

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

SF-00006-02

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT Attorney General
1100 Bremer Tower

TO : LARRY STARNS
Special Assistant
Attorney General

DATE: June 2, 1983

FROM : JOHN C. BJORK
Special Assistant
Attorney General

PHONE: 6-9701

SUBJECT: In the Matter of Proposed Rules Governing Deregulation of Workers' Compensation Insurance Rates (4 MCAR §§ 1.9140-1.9143).

The Commissioner of Insurance is herewith making a new submittal of rules in the above-entitled matter. The following documents are enclosed for your review pursuant to Minn. Stat. § 14.17 (1982) and 1 MCAR § 1.202:

1. One copy of the Rules as adopted that reflects the most recent amendments to these rules.

2. An Amended Findings of Fact, Conclusions, and Order Adopting Rules.

3. Affidavit of mailing Notice of Submission to the Attorney General and accompanying notice.

The Commissioner of Insurance would like an expedited review of these rules.

If you need anything further, please contact me.

JCB:jo
Enclosures

SF-00006-02

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT Attorney General
1100 Bremer Tower

TO : LARRY STARNS
Special Assistant
Attorney General

DATE: June 1, 1983

FROM : JOHN C. BJORK
Special Assistant
Attorney General

PHONE: 6-9701

SUBJECT: In the Matter of Proposed Rules Governing Deregulation of Workers' Compensation Insurance Rates During Transition to Competitive Rating Effective January 1, 1986 (4 MCAR §§ 1.9140-1.9143).

On behalf of the Commissioner of Insurance, I am herewith withdrawing from your consideration the rules in the above-entitled matter. I expect that a new submission of rules in this matter should be submitted on or before June 2, 1983.

JCB:jo

SF-00006-02

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT Attorney General
1100 Bremer Tower

TO : PAUL MARINAC
Assistant Revisor

DATE: May 25, 1983

FROM : JOHN C. BJORK
Special Assistant
Attorney General

PHONE: 6-9701

SUBJECT: In the Matter of Proposed Rules Governing Deregulation of Workers' Compensation Insurance Rates during Transition to Competitive Rating Effective January 1, 1986 (4 MCAR §§ 1.9140-1.9143).

Pursuant to our telephone conversations this morning, I have enclosed two copies of the Rules as adopted in the above-entitled matter -- only one of which reflects the changes that have been made since the Rules as proposed were published in the State Register. I have also enclosed a copy of the Rules as proposed and stamped with the Revisor's certificate of approval. As we discussed by phone this morning, these are the same Rules as adopted that were sent to you on May 13, 1983, except the title of the Rules has been changed so that it reads Rules as adopted instead of Rules as proposed. The Rules that were sent on May 13, 1983 should have been titled Rules as adopted.

JCB:jo

cc: Judith Wehrwein
204 Administration

SF-00006-02

STATE OF MINNESOTA

RR 914

Office Memorandum

DEPARTMENT Attorney General
1100 Bremer Tower

TO : JUDITH WEHRWEIN, Paralegal
204 Administration

DATE: May 25, 1983

FROM JOHN C. BJORK
Special Assistant
Attorney General

PHONE: 6-9701

SUBJECT: In the Matter of Proposed Rules Governing Deregulation of Workers' Compensation Insurance Rates during Transition to Competitive Rating Effective January 1, 1986 (4 MCAR §§ 1.9140-1.9143).

Pursuant to our telephone calls, I am enclosing two copies of the Rules as adopted in the above-entitled matter. These are the same rules that were sent to Ted Martinez on May 13, 1983, except these copies are labeled Rules as adopted instead of Rules as proposed. The copies of the rules I previously sent were all inadvertently labeled Rules as proposed instead of Rules as adopted.

JCB:jo
Enclosures

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT A.G. - BREMER TOWER

Office Memorandum

TO : TED MARTINEZ
Special Assistant
Attorney General

DATE: May 13, 1983

FROM : JOHN C. BJORK
Special Assistant
Attorney General

PHONE: 6-9701

SUBJECT: In the Matter of Proposed Rules Governing Deregulation of Workers' Compensation Insurance Rates during Transition to Competitive Rating Effective January 1, 1986 (MCAR §§ 1.9140-1.9143).

The Commissioner of Insurance has adopted Rules in the above-entitled matter. The following documents are enclosed for your review pursuant to Minn. Stat. § 14.17 (1982) and 1 MCAR § 1.202:

1. The original and three (3) copies of the Rules as Adopted.

2. Two (2) copies of the Findings of Fact, Conclusion and Order Adopting Rules.

3. The Order for Hearing.

4. The Notice of Hearing.

5. Affidavit of Mailing Notice of Hearing.

6. Mailing List Certificate.

7. Rule as proposed and published in the State Register.

8. Hearing Examiner's Report.

9. Chief Hearing Examiner's Reports.

10. Statement of Need and Reasonableness.

11. The complete record, including a tape recording of the proceeding.

12. Certificate of Compliance.

13. Affidavit of Mailing Notice of Submission to the Attorney General and accompanying Notice.

JCB:raa
/attachments

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 5-13-83
DATE FOR REVIEW 5-24-83
DATE DUE 6-2-83

Adopted w/a hearing ✓
Adopted w/o hearing
Temporary rule

Approved ____ Disapproved ____ Returned to Agency ____

Resubmitted ____ Due ____
Approved ____ Disapproved ____ Returned to Agency ____

Date filed w/Secretary of State ____ Revisor approved ____ disapproved ____

____ Rule as Adopted

✓ Rule as Proposed

✓ Order Adopting 5.13.83 Date combined with F of F.

____ Notice of Intent to Solicit Outside Opinion

✓ Order for rulemaking
12.21.82 date of Hearing

N/A Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
✓ Sufficiency

✓ Affidavit of Mailing Notice or rulemaking
11.10.82 At least 30 days prior to hearing/~~adoption~~

✓ Mailing list Certificate

✓ Publication in State Register
10.18.82 At least 30/~~20~~ days prior to hearing/~~adoption~~

✓ Hearing Examiner's Report

✓ Chief Hearing Examiner's Report(s)
✓ 2.14.83 Approving H.E.'s Report
✓ 4.7.83 Approving agency action

✓ Agency's Findings of Fact combined with Order Adopting

N/A LCRAR Report or agency Affidavit

✓ Certificate of Board's Resolution Adopting Rules

____ Order Approving Incorporation by Reference

✓ Statement of Need and Reasonableness

N/A Petition for Adoption of a Rule

✓ Record (includes transcript or tape, exhibits, comments received by agency, requests for a hearing, and other relevant materials)

✓ Certificate of Compliance w/Rulemaking Procedures

✓ Affidavit of Mailing Notice of Submission to Attorney General

✓ Notice of Submission to the Attorney General

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : Reynaud L. Harp, Commissioner of Insurance DATE: June 14, 1983

Attn: JOHN C. BJORK
Special Assistant Attorney General

FROM : LARRY D. STARNS
Special Assistant
Attorney General LDS

PHONE: 297-3493

SUBJECT: In the Matter of Proposed Rules Governing Deregulation of Workers' Compensation Insurance Rates (4 MCAR §§ 1.9140-1.9143).

Enclosed herewith are the rules you have submitted for approval. These rules have been approved by this office and filed with the Secretary of State. Please note that they have not been filed with the State Register. This must be done promptly by your agency.

Upon receipt and before transmittal to your agency, however, it is important that you recheck these rules as to:

1. Affixation of stamps of the Attorney General and Secretary of State;

2. Coverage by these stamps of all rules submitted; and

3. Inclusion of all pages to the rules in the approved set.

If you have any questions in this regard, please contact me.

Encs.
LDS/ls
cc: Ms. Kathy Burek
Mr. Duane Harves

Department of Commerce

Insurance Division

Adopted Rules Governing Workers' Compensation Insurance Rates

Rules as Adopted

4 MCAR S 1.9140 Definitions.

A. Applicability. For the purposes of 4 MCAR SS 1.9140-1.9143, the terms defined in this rule have the meanings given them.

B. Rating Association. "Rating Association" means the Workers' Compensation ~~Insurance~~ Insurers Rating Association of Minnesota.

C. Commissioner. "Commissioner" means the commissioner of insurance.

D. Data service organization; organization. "Data service organization" or "organization" means the same as it is defined in Minnesota Statutes, section 79.52, subdivision 3.

E. Classification plan; classification. "Classification plan" or "classification" means the same as it is defined in Minnesota Statutes, section 79.52, subdivision 4.

F. Rates. "Rates" means the same as it is defined in Minnesota Statutes, section 79.52, subdivision 5.

G. Insurer. "Insurer" means the same as it is defined in Minnesota Statutes, section 79.52, subdivision 13.

H. Pure premium rate. "Pure premium rate" means that portion of a rate designated for claim payments.

I. Pure premium. "Pure premium" means that portion of a premium, as defined in Minnesota Statutes, section 79.52, subdivision 7, designated for claim payments.

J. Pure premium relativities. "Pure premium relativities" means the mathematical relationship of pure premium rates for each reporting classification one to another, to a base class or classes, or to some common index or indices.

K. Pure premium base rate schedule. A "pure premium base rate schedule" is a set of pure premium rates with no

adjustments for trend and with only partial loss development reflecting some additional development but not developed to the ultimate expected loss level.

4 MCAR S 1.9141 Licensing of data service organizations.

A. Application information. A data service organization shall apply to the commissioner for a license. The ~~Workers' Compensation Insurance~~ rating association shall submit an application to be licensed as a data service organization by ~~January~~ July 1, 1983. An application to be a data service organization shall include all information required by Minnesota Statutes, section 79.62. In addition, the application shall include:

1. the organization's plan of operation including:

a. ~~the establishment of necessary facilities~~ a description of the applicant's operating premises and computer capabilities;

b. a description of the management and operation of the organization, including a description of major staff positions and necessary qualifications for the positions;

c. ~~the operating rules of the organization;~~

~~d.~~ a list of members and their responsibilities; and

d. a procedure by which insureds and any other interested party may challenge the action of the data service organization; and

2. a plan for data collection and analysis, and other activities of the data service organization, including:

a. a statistical plan for the collection and reporting of exposure base and ~~of~~ loss data ~~from~~ of individual insureds ~~of~~ from each member;

b. a system for the classification of risks to be used for reporting by member insurers, ~~in~~ and for calculating pure premium relativities, and ~~for~~ all other ~~relevant~~ rate-related or data analytic activities it proposes to undertake;

c. manual rules reasonably related to the recording and reporting of data pursuant to the statistical plan and the classification system;

d. data reporting requirements for members and monitoring procedures. Expense A data ~~shall not be reported~~ service organzation may not collect or report expense or profit data from its members but may collect loss adjustment costs. Premium data may be reported to the extent needed to monitor the quality and integrity of the data bases. Following the approval of a pure premium base rate schedule, the data service organization may require premium data to be reported at that level, provided that reporting need not be required of companies writing a small volume of Minnesota workers' compensation premiums. The criteria for being excused from reporting will be determined by the data service organization ~~subject to the commissioner's approval~~;

~~d.~~ e. a plan for the collection of any other data not prohibited in c. and a description of these data;

~~e.~~ f. a plan for and description of the ratemaking report required by Minnesota Statutes, section 79.61;

~~f.~~ g. plans for disseminating information to members of the organization and to the commissioner;

~~g.~~ h. plans for audit procedures to ensure that data reporting requirements are met by organization members; ~~and~~

~~h.~~ i. a plan for compiling expense data reported to the commissioner for development of advisory rates, rating plan values, and discount factors~~.~~; and

j. a description of any changes from the uniform statistical plan, classification system, and related rules which are in effect at the time the application is made.

B. Manuals. There are five manuals currently filed by the rating association and in force in Minnesota. The rating association must file similar manuals as part of their application to become a data service organization. The application must include a list of any changes in the current manuals.

1. The commissioner shall approve a uniform classification system and a uniform statistical plan and manual rules related to the classification system and the statistical

plan.

2. The commissioner shall disapprove changes in the manuals which would substantially lessen competition or which would lead to premiums which are unfairly discriminatory.

3. Every workers' compensation insurer shall report its data in accordance with the Classification Code Manual, and the Unit Statistical Plan Manual, and the related rules in the Basic Manual. In the current Basic Manual these rules consist of the following:

a. in Part One, Rules I, II, III, IV, V, VIII (A.1, A.2a, A.2.b.1, A.2.c-e, B.1, B.2, B.6, C.1, C.2, C.4), IX, XI (A, B), XII, XIII, XIV (A-D), XV (A and C);

b. all of Part Two on classifications; and

c. in part three, pages 9-17 on classifications; pages 18-19, Special Rules (IV, V, IX); and pages 20-23.

4. Insurers may use the premium factors, the experience rating plan, or the retrospective rating plans developed by the rating association. They may also develop and use their own factors and plans. In the current Basic Manual, the rules which insurers will not be required to use consist of the following:

a. in Part One, Rules VI, VII, VIII (A.2.b.2-4, B.3-5, C.3) X, XI (C-H), XIV (E-G), XV (B); and

b. in Part Three, pages 1-8; pages 18-19, Special Rules VI and VII; and Appendix B.

C. Granting of license.

1. The commissioner shall issue a license if the commissioner finds that:

a. the applicant meets the requirements of Minnesota Statutes, section 79.62 and 4 MCAR S 1.9141 A.;

b. the applicant demonstrates staff competence and technical qualifications necessary to provide the services proposed;

c. the applicant's premises and computer capabilities are sufficient to provide the services proposed; and

d. the applicant's plan for data collection and analysis will result in a reliable, credible data base.

2. The commissioner shall issue a notice of the acceptance or rejection of the application for licensure as a data service organization within 90 days of receipt of a complete application.

~~B.--Progress-reports.--Data-service-organizations-shall submit-semiannual-progress-reports-to-the-commissioner-on-the implementation-of-their-organizational-plan.--The-report-shall include-progress-made-on-satisfying-the-requirements-of Minnesota-Statutes,-sections-79.61-and-79.62-and-requirements-of 4-MCAR-SS-1.9140-1.9143.--The-reports-must-be-submitted semiannually-between-the-time-of-application-and-January-1,-1986.~~

~~4-MCAR-S-1.9142-Rate-petitions-and-hearings.~~

~~A.--Manual-rates;-creation-and-adjustment.~~

~~1.--A-petition-for-modification-of-the-schedule-of-rates shall-be-filed-by-the-rating-association-by-January-1,-1983,-for the-purpose-of-producing-a-schedule-of-manual-rates-by classification.--This-petition-shall-be-considered-in-a-hearing conducted-pursuant-to-Minnesota-Statutes,-section-79.071.~~

~~2.--After-approval-of-a-schedule-of-manual-rates-by-the commissioner,-insurers-may-modify-the-rates-by-adjustment-of-the pure-premium-rates-and-expense-allowances-within-a-range allowing-for-downward-deviations-that-are-unlimited-and-upward deviations-of-at-most-15-percent-of-the-approved-rate.~~

~~3.--Insurers-may-adjust-premiums-by-the-application-of discount-factors-as-defined-in-Minnesota-Statutes,-section 79.52,-subdivision-8-and-merit-rating-as-defined-in-Minnesota Statutes,-section-79.52,-subdivision-9.--Insurers-may-use-their own-plans-or-plans-developed-by-a-data-service-organization-in which-they-maintain-membership.~~

~~4.--All-data-and-calculations-used-to-develop-actual premiums-from-the-manual-rates-approved-by-the-commissioner shall-be-clearly-documented.~~

~~5.--An-insurer's-rates-and-rating-plans,-along-with clearly-documented-justification,-shall-be-filed-with-the commissioner-30-days-prior-to-use.~~

~~B.--Pure-premiums;-creation-and-modification.~~

1. A petition for modification of the schedule of rates shall be filed by the rating association by January 1, 1984, for the purpose of producing a schedule of pure premium rates. These rates must not contain trend adjustments. A hearing conducted pursuant to Minnesota Statutes, section 79.071 must be held on the petition.

2. The petition must contain an analysis of trended data as specified in 4 MCAR S 1.9143 B.1.g. The analysis shall be disseminated to all members of the rating association when filed.

3. Following approval of a schedule of pure premium rates, insurers may calculate final rates by:

a. the modification of pure premium rates allowing for downward deviations that are unlimited and upward deviations of at most 15 percent from the pure premium rates approved by the commissioner;

b. application of trend factors based on the analysis provided by the rating association or on their own interpretations of underlying data; or

c. adjustments to reflect the insurer's expected expense requirements. Neither the rating association nor any data service organization shall publish recommended expected expense allowances.

4. Insurers may adjust premiums by the application of discount factors as defined in Minnesota Statutes, section 79.52, subdivision 8 and merit rating as defined in Minnesota Statutes, section 79.52, subdivision 9. Insurers may use their own plans or plans developed by a data service organization in which they maintain membership.

5. All data and calculations used by an insurer to develop actual premiums from the pure premium rates shall be clearly documented.

6. An insurer's rates and rating plans, along with clearly documented justification, shall be filed with the commissioner 30 days prior to use.

C. Other rate petitions, hearings. The rating association or other data service organizations may make other filings. All

~~petitions-proposing-rates,-pure-premium-rates,-or-pure-premium relativities-for-an-effective-period-prior-to-January-1,-1986, shall-be-considered-in-hearings-conducted-pursuant-to-Minnesota Statutes,-section-79.071.~~

4 MCAR S 1.9143 Ratemaking report.

A. Data service organizations.

1. Beginning in 1984, licensed data service organizations shall make yearly ratemaking reports to the commissioner. Insurers may not make reference to a report in their filings until it has been filed with the commissioner.

2. In ~~1985~~ 1983 licensed data service organizations must prepare ~~a~~ their first ratemaking report ~~in-a-form-prescribed-by the-commissioner~~. The outline of the report should be submitted to the commissioner for comment by ~~January-1,-1985~~ September 1, 1983. A draft of the report should be submitted to the commissioner for comment by ~~July-1,-1985~~ November 1, 1983. The final ratemaking report must be submitted no later than January 1, ~~1986~~ 1984.

3. After ~~1985~~ 1984, licensed data service organizations must submit an outline of their annual ratemaking report to the commissioner for comment by July 1 of each year. A draft of the report should be submitted to the commissioner for comment by October 1. The final ratemaking report must be submitted no later than January 1 of the succeeding year. Interim reports on the effect of changes in the law on rates may be submitted at any time during a year.

B. Contents of ratemaking report.

1. A ratemaking report shall meet all requirements of Minnesota ~~law~~ Statutes, section 79.61, subdivision 1, clause (c) and, in addition, may contain information useful to data service organization members regarding factors pertinent to Minnesota workers' compensation business such as legislative concerns, Workers' Compensation Reinsurance Association operations, loss control programs, and programs developed by insurers that may be of interest and applicability to workers' compensation insurers. A ratemaking report shall include:

a. a compilation of financial data collected under Minnesota Statutes, section 79.61 without adjustments for either premium or loss development or trend. Financial data must be reconcilable to that reported by insureds in their annual financial statements to the commissioner;

b. a compilation of reporting classification data collected under Minnesota Statutes, section 79.61 without adjustments for either premium development or loss development or premium trend or loss trend;

c. a calculation of factors to adjust reported loss data to a common development level. The development level is subject to approval by the commissioner;

d. a calculation of factors to reflect any benefit level changes mandated by statute or by the courts;

e. the development of a schedule of pure premium base rates using the data reported by insurers and the factors calculated in c.;

f. a schedule of pure premium relativities, based on the pure premium base rate schedule;

g. an analysis and calculation of factors to adjust reported premium and loss data to an expected ultimate level. The analysis shall be in detail so as to permit insurers to select and modify the factors based on their own interpretations of underlying data;

h. an analysis and calculation of trended data to reflect future conditions through the use of factors or some other method. The analysis shall be in detail so as to permit insurers to select and modify the factors or utilize other trending methods based on their own interpretations of underlying data;

i. a calculation of any other quantitative factor or modifications and a description of any subjective considerations reflected in the determination of pure premiums in a manner so as to permit insurers to evaluate and modify the factors and considerations based on their own interpretations of underlying data; and

j. a calculation of any other quantitative factors required to maintain advisory discount factors as defined in Minnesota Statutes, section 79.52, subdivision 8 and advisory merit rating plans as defined in Minnesota Statutes, section 79.52, subdivision 9.

2. The ratemaking report shall be disseminated to all members of the data service organization.

C. Use of ratemaking report.

1. After the ratemaking report has been filed with the commissioner, insurers may develop and use rates based upon the pure premium base rates contained in the report. Effective January 1, ~~1986~~ 1984, insurers may also develop and use rates based upon any reasonable factors.

2. If an insurer uses the pure premium base rates contained in the ratemaking report, then the insurer may calculate rates by:

a. application of trend factors based on the analysis provided by the data service organization or on the insurer's own interpretations of underlying data;

b. application of loss development factors reflecting expected development beyond that in the pure premium base rate schedule to the ultimate loss level;

c. application of a factor to reflect the insurer's expected expense requirements~~.--No-data-service-organization shall-publish-recommended-expected-expense-allowances~~;

d. application of any other factor based on the analysis provided by the data service organization or on the insurer's own interpretation of underlying data.

3. Insurers may adjust premiums by application of discount factors as defined in Minnesota Statutes, section 79.52, subdivision 8 and merit rating as defined in Minnesota Statutes, section 79.52, subdivision 9. Insurers may use their own plans or plans developed by a data service organization in which they maintain membership.

4. An insurer shall not refuse to write insurance for an employer solely because:

a. the employer was denied coverage by another insurer, whether by cancellation or nonrenewal or refusal to offer coverage; or

b. the employer was insured through the Assigned Risk Plan.

5. All data and calculations used to calculate rates from the pure premium base rate schedule shall be clearly documented.

~~5.--Prior-to-January-1,-1986,-an-insurer's-rates-and rating-plans,-along-with-clearly-documented-justification,-must be-filed-with-the-commissioner-30-days-prior-to-use.~~

~~Repealer.--Rule-4-MCAR-S-1.9142-is-repealed-effective-January-1, 1986.~~

OFFICE OF THE REVISOR OF STATUTES

Certificate of Approval of Adopted Rules

Agency: Department of Commerce AR0278

Division: Insurance Division

Agency Contact: John Bjork 6-9701

Rule Numbers: 4 MCAR SS 1.9140-1.9143

Title: Adopted Rules Governing Workers' Compensation Insurance Rates

Type of Rules: Permanent

Incorporations by Reference:

Rule Number:	Material Incorporated:
4 MCAR S 1.9141	Classification Code Manual
	Unit Statistical Plan Manual
	Basic Manual

Duplication of Statutory Language: None

The attached rules are approved as to form, subject to the following editorial changes:

Steven C. Cross
Revisor of Statutes

John C. Fuller
Assistant Deputy Revisor
Phone: 296-0955
Date: June 1, 1983

APPROVED AS TO LEGALITY
June 14, 1983
HUBERT H. HUMPHREY, III
ATTORNEY GENERAL
BY
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
JUN 14 1983
Joan Anderson Growe
Secretary of State
3:18 PM

H.F. No. 274
CHAPTER No.

AN ACT

NOTE
This is the final version of the bill that will be transmitted to the governor's desk. Check House Index Department for updated status (296-6646)

relating to workers' compensation; providing for comprehensive reform of all aspects of workers' compensation; providing penalties; appropriating money; amending Minnesota Statutes 1982, sections 43A.23, by adding a subdivision; 79.071, subdivisions 1 and 1a; 79.211, subdivision 2; 79.251; 79.34, subdivisions 1, 2, and by adding a subdivision; 79.35; 79.37; 79.51, subdivision 3; 79.52, by adding a subdivision; 79.53; 147.02, by adding a subdivision; 175.006, subdivision 1; 175.007, subdivision 1; 175.08; 175.10; 175.101, subdivisions 1 and 2; 176.001; 176.011, subdivision 9, and by adding subdivisions; 176.012; 176.021, subdivisions 1a and 3; 176.041, subdivision 1; 176.061; 176.081, subdivisions 1, 2, 5, 6, 7, and by adding a subdivision; 176.101, subdivisions 1, 2, 6, and by adding subdivisions; 176.102, subdivisions 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and by adding subdivisions; 176.105, by adding a subdivision; 176.111, subdivisions 6, 7, 8, and 18, and by adding a subdivision; 176.121; 176.131, subdivisions 1, 1a, 2, 3, 4, 5, 6, 7, and 8; 176.132, subdivision 1, and by adding a subdivision; 176.134, subdivision 4; 176.135, subdivisions 1 and 3; 176.136; 176.155, subdivisions 3 and 5; 176.179; 176.181, by adding a subdivision; 176.182; 176.183, subdivisions 1, 1a, and by adding subdivisions; 176.185, subdivision 1, and by adding a subdivision; 176.191, by adding subdivisions; 176.195, subdivision 2, and by adding subdivisions; 176.221; 176.225, subdivisions 1, 2, and 3; 176.231, subdivisions 3, 4, 5, 9, and 10; 176.241, subdivisions 2 and 4; 176.281; 176.285; 176.321, subdivision 1; 176.331; 176.341; 176.361; 176.371; 176.421, subdivisions 3, 4, 6, and 7; 176.442; 176.461; 176.521, subdivisions 2, 2a, and 3; 176.561; 176.571, subdivision 6; 176.66, by adding subdivisions; 268.08, subdivision 3; and 471.982, subdivision 2, and by adding a subdivision; Laws 1981, chapter 346, sections 145 and 146; proposing new law coded in Minnesota Statutes, chapters 79; 148; and 176; proposing new law coded as Minnesota Statutes, chapter 176A; repealing Minnesota Statutes 1982, sections 8.31, subdivision 4; 79.51, subdivision 2; 79.63; 175.07; 175.101, subdivision 3; 175.36; 176.101, subdivision 3; 176.102, subdivision 12; 176.131, subdivisions 9, 10, 11, and 12; 176.152; and

176.262.

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

Section 1. Minnesota Statutes 1982, section 43A.23, is amended by adding a subdivision to read:

Subd. 3. [CONTRACT WITH INSURANCE CARRIERS.] The commissioner of labor and industry may contract with carriers authorized to provide coverage under the state employees group insurance plan to extend coverage to eligible employees who incur medical expenses due to a personal injury which results from their state employment which is compensable under chapter 176.

Sec. 2. Minnesota Statutes 1982, section 79.071, subdivision 1, is amended to read:

Subdivision 1. The commissioner shall adopt a schedule of workers' compensation insurance rates for use in this state for each classification under which business is written until January 1, ~~1986~~ 1984. The schedule of rates shall not be excessive, inadequate, or unfairly discriminatory. In adopting a schedule of rates, the commissioner may act on the written petition of the association or any other interested party requesting that a hearing be held for modification of the schedule of rates. The commissioner may include the expense of a reasonable charge for the services of an agent of record, for the service of rejected risks as set forth in sections 79.24 to 79.27.

Sec. 3. Minnesota Statutes 1982, section 79.071, subdivision 1a, is amended to read:

Subd. 1a. If the legislature enacts amendments to the workers' compensation laws of this state which indicate a reduction in the schedule of rates, or the commissioner determines that the loss experience of Minnesota workers' compensation insurers indicates a change in the existing schedule of rates, the commissioner may, in his discretion, order a change in the schedule of rates or order a hearing to determine whether and by what percentage the schedule of rates

should be changed. A hearing held pursuant to this subdivision is not subject to the contested case proceeding requirements of sections 79.071 and 79.072, notwithstanding section 79.076. The commissioner is prohibited from granting approval of any proposed increase in rates after May 1, 1983.

Sec. 4. Minnesota Statutes 1982, section 79.211, subdivision 2, is amended to read:

Subd. 2. [DIVISION OF PAYROLL.] An insurer shall permit an employer to divide his 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.

Sec. 5. Minnesota Statutes 1982, section 79.251, is amended to read:

79.251 [ADMINISTRATION OF ASSIGNED RISK PLAN.]

Subdivision 1. [ASSIGNED RISK PLAN REVIEW BOARD.] (1) An assigned risk plan review board is created for the purposes of review of the operation of sections ~~79.34 to 79.37~~ 6 and 79.251. The board shall have all the usual powers and authorities necessary for the discharge of its duties under this section and may contract with individuals in discharge of those duties.

(2) The board shall consist of ~~five~~ six members to be appointed by the commissioner of insurance. ~~Two~~ Three members shall be insureds holding policies or contracts of coverage issued pursuant to ~~section 79.35~~ subdivision 4. Two members shall be ~~members of the association~~ insurers licensed pursuant to section 60A.06, subdivision 1, clause (5), paragraph (b). The commissioner shall be the ~~fifth~~ sixth member and shall vote.

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

(3) The assigned risk plan review board shall audit the reserves established ~~by insurers~~ (a) for individual cases arising under policies and contracts of coverage issued under

section 79.25 subdivision 4 and (b) for the total book of business issued under section 79.25 subdivision 4.

(4) The assigned risk plan review board shall monitor the operations of sections 79.24 to 79.27 6 and 79.251 and shall periodically make recommendations to the commissioner, and to the governor and legislature when appropriate, for improvement in the operation of those sections.

(5) All members of the association insurers and self-insurance administrators issuing policies or contracts under section 79.25 subdivision 4 shall pay and the commissioner shall receive and disburse, on behalf of the board, a .25 percent assessment on premiums for policies and contracts of coverage issued under section 79.25 subdivision 4 for the purpose of defraying the costs of the assigned risk plan review board.

(6) The assigned risk plan and the assigned risk plan review board shall not be deemed a state agency.

Subd. 2. [APPROPRIATE MERIT RATING PLAN.] The commissioner shall develop an appropriate merit rating plan which shall be applicable to all insureds holding policies or contracts of coverage issued pursuant to section 79.25 whose premium is less than the amount necessary to qualify for experience rating subdivision 4 and to the insurers or self-insurance administrators issuing those policies or contracts. The plan shall provide a maximum merit payment adjustment equal to ten percent of earned premium. The actual payment adjustment may vary with insured's loss experience.

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. 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.

Sec. 6. [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. 3. [COVERAGE.] 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.

Subd. 4. [RESPONSIBILITIES.] Assigned risk policies and contracts of coverage shall be subject to premium tax pursuant to section 60A.15, and special compensation fund assessments pursuant to 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 shall be deemed to have selected the higher retention limit provided in section 79.34, subdivision 2.

Subd. 5. [RULES.] The commissioner may adopt rules, including temporary rules, as may be necessary to implement sections 6 and 79.251.

Sec. 7. Minnesota Statutes 1982, section 79.34, subdivision 1, is amended to read:

Subdivision 1. A nonprofit association known as the workers' compensation reinsurance association is created, which may be incorporated under chapter 317 with all the powers of a corporation formed under that chapter, except that if the provisions of that chapter are inconsistent with sections 79.34 to 79.40 or any amendments thereto, sections 79.34 to 79.40 shall govern. Each insurer as defined by section 79.01, subdivision 2, shall as a condition of its authority to transact workers' compensation insurance in this state, be a member of the reinsurance association and shall be bound by the plan of operation of the reinsurance association; provided, that all affiliated insurers within a holding company system as defined in sections 60D.01 to 60D.13 shall be considered a single entity for purposes of the exercise of all rights and duties of membership in the reinsurance association. Each self-insurer

approved pursuant to section 176.181 and each political subdivision which self-insures shall, as a condition of its authority to self-insure workers' compensation liability in this state, be a member of the reinsurance association and shall be bound by its plan of operation; provided, that (a) all affiliated companies within a holding company system, as determined by the commissioner in a manner consistent with the standards and definitions in sections 60D.01 to 60D.13, shall be considered a single entity for purposes of the exercise of all rights and duties of membership in the reinsurance association, and (b) all group self-insurers granted authority to self-insure pursuant to section 176.181 shall be considered a single entity for purposes of the exercise of all the rights and duties of membership in the reinsurance association. As a condition of its authority to self-insure workers' compensation liability, and for losses incurred on or after January 1, 1984, the state shall be a member of the reinsurance association and is bound by its plan of operation. The commissioner of labor and industry represents the state in the exercise of all the rights and duties of membership in the reinsurance association. The state treasurer shall pay the premium to the reinsurance association from the state compensation revolving fund upon warrants of the commissioner of labor and industry. 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 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 ~~shall~~ is not ~~be deemed~~ a state agency. Actions of the reinsurance association and its board of directors and actions of the commissioner of insurance with respect to the reinsurance association ~~shall~~ are not ~~be~~ subject to ~~chapter~~ chapters 13, 14, and 15. The reinsurance association

shall be is exempt from taxation under the laws of this state and all property owned by the association shall be is exempt from taxation. The reinsurance association shall is not be obligated to make any payments or pay any assessments to any funds or pools established pursuant to this chapter or chapter 176 or any other law.

Sec. 8. Minnesota Statutes 1982, section 79.34, subdivision 2, is amended to read:

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

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

under chapter 176; (d) when the reinsurance or contract is limited to all the claims of a specific insured of a member which are reimbursed or indemnified by a reinsurer which, directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with the insured of the member so long as any subsequent contract or reinsurance of the reinsurer relating to the claims of the insured of a member is not inconsistent with the bases of exception provided under clauses (a), (b) and (c) above; or (e) when the reinsurance or contract is limited to all claims of a specific self-insurer member which are reimbursed or indemnified by a reinsurer which, directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with the self-insurer member so long as any subsequent contract or reinsurance of the reinsurer relating to the claims of the self-insurer member are not inconsistent with the bases for exception provided under clauses (a), (b) and (c) above.

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

Sec. 9. Minnesota Statutes 1982, section 79.34, is amended by adding a subdivision to read:

Subd. 7. 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 relating 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.

Sec. 10. Minnesota Statutes 1982, section 79.35, is amended to read:

79.35 [DUTIES; RESPONSIBILITIES; POWERS.]

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

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

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

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

(d) Calculate and charge to members a total premium sufficient to cover the expected liability which the reinsurance association will incur in excess of the higher retention limit but less than the prefunded limit, together with incurred or estimated to be incurred operating and administrative expenses for the period to which this premium applies and actual claim payments to be made by members, during the period to which this premium applies, for claims in excess of the prefunded limit in effect at the time the loss was incurred. The prefunded limit shall be $2,500,000 on and after October 1, 1979, provided that the prefunded limit shall be increased on January 1, 1983 and on each January 1 thereafter by the percentage increase in the statewide average weekly wage, to the nearest $100,000, as determined in accordance with section 176.011, subdivision 20. Each member shall be charged a proportion of the total premium in an amount equal to its proportion of the ~~total standard earned premium~~ exposure base of all members during the period to which the reinsurance association premium will apply, ~~as determined by the commissioner~~. The exposure base shall be determined by the board and is subject to the approval of the commissioner. 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 exercising the lower retention option shall also be charged a premium established by the board as sufficient to cover incurred or estimated to be incurred claims for the liability the reinsurance association is likely to incur between the lower and higher retention limits for the period to which the premium applies. Each member shall also be charged a premium determined by the board to equitably distribute excess or deficient premiums from previous periods including any excess or deficient premiums resulting from a retroactive change in the prefunded limit. ~~An equitable basis for determining standard earned premium for self-insurers shall be established by the commissioner.~~ The premiums charged to members shall not be

unfairly discriminatory as defined in section 79.074. All premiums shall be approved by the commissioner;

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

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

(g) Establish procedures for reviewing claims procedures and practices of members of the reinsurance association. If the claims procedures or practices of a member are considered inadequate to properly service the liabilities of the reinsurance association, the reinsurance association may undertake, or may contract with another person, including another member, to adjust or assist in the adjustment of claims which create a potential liability to the association ~~and~~. 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.

Sec. 11. Minnesota Statutes 1982, section 79.37, is amended to read:

79.37 [BOARD OF DIRECTORS.]

A board of directors of the reinsurance association is created and ~~shall~~ be is responsible for the operation of the reinsurance association consistent with the plan of operation and sections 79.34 to 79.42. The board ~~shall consist~~ consists of ~~nine~~ 13 directors and the ~~commissioner~~ commissioners of insurance and labor and industry who shall be ~~an~~ ex officio ~~member~~ members . Four members of the board shall represent insurers, ~~three~~ six members of the board shall represent employers, at least one, but not more than ~~two~~ three, of whom

shall represent self-insurers, and ~~two~~ three members of the board shall represent employees. Members shall elect the insurer directors, and the commissioner of insurance shall appoint the employer and employee directors from a list presented to the commissioner by the workers' compensation advisory council established in chapter 175, for the terms authorized in the plan of operation. Each board member ~~shall be~~ 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 chairman and other officers it deems appropriate.

A majority of the board ~~shall constitute~~ constitutes a quorum, notwithstanding any vacancies. Action may be taken by a majority vote of the directors present.

Sec. 12. Minnesota Statutes 1982, section 79.51, subdivision 3, is amended to read:

Subd. 3. [RULES; SUBJECT MATTER.] (a) The commissioner in issuing rules shall consider:

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

(2) Experience rating plans;

(3) Retrospective rating plans;

(4) General expenses and related expense provisions;

(5) Minimum premiums;

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

(7) Loss development and trend factors;

(8) The workers' compensation reinsurance association;

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

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

~~(11)~~ (10) Imposing limitations on the functions of workers' compensation data service organizations consistent with the introduction of competition;

~~(12)~~ (11) The rules contained in the workers' compensation rating manual adopted by the workers' compensation insurers rating association; and

~~(13)~~ (12) Any other factors that the commissioner deems relevant to achieve the purposes of chapter 79.

(b) The rules shall provide for the following:

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

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

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

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

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

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

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

Sec. 13. Minnesota Statutes 1982, section 79.52, is amended by adding a subdivision to read:

Subd. 16. [ATTORNEY'S 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.

Sec. 14. Minnesota Statutes 1982, section 79.53, is amended to read:

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. 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. [STUDY; REPORT.] The commissioner of insurance shall conduct a comparative actuarial study of the exposure bases of employers located within and outside of the seven county metropolitan area. In addition to the factors required to be considered by a data service organization under section 79.61, subdivision 1, the study shall include the activity permitted under section 79.61, subdivision 2, and specifically, shall include a comparative study of the incidence of litigation in relationship to first reports of injuries as between employers within and outside the metropolitan area.

For the purposes of this section, "metropolitan area" has the meaning as defined in section 473.121, subdivision 2.

A report on the study shall be made by the commissioner to the legislature by January 15, 1984.

Sec. 15. Laws 1981, chapter 346, section 145, is amended to read:

Sec. 145. [REPEALER.]

Minnesota Statutes 1980, Sections ~~79.071, Subdivision 1, 79.074, Subdivision 1, 79.075, 79.076, 79.08, 79.09, 79.11, 79.12, 79.13, 79.14, 79.15, 79.16, 79.17, 79.171, 79.18, 79.19, 79.20, 79.21, 79.22, Subdivision 1, 79.221, 79.23,~~ 79.24; 79.25; and 79.26; ~~79.27, 79.28, 79.29, 79.30, 79.31, 79.32, and 79.33~~ are repealed effective July 1, 1983. Minnesota Statutes 1980, Sections 79.071, ~~Subdivisions 2, 3, 4, 5, 6, and 7~~; 79.072; ~~and~~

79.073; 79.074, Subdivision 1; 79.075; 79.076; 79.08; 79.09; 79.11; 79.12; 79.13; 79.14; 79.15; 79.16; 79.17; 79.171; 79.18; 79.19; 79.20; 79.21; 79.22, Subdivision 1; 79.221; 79.23; 79.27; 79.28; 79.29; 79.30; 79.31; 79.32; and 79.33 are repealed effective January 1, ~~1986~~ 1984. Minnesota Statutes 1980, Sections 175.006, Subdivisions 1a and 2; 175.0061; 175.09; 176.111, Subdivision 11; and 176.441, Subdivision 2, are repealed.

Sec. 16. Laws 1981, chapter 346, section 146, is amended to read:

Sec. 146. [EFFECTIVE DATE.]

Sections 11, 21, 22, 23, 35, 36, 37, 38, 53, 54, 141, and 142 are effective the day following enactment. Sections 1 to 8, 12, 39 to 52, 55 to 95, 99 to 138, 140, and 143 to 145 are effective July 1, 1981. Sections 96 to 98 are effective October 1, 1981. Sections 9, 10, and 13 to 20 are effective January 1, 1982. Sections ~~24~~ 30 to 34 are effective July 1, 1983. Sections 24 to 29 are effective January 1, 1984. Section 139 is effective retroactively to April 12, 1980.

Sec. 17. Minnesota Statutes 1982, section 147.02, is amended by adding a subdivision to read:

Subd. 3. [CONTINUING EDUCATION.] The board shall adopt rules requiring continuing education for physicians, surgeons, and osteopaths licensed under this chapter who regularly practice in the area of workers' compensation. These rules shall include rules relating to continuing education designed to assure the coordination of treatment, rehabilitation, and other medical services provided to injured employees under chapter 176. Rules relative to education regarding treatment under chapter 176 shall be adopted jointly with the commissioner of labor and industry. These rules shall be consistent with section 214.12.

Sec. 18. [148.031] [CONTINUING EDUCATION.]

The board shall adopt rules requiring continuing education for chiropractors licensed under this chapter who regularly practice in the area of workers' compensation. These rules

shall include rules relating to continuing education designed to assure the coordination of treatment, rehabilitation, and other chiropractic services provided to injured employees under chapter 176. Rules relative to education under chapter 176 shall be adopted jointly with the commissioner of labor and industry. These rules shall be consistent with section 214.12.

Sec. 19. Minnesota Statutes 1982, section 175.006, subdivision 1, is amended to read:

Subdivision 1. [CREATION AND ORGANIZATION.] The division of workers' compensation, generally administering the workers' compensation law, is created within the department of labor and industry. ~~There is created as a separate appellate tribunal for workers' compensation, the workers' compensation court of appeals.~~

~~The workers' compensation court of appeals shall be composed of five judges each serving in the unclassified service of the state civil service. Of the five judges, at least three shall be learned in the law. Each judge of the workers' compensation court of appeals shall be appointed by the governor, by and with the advice and consent of the senate, for a term of six years. The judges of the workers' compensation court of appeals as now created shall be the judges of the workers' compensation court of appeals until the expiration of the terms for which they have been appointed and qualified.~~

Sec. 20. Minnesota Statutes 1982, section 175.007, subdivision 1, is amended to read:

Subdivision 1. The commissioner shall appoint an advisory council on workers' compensation, which ~~shall consist~~ consists of five representatives of employers and five representatives of employees and ~~three~~ five nonvoting members representing the general public. The council may consult with ~~the judges of the workers' compensation court of appeals~~ any party it desires. The ~~council shall expire and the~~ terms, ~~compensation~~ and removal of members shall be as provided in section 15.059. The council is not subject to section 15.059, subdivision 5.

Sec. 21. Minnesota Statutes 1982, section 175.08, is

amended to read:

175.08 [OFFICE.]

The ~~workers' compensation court of appeals and the~~ department of labor and industry shall maintain ~~their~~ its main ~~offices~~ office within the Minneapolis-Saint Paul metropolitan area and be provided by the commissioner of administration with suitable rooms and necessary furniture. ~~The offices of the workers' compensation court of appeals and the department of labor and industry shall be in separate buildings. They~~ It may hold sessions at any other place in the state when ~~their convenience and that of the parties interested so requires~~ it is convenient.

Sec. 22. Minnesota Statutes 1982, section 175.10, is amended to read:

175.10 [SESSIONS TO BE PUBLIC.]

The department of labor and industry shall be open for the transaction of business during all business hours of each and every day, excepting Saturdays, Sundays and legal holidays. The hearings of ~~the workers' compensation court of appeals and~~ the workers' compensation division ~~shall be~~ are open to the public and may be adjourned from time to time. All the proceedings of ~~the workers' compensation court of appeals and~~ the division shall be shown on ~~their~~ its records, which ~~shall be~~ are public records.

Sec. 23. Minnesota Statutes 1982, section 175.101, subdivision 1, is amended to read:

Subdivision 1. It is the legislative purpose in creating a division of workers' compensation, and in assigning to the commissioner of the department of labor and industry specific duties and responsibilities, to:

(a) provide for a unified department of labor and industry for the limited purposes of organization and administration of common administrative functions; and

(b) assure the autonomy and maximum independence of the necessary adjudicative functions and quasi-legislative administrative duties of the division; ~~and~~

~~(c) separate and limit the functions and responsibilities of the existing workers' compensation court of appeals to those appropriate to an independent appellate reviewing body.~~

The commissioner ~~of the department of labor and industry~~ as head of the workers' compensation division is the administrator of the workers' compensation division. ~~He~~ The commissioner shall possess only ~~such~~ the powers and shall perform only ~~such~~ the duties as are ~~specifically~~ prescribed by law.

Sec. 24. Minnesota Statutes 1982, section 175.101, subdivision 2, is amended to read:

Subd. 2. The commissioner ~~of the department of labor and industry~~ shall keep a full and true record of all proceedings of the workers' compensation division ~~and the workers' compensation court of appeals~~, issue all necessary processes, writs, warrants, and notices which the division ~~or workers' compensation court of appeals~~ are is required or authorized to issue and generally act as the administrator of the division of workers' compensation in the department of labor and industry. Notices and other documents required to be served or filed on the division of workers' compensation or the workers' compensation court of appeals shall be served on the commissioner ~~of the department of labor and industry~~.

Sec. 25. Minnesota Statutes 1982, section 176.001, is amended to read:

176.001 [INTENT OF THE LEGISLATURE.]

It is the intent of the legislature that chapter 176 be interpreted so as to assure the quick and efficient delivery of indemnity and medical benefits to injured workers at a reasonable cost to the employers who are subject to the provisions of chapter 176. It is the specific intent of the legislature that workers' compensation cases shall be decided on their merits and that the common law rule of "liberal construction" based on the supposed "remedial" basis of workers' compensation legislation shall not apply in such cases. The workers' compensation system in Minnesota is based on a mutual renunciation of common law rights and defenses by employers and

employees alike. Employees' rights to sue for damages over and above medical and health care benefits and wage loss benefits are to a certain degree limited by the provisions of this chapter, and employers' rights to raise common law defenses such as lack of negligence, contributory negligence on the part of the employee, and others, are curtailed as well. Accordingly, the legislature hereby declares that the workers' compensation laws are not remedial in any sense and are not to be given a broad liberal construction in favor of the claimant or employee on the one hand, nor are the rights and interests of the employer to be favored over those of the employee on the other hand.

Sec. 26. Minnesota Statutes 1982, section 176.011, subdivision 9, is amended to read:

Subd. 9. [EMPLOYEE.] "Employee" means any person who performs services for another for hire; and includes the following:

(1) an alien;

(2) a minor;

(3) a sheriff, deputy sheriff, constable, marshal, policeman, firefighter, a county highway engineer, and a peace officer while engaged in the enforcement of peace or in and about the pursuit or capture of any person charged with or suspected of crime and any person requested or commanded to aid an officer in arresting any person, or in retaking any person who has escaped from lawful custody, or in executing any legal process in which case, for purposes of calculating compensation payable under this chapter, the daily wage of the person requested or commanded to assist an officer or to execute a legal process shall be the prevailing wage for similar services where the services are performed by paid employees;

(4) a county assessor;

(5) an elected or appointed official of the state, or of any county, city, town, school district or governmental subdivision therein but an officer of a political subdivision elected or appointed for a regular term of office or to complete

the unexpired portion of any such regular term, shall be included only after the governing body of the political subdivision has adopted an ordinance or resolution to that effect;

(6) an executive officer of a corporation except an officer of a family farm corporation as defined in section 500.24, subdivision 1, clause (c), nor shall it include an executive officer of a closely held corporation who is referred to in section 176.012;

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

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

(9) a voluntary uncompensated worker participating in a program established by a county welfare board shall be an employee within the meaning of this subdivision. In the event of injury or death of the voluntary uncompensated worker, the wage of the worker, for the purpose of calculating compensation

payable under this chapter, shall be the usual going wage paid in the county at the time of the injury or death for similar services where the services are performed by paid employees working a normal day and week;

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

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

(12) a voluntary uncompensated worker, accepted by the director of the Minnesota historical society, rendering services as a volunteer, pursuant to chapter 138, shall be an employee. The daily wage of the worker, for the purposes of calculating compensation payable under this chapter, shall be the usual going wage paid at the time of injury or death for similar services where the services are performed by paid employees;

(13) a voluntary uncompensated worker, other than a student, who renders services at the Minnesota school for the deaf or the Minnesota braille and sight-saving school, and whose services have been accepted or contracted for by the state board of education, as authorized by law, shall be an employee within the meaning of this subdivision. In the event of injury or death of the voluntary uncompensated worker, the daily wage of the worker, for the purpose of calculating compensation payable under this chapter, shall be the usual going wage paid at the

time of the injury or death for similar services in institutions where the services are performed by paid employees;

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

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

(16) those students enrolled in and regularly attending the medical school of the University of Minnesota, whether in the graduate school program or the post graduate program, as provided in section 147.20, notwithstanding that the students shall not be considered employees for any other purpose. In the event of the student's injury or death, the weekly wage of the student for the purpose of calculating compensation payable under chapter 176, shall be the annualized educational stipend awarded to the student, divided by 52 weeks. The institution in which the student is enrolled shall be considered the "employer" for the limited purpose of determining responsibility for paying benefits payable under chapter 176.

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

Sec. 27. Minnesota Statutes 1982, section 176.011, is amended by adding a subdivision to read:

Subd. 23. [RETRAINING.] "Retraining" means a formal course

of study in a school setting which is designed to train an employee to return to suitable gainful employment.

Sec. 28. Minnesota Statutes 1982, section 176.011, is amended by adding a subdivision to read:

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

Sec. 29. Minnesota Statutes 1982, section 176.011, is amended by adding a subdivision to read:

Subd. 25. [MAXIMUM MEDICAL IMPROVEMENT.] "Maximum medical improvement" means the date after which no further significant recovery from or significant lasting improvement to a personal injury can reasonably be anticipated, based upon reasonable medical probability.

Sec. 30. Minnesota Statutes 1982, section 176.011, is amended by adding a subdivision to read:

Subd. 26. [MONITORING PERIOD.] "Monitoring period" means the number of weeks during which economic recovery compensation pursuant to section 176.101, subdivision 3a, would have been paid if that compensation were payable.

Sec. 31. Minnesota Statutes 1982, section 176.012, is amended to read:

176.012 [ELECTION OF COVERAGE.]

The persons, partnerships and corporations described in this section may elect to provide the insurance coverage required by this chapter.

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

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

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

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

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

The persons, partnerships and corporations described in this section may also elect coverage for an employee who is a spouse, parent or child, regardless of age, of an owner, partner, or executive officer, who is eligible for coverage under this section. Coverage may be elected for a spouse, parent or child whether or not coverage is elected for the related owner, partner or executive director and whether or not the person, partnership or corporation employs any other person to perform a service for hire. Any person for whom coverage is elected pursuant to this section shall be included within the meaning of the term employee for the purposes of this chapter.

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

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

Sec. 32. Minnesota Statutes 1982, section 176.021, subdivision 1a, is amended to read:

Subd. 1a. [BURDEN OF PROOF.] All disputed issues of fact arising under chapter 176 shall be determined by a preponderance of the evidence, and in accordance with the principles laid down in section 176.001. Preponderance of the evidence means evidence produced in substantiation of a fact which, when weighed against the evidence opposing the fact, has more convincing force and greater probability of truth.

Questions of law arising under chapter 176 shall be determined ~~in accordance with the rules of construction generally applied to all other civil matters~~ on an even-handed basis in accordance with the principles laid down in section 176.001.

Sec. 33. Minnesota Statutes 1982, section 176.021, subdivision 3, is amended to read:

Subd. 3. [COMPENSATION, COMMENCEMENT OF PAYMENT.] All employers shall commence payment of compensation at the time and in the manner prescribed by this chapter without the necessity of any agreement or any order of the division. Except for medical, burial, and other non-periodic benefits, payments shall be made as nearly as possible at the intervals when the wage was payable, provided, however, that payments for permanent partial disability shall be governed by ~~subdivision 3a~~ section 176.101. If doubt exists as to the eventual permanent partial disability, payment for the economic recovery compensation or impairment compensation, whichever is due, pursuant to ~~subdivision 3a~~ section 176.101, shall be then made when due for the minimum permanent partial disability ascertainable, and further payment shall be made upon any later ascertainment of greater permanent partial disability. Prior to or at the time of ~~any tender~~ commencement of the ~~lump sum~~ payment of economic recovery compensation or lump sum or periodic payment of impairment compensation, the employee and employer shall be furnished with a copy of the medical report upon which the payment is based and all other medical reports which the insurer has that indicate a permanent partial disability rating, together with a statement by the insurer as to whether the tendered payment is for minimum

permanent partial disability or final and eventual disability.

~~Compensation for permanent partial disability~~ After receipt of all reports available to the insurer that indicate a permanent partial disability rating, the employee shall make available or permit the insurer to obtain any medical report that the employee has or has knowledge of that contains a permanent partial disability rating which the insurer does not already have. Economic recovery compensation or impairment compensation pursuant to section 176.101 is payable in addition to but not concurrently with compensation for temporary total disability and but is payable ~~temporary partial disability~~ pursuant to section 176.101, ~~subdivisions 1 and 2, as provided in subdivision 3a~~. ~~Compensation for permanent partial disability~~ Impairment compensation is payable concurrently and in addition to compensation for permanent total disability pursuant to section 176.101, ~~subdivision 5, as provided in subdivision 3a~~.

~~Compensation for permanent partial disability~~ Economic recovery compensation or impairment compensation pursuant to section 176.101 shall be withheld pending completion of payment for temporary total ~~and temporary partial~~ disability ~~but shall not be withheld pending payment of compensation for permanent total disability~~, and no credit shall be taken for payment of ~~permanent partial disability~~ economic recovery compensation or impairment compensation against liability for temporary total or future permanent total disability. Liability on the part of an employer or ~~his~~ the insurer for disability of a temporary total, temporary partial, and permanent total nature shall be considered as a continuing product and part of the employee's inability to earn or reduction in earning capacity due to injury or occupational disease and ~~shall be~~ compensation is payable accordingly, subject to ~~subdivision 3a~~ section 176.101.

~~Permanent partial disability~~ Economic recovery compensation or impairment compensation is payable for functional loss of use or impairment of function, permanent in nature, and payment therefore shall be separate, distinct, and in addition to payment for any other compensation, subject to ~~subdivision 3a~~

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

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

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

Sec. 34. Minnesota Statutes 1982, section 176.041, subdivision 1, is amended to read:

Subdivision 1. [EMPLOYMENTS EXCLUDED.] This chapter does not apply to persons employed by any common carrier by railroad engaged in interstate or foreign commerce, ~~which persons~~ who are covered by the Federal Employers' Liability Act (45 U.S.C. 51-60) or other comparable federal law; persons employed by family farms as defined by section 176.011, subdivision 11a, the spouse, parent and child, regardless of age, of a farmer employer working for ~~him~~ the farmer employer; partners engaged in any farm operation or partners engaged in a business and the spouse, parent, and child, regardless of age, of any of the partners of the farm operation or business; an executive officer of a family farm corporation; an executive officer of a closely held corporation referred to in section 176.012; any spouse, parent, or child, regardless of age, of an executive officer of

a family farm corporation as defined in section 500.24, subdivision 2, employed by that family farm corporation; any spouse, parent, or child, regardless of age, of an executive officer of a closely held corporation referred to in section 176.012; or other farmers or members of their families exchanging work with the farmer employer or family farm corporation operator in the same community, or persons whose employment at the time of the injury is casual, and not in the usual course of the trade, business, profession, or occupation of ~~his~~ the employer; persons who are independent contractors as defined by rules adopted by the commissioner pursuant to section 176.83 except that this exclusion does not apply to an employee of an independent contractor; nor does it apply to officers or members of veteran's organizations whose employment relationship arises solely by virtue of attending meetings or conventions of their organization, unless the veteran's organizations elect by resolution to provide coverage under this chapter for the officers or members. ~~Neither shall~~ The chapter also does not apply to any person employed as a household worker in, for, or about, a private home or household who earns less than $500 in cash in any three month period from a single private home or household provided that any household worker who has earned $500 or more from ~~his~~ the household worker's present employer in any three month period within the previous year ~~shall be~~ is covered by this chapter regardless of whether or not ~~he~~ the household worker has earned $500 in the present quarter ~~earned $500~~. This chapter does not apply to those persons employed by a corporation where those persons are related by blood or marriage, within the third degree of kindred according to the rules of civil law, to all of the officers of the corporation, and if the corporation files a written election with the commissioner ~~of labor and industry~~ to have those persons excluded from this chapter except that a written election is not required for a person who is otherwise excluded from this chapter by this section. This chapter does not apply to a nonprofit association which does not pay more than $500 in

salary or wages in a year.

Sec. 35. Minnesota Statutes 1982, section 176.061, is amended to read:

176.061 [THIRD PARTY LIABILITY.]

Subdivision 1. [ELECTION OF REMEDIES.] ~~Where~~ If an injury or death for which benefits are payable occurs under circumstances which create a legal liability for damages on the part of a party other than the employer and at the time of ~~such~~ the injury or death that party was insured or self-insured in accordance with this chapter, the employee, in case of injury, or ~~his~~ the employee's dependents, in case of death, may proceed either at law against that party to recover damages or against the employer for benefits, but not against both.

Subd. 2. [ACTION FOR RECOVERY OF DAMAGES.] If the employee, in case of injury, or ~~his~~ the employee's dependents, in case of death, brings an action for the recovery of damages, the amount ~~thereof~~ of the damages, the manner in which they are paid, and the persons to whom ~~the same~~ they are payable, ~~shall be~~ are as provided in this chapter. In no case shall ~~such~~ the party be liable to any person other than the employee or ~~his~~ the employee's dependents for any damages resulting from ~~such~~ the injury or death.

Subd. 3. [ELECTION TO RECEIVE BENEFITS FROM EMPLOYER; SUBROGATION.] If the employee or ~~his~~ the employee's dependents elect to receive benefits from the employer, or the special compensation fund, the employer, or the special compensation fund, has a right of indemnity or is subrogated to the right of the employee or ~~his~~ the employee's dependents to recover damages against the other party. The employer, or the attorney general on behalf of the special compensation fund, may bring legal proceedings against ~~such~~ the party and recover the aggregate amount of benefits payable to or on behalf of the employee or ~~his~~ the employee's dependents, together with costs, disbursements, and reasonable attorney's fees of the action.

If an action as provided in this chapter is prosecuted by the employee, the employer, or the attorney general on behalf of

the special compensation fund, against the third person, and results in judgment against the third person, or settlement by the third person, the employer ~~shall have~~ has no liability to reimburse or hold the third person harmless on the judgment or settlement in absence of a written agreement to do so executed prior to the injury.

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

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

(a) If an action against the other party is brought by th injured employee or ~~his~~ the employee's dependents and a judgment is obtained and paid or settlement is made with the other party, the employer or the special compensation fund may deduct from the benefits payable the amount actually received by the employee or dependents or paid on their behalf in accordance with subdivision 6. If the action is not diligently prosecuted

or if the court deems it advisable in order to protect the interests of the employer, or the special compensation fund, upon application the court may grant the employer, or the special compensation fund, the right to intervene in ~~any such~~ the action for the prosecution ~~thereof~~ of the action. If the injured employee or ~~his~~ the employee's dependents or any party on their behalf receives benefits from the employer, or the special compensation fund, or ~~institute~~ institutes proceedings to recover ~~the same~~ benefits or ~~accept~~ accepts from the employer, or the special compensation fund, any payment on account of the benefits, the employer, or the special compensation fund, is subrogated to the rights of the employee or ~~his~~ the employee's dependents or has a right of indemnity against a third party. ~~This~~ The employer, or the attorney general on behalf of the special compensation fund, may maintain ~~an~~ a separate action or continue an action already instituted. This action may be maintained in the name of the employee or the names of the employee's dependents, or in the name of the employer, or in the name of the attorney general on behalf of the special compensation fund, against ~~such~~ the other party for the recovery of damages. If the action is not diligently prosecuted by the employer, or the attorney general on behalf of the special compensation fund, or if the court deems it advisable in order to protect the interest of the employee, the court, upon application, may grant to the employee or ~~his~~ the employee's dependents the right to intervene in the action for the prosecution ~~thereof~~ of the action. The proceeds of ~~such~~ the action or settlement ~~thereof~~ of the action shall be paid in accordance with subdivision 6.

(b) If an employer, being then insured, sustains damages due to a change in workers' compensation insurance premiums, whether by a failure to achieve a decrease or by a retroactive or prospective increase, as a result of the injury or death of ~~his~~ an employee which was caused under circumstances which created a legal liability for damages on the part of a party other than the employer, the employer, notwithstanding other

remedies provided, may maintain an action against the other party for recovery of ~~such~~ the premiums. This cause of action may be brought either by joining in an action described in clause (a) or by a separate action. Damages recovered under this clause ~~shall be~~ are for the benefit of the employer and the provisions of subdivision 6 ~~shall~~ are not be applicable to ~~such~~ the damages.

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

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

Subd. 6. [COSTS, ATTORNEY FEES, EXPENSES.] The proceeds of all actions for damages or of a settlement ~~thereof~~ of an action under this section, except for damages received under subdivision 5, clause (b) received by the injured employee or ~~his~~ the employee's dependents or by the employer, or the special compensation fund, as provided by subdivision 5, shall be divided as follows:

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

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

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

compensation fund, to the employee or ~~his~~ the employee's dependents.

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

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

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

will be required to pay compensation or pay for medical treatment of the injured employee and shall does not affect the amount of periodic compensation to be paid.

~~Subd. 8. [STATE AS EMPLOYER.] In every case arising under subdivision 5 when the state is the employer and a settlement between the third party and the employee is made it is not valid unless prior notice thereof is given to the state within a reasonable time. If the state pays compensation to the employee under the provisions of this chapter and becomes subrogated to the rights of the employee or his dependents any settlement between the employee or his dependents and the third party is void as against the state's right of subrogation. When an action at law is instituted by an employee or his dependents against a third party for recovery of damages a copy of the complaint and notice of trial or note of issue in such action shall be served on the state. Any judgment rendered therein is subject to a lien of the state for the amount to which it is entitled to be subrogated under the provisions of subdivision 5.~~

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

Subd. 9. [SERVICE OF NOTICE ON ATTORNEY GENERAL.] In every

case in which the state is liable to pay compensation or is subrogated to the rights of the employee or ~~his~~ the employee's dependents or has a right of indemnity, all notices required to be given the state shall be served on the attorney general and the commissioner ~~of the department of labor and industry~~.

Subd. 10. [INDEMNITY.] Notwithstanding the provisions of chapter 65B or any other law to the contrary, an employer has a right of indemnity for any compensation paid or payable pursuant to this chapter, including temporary total compensation, temporary partial compensation, permanent partial disability, economic recovery compensation, impairment compensation, medical compensation, rehabilitation, death, and permanent total compensation.

Sec. 36. Minnesota Statutes 1982, section 176.081, subdivision 1, is amended to read:

Subdivision 1. ~~No claim for legal services or disbursements pertaining to any demand made or suit or proceeding brought under the provisions of this chapter is an enforceable lien against the compensation or is valid or binding in any other respect unless approved in writing by the division, a compensation judge, a judge of the district court, or the workers' compensation court of appeals, if the claim arises out of a proceeding for compensation under this chapter, or by the judge presiding at the trial in an action for damages, or by a judge of the district court in a settlement of a claim for damages without trial. The division, a compensation judge, a judge of the district court or the workers' compensation court of appeals shall in matters before them, including settlement proceedings, have authority to approve~~ (a) A fee for legal services of ~~up to~~ 25 percent of the first $4,000 of compensation awarded to the employee and ~~up to~~ 20 percent of the next $27,500 of compensation awarded to the employee is permissible and does not require approval by the commissioner, compensation judge, or any other party except as provided in clause (b). If the employer or ~~his~~ the insurer or the defendant is given written notice of ~~such~~ claims for legal services or disbursements, the

same claim shall be a lien against the amount paid or payable as compensation~~, subject to determination of the amount and approval provided by this chapter. Provided, however, that~~ In no case shall fees be calculated on the basis of any undisputed portion of compensation awards. Allowable fees under this chapter shall be based solely upon genuinely disputed portions of claims, including disputes related to the payment of rehabilitation benefits or to other aspects of a rehabilitation plan.

(b) An attorney who is claiming legal fees under this section shall file a statement of attorney's fees with the commissioner, compensation judge before whom the matter was heard, or workers' compensation court of appeals on cases before the court. A copy of the signed retainer agreement shall also be filed. The employee and insurer shall receive a copy of the statement. The statement shall be on a form prescribed by the commissioner and shall clearly and conspicuously state that the employee or insurer has ten calendar days to object to the attorney fees requested. If no objection is timely made by the employee or insurer, the amount requested shall be conclusively presumed reasonable providing the amount does not exceed the limitation in subdivision 1. The commissioner, compensation judge, or court of appeals shall issue an order granting the fees and the amount requested shall be awarded to the party requesting the fee.

If a timely objection is filed, the commissioner, compensation judge, or court of appeals shall review the matter and make a determination based on the criteria in subdivision 5.

If no timely objection is made by an employer or insurer, reimbursement under subdivision 7 shall be made if the statement of fees requested this reimbursement.

Sec. 37. Minnesota Statutes 1982, section 176.081, subdivision 2, is amended to read:

Subd. 2. ~~Any~~ An application for attorney fees in excess of the amount authorized in subdivision 1 shall be made to the ~~workers' compensation court of appeals~~ division, compensation

judge, or district judge, before whom the matter was heard. An appeal of a decision by a compensation judge or district court judge on additional fees may be made to the workers' compensation court of appeals. The application shall set forth the fee requested and the basis for ~~such~~ the request and whether or not a hearing is requested. The application, with affidavit of service upon the employee, shall be filed by the attorney requesting the fee. If a hearing is requested by an interested party, a hearing shall be set with notice of ~~such~~ the hearing served upon known interested parties. In all cases the employee shall be served with notice of hearing.

Sec. 38. Minnesota Statutes 1982, section 176.081, subdivision 5, is amended to read:

Subd. 5. In the determination of ~~the reasonable value of attorney fees arising out of a claim or proceeding under this chapter~~ an award of fees in excess of the amount authorized under subdivision 1, or if an objection is filed under subdivision 1, clause (b), the following principles are to be applied:

(a) The fee in each individual case must be a reasonable one.

(b) There is no set standard fee to be awarded in any workers' compensation matter.

(c) No attorney-client fee contract or arrangement is binding in any workers' compensation matter.

(d) In determining a reasonable attorney fee, important factors to be taken into account are: the amount involved, the time and expense necessary to prepare for trial, the responsibility assumed by counsel, the expertise of counsel in the workers' compensation field, the difficulties of the issues involved, the nature of proof needed to be adduced and the results obtained. The amount of money involved shall not be the controlling factor.

(e) The determination of the fee in each specific workers' compensation matter must be done with the same care as the determination of any other fact question in the matter.

(f) The determiner of the attorney fee in each matter must ascertain whether or not a retainer fee has been paid to the attorney and if so, the amount of the retainer fee.

(g) The determiner of attorney fees in each case must personally see that the workers' compensation file contains fully adequate information to justify the fee that is determined.

Sec. 39. Minnesota Statutes 1982, section 176.081, subdivision 6, is amended to read:

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

Sec. 40. Minnesota Statutes 1982, section 176.081, subdivision 7, is amended to read:

Subd. 7. If the employer or insurer ~~shall file~~ files a denial of liability, notice of discontinuance, or ~~shall fail~~ fails to make payment of compensation or medical expenses within the statutory period after notice of injury or occupational disease, or ~~shall~~ otherwise ~~resist~~ unsuccessfully resists the payment of compensation or medical expenses, or unsuccessfully disputes the payment of rehabilitation benefits or other aspects of a rehabilitation plan, and the injured person ~~shall have~~ has employed an attorney at law, who successfully procures payment on behalf of the employee or who enables the resolution of a dispute with respect to a rehabilitation plan, the compensation judge, commissioner ~~of the department of labor and industry~~, or the workers' compensation court of appeals upon appeal, upon application, shall award to the employee against the insurer or self-insured employer or uninsured employer, in addition to the compensation benefits paid or awarded to the employee, an amount equal to 25 percent of that portion of the attorney's fee which has been awarded pursuant to this section that is in excess of $250.

Sec. 41. Minnesota Statutes 1982, section 176.081, is amended by adding a subdivision to read:

Subd. 11. [WHEN FEES DUE.] Attorney fees and other

disbursements for a proceeding under this chapter shall not be due or paid until the issue for which the fee or disbursement was incurred has been resolved.

Sec. 42. Minnesota Statutes 1982, section 176.101, subdivision 1, is amended to read:

Subdivision 1. [TEMPORARY TOTAL DISABILITY.] For injury producing temporary total disability, the compensation is 66 2/3 percent of the ~~daily~~ weekly wage at the time of injury

(1) provided that during the year commencing on October 1, 1979, and each year thereafter, commencing on October 1, the maximum weekly ~~benefits~~ compensation payable ~~shall be~~ is the statewide average weekly wage for the period ending December 31, of the preceding year.

(2) The minimum weekly compensation benefits for temporary total disability shall be not less than 50 percent of the statewide average weekly wage or the injured employee's actual weekly wage, whichever is less. In no case shall a weekly benefit be less than 20 percent of the statewide average weekly wage.

Subject to subdivisions 3a to 3u this compensation shall be paid during the period of disability, payment to be made at the intervals when the wage was payable, as nearly as may be.

Sec. 43. Minnesota Statutes 1982, section 176.101, subdivision 2, is amended to read:

Subd. 2. [TEMPORARY PARTIAL DISABILITY.] In all cases of temporary partial disability the compensation shall be 66 2/3 percent of the difference between the ~~daily~~ weekly wage of the ~~worker~~ employee at the time of injury and the wage ~~he~~ the employee is able to earn in ~~his~~ the employee's partially disabled condition. This compensation shall be paid during the period of disability except as provided in section 176.101, payment to be made at the intervals when the wage was payable, as nearly as may be, and subject to a maximum compensation equal to the statewide average weekly wage. ~~If the employer does not furnish the worker with work which he can do in his temporary partially disabled condition and he is unable to procure such~~

~~work with another employer, after reasonably diligent effort, the employee shall be paid at the full compensation rate for his or her temporary total disability.~~

Sec. 44. Minnesota Statutes 1982, section 176.101, is amended by adding a subdivision to read:

Subd. 3a. [ECONOMIC RECOVERY COMPENSATION.] If an employee is not eligible for an impairment award pursuant to subdivision 3b, then the employee shall receive economic recovery compensation for a permanent partial disability pursuant to this subdivision. The compensation shall be 66-2/3 percent of the weekly wage at the time of injury subject to a maximum equal to the statewide average weekly wage. For permanent partial disability up to the percent of the whole body in the following schedule the compensation shall be paid for the proportion that the loss of function of the disabled part bears to the whole body multiplied by the number of weeks aligned with that percent.

Percent of disability	Weeks of compensation
0-25	600
26-30	640
31-35	680
36-40	720
41-45	760
46-50	800
51-55	830
56-60	960
61-65	1040
66-70	1120
71-100	1200

The percentage loss in all cases under this subdivision is determined according to the rules adopted by the commissioner pursuant to section 176.105, subdivision 4. This subdivision shall apply to a permanent partial disability incurred on or after the adoption of those rules.

Sec. 45. Minnesota Statutes 1982, section 176.101, is amended by adding a subdivision to read:

Subd. 3b. [IMPAIRMENT COMPENSATION.] An employee who

suffers a permanent partial disability due to a personal injury and receives impairment compensation under this section shall receive compensation in an amount as provided by this subdivision. For permanent partial disability up to the percent of the whole body shown in the following schedule the amount shall be equal to the proportion that the loss of function of the disabled part bears to the whole body multiplied by the amount aligned with that percent in the following schedule:

Percent of disability	Amount
0-25	$ 75,000
26-30	80,000
31-35	85,000
36-40	90,000
41-45	95,000
46-50	100,000
51-55	120,000
56-60	140,000
61-65	160,000
66-70	180,000
71-75	200,000
76-80	240,000
81-85	280,000
86-90	320,000
91-95	360,000
96-100	400,000

For all cases under this subdivision the percentage loss of function of a part of the body is determined according to the rules adopted by the commissioner pursuant to section 176.105, subdivision 4. This subdivision shall apply to a permanent partial disability incurred on or after the adoption of those rules.

Sec. 46. Minnesota Statutes 1982, section 176.101, is amended by adding a subdivision to read:

Subd. 3c. [MAXIMUM PAYABLE.] The maximum amount payable under subdivisions 3a and 3b is the maximum compensation payable to an employee who has a 100 percent disability to the body as a

whole and under no conditions shall an employee receive more than those amounts even if the employee sustains a disability to two or more body parts.

Sec. 47. Minnesota Statutes 1982, section 176.101, is amended by adding a subdivision to read:

Subd. 3d. [GENERAL.] An employee who has incurred a personal injury shall receive temporary total compensation until these benefits are no longer payable pursuant to this section. If the injury results in a permanent partial disability the employee shall receive compensation as provided in this section.

Sec. 48. Minnesota Statutes 1982, section 176.101, is amended by adding a subdivision to read:

Subd. 3e. [END OF TEMPORARY TOTAL COMPENSATION.] (a) 90 days after an employee has reached maximum medical improvement or 90 days after the end of an approved retraining program, whichever is later, the employee's temporary total compensation shall cease. This cessation shall occur at an earlier date if otherwise provided by this chapter.

(b) If during the 90-day period described in clause (a) the employee retires or the employer furnishes work to the employee that is consistent with an approved plan of rehabilitation or, if no plan has been approved, that the employee can do in his or her physical condition and that job produces an economic status as close as possible to that the employee would have enjoyed without the disability, or the employer procures this employment with another employer or the employee accepts this job with another employer, temporary total compensation shall cease and the employee shall, if appropriate, receive impairment compensation pursuant to subdivision 3b. This impairment compensation is in lieu of economic recovery compensation under subdivision 3a, and the employee shall not receive both economic recovery compensation and impairment compensation. Temporary total compensation and impairment compensation shall not be paid concurrently. Once temporary total compensation ceases no further temporary total compensation is payable except as specifically provided by this section.

Upon receipt of a written medical report indicating that the employee has reached maximum medical improvement, the employer or insurer shall serve a copy of the report upon the employee and shall file a copy with the division. The beginning of the 90-day period shall commence on the day this report is served on the employee for the purpose of determining whether a job offer consistent with the requirements of this subdivision is made.

(c) The job which is offered or procured by the employer or accepted by the employee under clause (b) does not necessarily have to commence immediately but shall commence within a reasonable period after the end of the 90-day period described in clause (a). Temporary total compensation shall not cease under this sudivision until the job commences.

(d) If the job offered under clause (a) is not the job the employee had at the time of injury it shall be offered in writing and shall state the nature of the job, the rate of pay, the physical requirements of the job, and any other information necessary to fully and completely inform the employee of the job duties and responsibilities.

The employee has 14 calendar days to accept or reject the job offer. If the employee does not respond within this period it is deemed a refusal of the offer.

(e) Self employment may be an appropriate job under this subdivision.

The commissioner shall monitor application of this subdivision and may adopt rules to assure its proper application.

Sec. 49. Minnesota Statutes 1982, section 176.101, is amended by adding a subdivision to read:

Subd. 3f. [JOB PRIOR TO MAXIMUM MEDICAL IMPROVEMENT.] If the employer offers a job prior to the employee reaching maximum medical improvement and the job is consistent with an approved plan of rehabilitation or if no rehabilitation plan has been approved and the job is within the employee's physical limitations; or the employer procures a job for the employee with another employer which meets the requirements of this

subdivision; or the employee accepts a job with another employer which meets the requirements of this subdivision, the employee's temporary total compensation shall cease. In this case the employee shall receive impairment compensation for the permanent partial disability which is ascertainable at that time. This impairment compensation shall be paid at the same rate that temporary total compensation was last paid. Upon reaching maximum medical improvement the provisions of subdivisions 3e or 3p apply, whichever is appropriate, and economic recovery compensation or impairment compensation is payable accordingly except that the compensation shall be offset by impairment compensation received under this subdivision.

Sec. 50. Minnesota Statutes 1982, section 176.101, is amended by adding a subdivision to read:

Subd. 3g. [ACCEPTANCE OF JOB OFFER.] If the employee accepts a job offer described in subdivision 3e and the employee begins work at that job, although not necessarily within the 90-day period specified in that subdivision, the impairment compensation shall be paid in a lump sum 30 calendar days after the employee actually commences work.

Sec. 51. Minnesota Statutes 1982, section 176.101, is amended by adding a subdivision to read:

Subd. 3h. [TEMPORARY PARTIAL COMPENSATION.] An employee who accepts a job under subdivision 3e or subdivision 3f and begins that job shall receive temporary partial compensation pursuant to subdivision 2, if appropriate.

Sec. 52. Minnesota Statutes 1982, section 176.101, is amended by adding a subdivision to read:

Subd. 3i. [LAYOFF BECAUSE OF LACK OF WORK OR RELEASED FOR OTHER THAN SEASONAL CONDITIONS.] (a) If an employee accepts a job under subdivision 3e and begins work at that job and is subsequently unemployed because of economic conditions, other than seasonal conditions, the employee shall receive monitoring period compensation pursuant to clause (b). In addition, the employer who was the employer at the time of the injury shall provide rehabilitation consultation by a qualified

rehabilitation consultant if the employee remains unemployed for 45 calendar days. The commissioner may waive this rehabilitation consultation if the commissioner deems it appropriate. Further rehabilitation, if deemed appropriate, is governed by section 176.102.

(b) Upon the employee's initial return to work the monitoring period begins to run. If the employee is unemployed for the reason in clause (a), prior to the end of the monitoring period the employee shall receive monitoring period compensation. This compensation shall be paid for the lesser of (1) the weeks remaining in the monitoring period, or (2) the weeks equal to the monitoring period minus the impairment compensation paid to the employee. For purposes of this clause the impairment compensation shall be converted to weeks by dividing the impairment compensation received by the employee by the employee's compensation rate for temporary total disability at the time of the injury. No monitoring period compensation is payable if the unemployment occurs after the expiration of the monitoring period. Monitoring period compensation is payable at the same intervals and in the same amount as when temporary total compensation ceased.

(c) If the employee returns to work and is still receiving monitoring period compensation, this compensation shall cease. Any period remaining in the monitoring period upon this return to work shall be used to determine further benefits if the employee is again unemployed under clause (a).

(d) Upon the employee's return to work pursuant to this section the insurer shall notify the employee of the length of the employee's monitoring period and shall notify the employee of the amount of impairment to be paid and the date of payment.

Sec. 53. Minnesota Statutes 1982, section 176.101, is amended by adding a subdivision to read:

Subd. 3j. [MEDICALLY UNABLE TO CONTINUE WORK.] (a) If the employee has started the job offered under subdivision 3e and is medically unable to continue at that job because of the permanent partial disability, that employee shall receive

temporary total compensation pursuant to clause (b). In addition, the employer who was the employer at the time of the injury shall provide rehabilitation consultation by a qualified rehabilitation consultant. Further rehabilitation, if deemed appropriate, is governed by section 176.102.

(b) Temporary total compensation shall be paid for up to 90 days after the employee has reached maximum medical improvement or 90 days after the end of an approved retraining plan, whichever is later. The temporary total compensation shall cease at any time within the 90-day period that the employee begins work meeting the requirements of subdivision 3e. If no job is offered to the employee by the end of this 90-day period, the employee shall receive economic recovery compensation pursuant to this section but reduced by the impairment compensation previously received by the employee for the same disability.

Sec. 54. Minnesota Statutes 1982, section 176.101, is amended by adding a subdivision to read:

Subd. 3k. [UNEMPLOYMENT DUE TO SEASONAL CONDITION.] If an employee has started the job offered under subdivision 3e and is subsequently unemployed from that job because of the job's seasonal nature, the employee shall receive any unemployment compensation the employee is eligible for pursuant to chapter 268. The employee shall receive, in addition and concurrently, the amount that the employee was receiving for temporary partial disability at the time of the layoff. No further or additional compensation is payable under this chapter because of the seasonal layoff.

Sec. 55. Minnesota Statutes 1982, section 176.101, is amended by adding a subdivision to read:

Subd. 31. [FAILURE TO ACCEPT JOB OFFER.] If the employee has been offered a job under subdivision 3e and has refused the offer, the impairment compensation shall not be paid in a lump sum but shall be paid in the same interval and amount that temporary total compensation was initially paid. Temporary total compensation shall cease upon the employee's refusal to

accept the job offered and no further or additional temporary total compensation is payable for that injury. The payment of the periodic impairment compensation shall cease when the amount the employee is eligible to receive under subdivision 3b is reached, after which time the employee shall not receive additional impairment compensation or any other compensation under this chapter unless the employee has a greater permanent partial disability than already compensated for.

Sec. 56. Minnesota Statutes 1982, section 176.101, is amended by adding a subdivision to read:

Subd. 3m. [RETURN TO WORK AFTER REFUSAL OF JOB OFFER.] If the employee has refused the job offer under subdivision 3e and is receiving periodic impairment compensation and returns to work at another job, the employee shall receive the remaining impairment compensation due, in a lump sum, 30 days after return to work.

Sec. 57. Minnesota Statutes 1982, section 176.101, is amended by adding a subdivision to read:

Subd. 3n. [NO TEMPORARY PARTIAL COMPENSATION OR REHABILITATION IF JOB OFFER REFUSED.] An employee who has been offered a job under subdivision 3e and has refused that offer and who subsequently returns to work shall not receive temporary partial compensation pursuant to subdivision 2 if the job the employee returns to provides a wage less than the wage at the time of the injury. No rehabilitation shall be provided to this employee.

Sec. 58. Minnesota Statutes 1982, section 176.101, is amended by adding a subdivision to read:

Subd. 3o. [INABILITY TO RETURN TO WORK.] (a) An employee who is permanently totally disabled pursuant to subdivision 5 shall receive impairment compensation as determined pursuant to subdivision 3b. This compensation is payable in addition to permanent total compensation pursuant to subdivision 4 and is payable concurrently. In this case the impairment compensation shall be paid in the same intervals and amount as the permanent total compensation is paid, and the impairment compensation

shall cease when the amount due under subdivision 3b is reached. If this employee returns to work at any job during the period the impairment compensation is being paid, the remaining impairment compensation due shall be paid in a lump sum 30 days after the employee has returned to work and no further temporary total compensation shall be paid.

(b) If an employee is receiving periodic economic recovery compensation and is determined to be permanently totally disabled no offset shall be taken against future permanent total compensation for the compensation paid. No further economic recovery compensation is payable even if the amount due the employee pursuant to subdivision 3a has not yet been reached.

(c) An employee who has received periodic economic recovery compensation and who meets the criteria under clause (b) of this subdivision shall receive impairment compensation pursuant to clause (a) of this subdivision even if the employee has previously received economic recovery compensation for that disability.

(d) Rehabilitation consultation pursuant to section 176.102 shall be provided to an employee who is permanently totally disabled.

Sec. 59. Minnesota Statutes 1982, section 176.101, is amended by adding a subdivision to read:

Subd. 3p. [NO JOB OFFER.] Where the employee has a permanent partial disability and has reached maximum medical improvement or upon completion of an approved retraining program, whichever is later, that employee shall receive economic recovery compensation pursuant to subdivision 3a if no job offer meeting the criteria of the job in subdivision 3e is made within 90 days after reaching maximum medical improvement or 90 days after the end of an approved retraining plan, whichever is later.

Temporary total compensation shall cease upon commencement of the payment of economic recovery compensation. Temporary total compensation shall not be paid concurrently with economic recovery compensation.

Sec. 60. Minnesota Statutes 1982, section 176.101, is amended by adding a subdivision to read:

Subd. 3q. [METHOD OF PAYMENT OF ECONOMIC RECOVERY COMPENSATION.] (a) Economic recovery compensation is payable at the same intervals and in the same amount as temporary total compensation was paid. If the employee returns to work and the economic recovery compensation is still being paid, the remaining economic recovery compensation due shall be paid in a lump sum 30 days after the employee has returned to work.

(b) Periodic economic recovery compensation paid to the employee shall not be adjusted pursuant to section 176.645.

Sec. 61. Minnesota Statutes 1982, section 176.101, is amended by adding a subdivision to read:

Subd. 3r. [PAYMENT OF COMPENSATION AT DEATH.] If an employee receiving economic recovery compensation or impairment compensation in periodic amounts dies during the period from causes unrelated to the injury, the compensation shall be paid in the following manner:

(a) If the deceased employee leaves a dependent surviving spouse and no dependent children, as defined by section 176.111, subdivision 1, the spouse shall receive the periodic economic recovery or impairment compensation that the deceased was receiving before the death. This compensation shall be paid for a period of up to ten years after the date of death at which time payments and future entitlement to it ceases.

(b) If the deceased employee leaves a dependent spouse and dependent children, as defined in section 176.111, subdivision 1, the periodic economic recovery or impairment compensation shall continue to be paid to the surviving spouse for up to ten years after the last child is no longer dependent after which time payments and future entitlement to the compensation ceases.

(c) Payment of compensation under this subdivision shall cease prior to the end of the ten-year periods in this subdivision if the amount to which the employee is entitled to receive under subdivision 3, 3a, or 3b, is reached prior to the end of the ten-year period. If the deceased employee is not

survived by dependent children or a dependent spouse as defined in section 176.111, no further economic recovery compensation or impairment compensation is payable to any person under this subdivision.

(d) If the death results from the injury, the payment of economic recovery compensation or impairment compensation shall cease upon the death and death benefits are payable pursuant to section 176.111.

Sec. 62. Minnesota Statutes 1982, section 176.101, is amended by adding a subdivision to read:

Subd. 3s. [ADDITIONAL ECONOMIC RECOVERY COMPENSATION OR IMPAIRMENT COMPENSATION.] No additional economic recovery compensation or impairment compensation is payable to an employee who has received that compensation to which the employee is entitled pursuant to subdivision 3a or 3b unless the employee has a greater permanent partial disability than already compensated.

Sec. 63. Minnesota Statutes 1982, section 176.101, is amended by adding a subdivision to read:

Subd. 3t. [MINIMUM ECONOMIC RECOVERY COMPENSATION.] (a) Economic recovery compensation pursuant to this section shall be at least 120 percent of the impairment compensation the employee would receive if that compensation were payable to the employee. The monitoring period shall be at least 120 percent of the weeks during which impairment compensation would be payable if paid weekly.

(b) An employee who has suffered a personal injury for which temporary total compensation is payable but which produces no permanent partial disability shall receive 26 weeks of economic recovery compensation if no job is offered within the time specified in and meeting the criteria of subdivision 3e.

Sec. 64. Minnesota Statutes 1982, section 176.101, is amended by adding a subdivision to read:

Subd. 3u. [MEDICAL BENEFITS.] This section does not in any way limit the medical benefits to which an injured employee is otherwise entitled pursuant to this chapter.

Sec. 65. Minnesota Statutes 1982, section 176.101, is amended by adding a subdivision to read:

Subd. 3v. [ADMINISTRATIVE CONFERENCE.] The provisions of section 176.242 apply if there exists a dispute regarding maximum medical improvement or whether the job offered meets the criteria under subdivision 3e or 3f.

Sec. 66. Minnesota Statutes 1982, section 176.101, is amended by adding a subdivision to read:

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

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

Sec. 67. Minnesota Statutes 1982, section 176.101, subdivision 6, is amended to read:

Subd. 6. [MINORS.] If any employee entitled to the benefits of this chapter is a minor or is an apprentice of any age and sustains a personal injury arising out of and in the course of employment resulting in permanent total or a compensable permanent partial disability, for the purpose of computing the compensation to which he the employee is entitled

for ~~said~~ the injury the compensation rate for temporary total, temporary partial, ~~retraining, permanent partial or~~ a permanent total disability or economic recovery compensation shall be the ~~larger of either the~~ statewide average weekly wage ~~or the employees weekly wage, but in no case shall the compensation exceed the maximum weekly compensation rate payable under this chapter~~.

Sec. 68. Minnesota Statutes 1982, section 176.101, is amended by adding a subdivision to read:

Subd. 8. [RETIREMENT PRESUMPTION.] For injuries occurring after the effective date of this subdivision an employee who receives social security old age and survivors insurance retirement benefits is presumed retired from the labor market. This presumption is rebuttable by a preponderance of the evidence.

Sec. 69. Minnesota Statutes 1982, section 176.102, subdivision 1, is amended to read:

Subdivision 1. [SCOPE.] ~~Vocational~~ Rehabilitation ~~shall train an~~ is intended to restore the injured employee, through physical and vocational rehabilitation, so ~~he~~ the employee may ~~be returned~~ return to a job related to ~~his~~ the employee's former employment or to a job in another work area which produces an economic status as close as possible to that ~~he~~ the employee would have enjoyed without disability. Rehabilitation to a job with a higher economic status than would have occurred without disability is permitted if it can be demonstrated that this rehabilitation is necessary to increase the likelihood of reemployment. Economic status is to be measured not only by opportunity for immediate income but also by opportunity for future income.

Sec. 70. Minnesota Statutes 1982, section 176.102, subdivision 2, is amended to read:

Subd. 2. [ADMINISTRATORS.] The commissioner ~~of labor and industry~~ shall hire a director of rehabilitation services in the classified service. The commissioner ~~of labor and industry is responsible for supervising~~ shall monitor and supervise

rehabilitation services, including, but not limited to, making determinations regarding the selection and delivery of rehabilitation services and the criteria used to approve qualified rehabilitation consultants and rehabilitation vendors. The commissioner may also make determinations regarding fees for rehabilitation services, the fitness of qualified rehabilitation consultants and vendors to continue to be approved under this section and has authority to discipline, by fine or otherwise, the consultants or vendors who act in violation of this chapter or rules adopted pursuant to this chapter. The commissioner ~~of labor and industry~~ may hire qualified personnel to assist in his duties under this section and may delegate his duties and performance.

Sec. 71. Minnesota Statutes 1982, section 176.102, subdivision 3, is amended to read:

Subd. 3. [REVIEW PANEL.] There is created a rehabilitation review panel composed of the commissioner ~~of labor and industry~~ or ~~his~~ a designee, who shall serve as an ex officio member and two members each from ~~labor,~~ employers, insurers, ~~vocational~~ rehabilitation, and medicine ~~and~~, one member representing chiropractors, and four members representing labor. The members shall be appointed by the ~~governor~~ commissioner and shall serve ~~four year~~ four-year terms which may be renewed. Compensation for members shall be governed by section 15.0575. The panel shall select a chairman. The panel shall ~~(a)~~ review and make a determination with respect to (a) appeals regarding eligibility for rehabilitation services, rehabilitation plans and rehabilitation benefits under subdivisions 9 and 11; (b) ~~held~~ appeals on any other rehabilitation issue the commissioner determines under this section; and (c) appeals regarding fee disputes, penalties, discipline, certification approval or revocation ~~of certification approval hearings;~~ ~~(c)~~ of registration of qualified rehabilitation consultants and approved vendors. The panel shall continuously study rehabilitation, services and delivery and ~~(d)~~ develop and recommend rehabilitation rules ~~as necessary~~ to the commissioner

of labor and industry. A majority vote of those attending a panel hearing under subdivision 6 shall constitute the decision of the board.

Sec. 72. Minnesota Statutes 1982, section 176.102, is amended by adding a subdivision to read:

Subd. 3a. [REVIEW PANEL APPEALS.] Appeals to the review panel shall be heard before a panel of five members designated by the review panel. Each five-member panel shall consist of two labor members, two employer or insurer members, and one member representing medicine, chiropractic, or rehabilitation. The determination of the five-member panel shall be by a majority vote and shall represent the determination of the entire review panel and is not subject to review by the panel as a whole. When conducting a review of the commissioner's determination regarding any rehabilitation issue or plan the panel shall give the parties notice that the appeal will be heard. This notice shall be given at least ten working days prior to the hearing. The notice shall state that parties may be represented by counsel at the hearing. In conducting its review the panel shall permit an interested party to present relevant, competent, oral or written evidence and to cross-examine opposing evidence. Evidence presented is not limited to the evidence previously submitted to the commissioner. A record of the proceeding shall be made by the panel. Upon determination of the issue presented, the panel shall issue to the interested parties a written decision and order. The decision need not contain a recitation of the evidence presented at the hearing, but shall be limited to the panel's basis for the decision.

Sec. 73. Minnesota Statutes 1982, section 176.102, subdivision 4, is amended to read:

Subd. 4. [REHABILITATION PLAN; DEVELOPMENT.] Within 30 days of the time an employer or his insurer has medical information that an employee is unable due to a personal injury or occupational disease to return to his preinjury occupation the employer shall provide rehabilitation consultation for the

~~employee. The employee, however, has the final decision on which rehabilitation agency is to be utilized pursuant to the provisions of this section. The consultation shall be done by any person or public or private institution approved by the commissioner of labor and industry. If the consultant determines rehabilitation would significantly reduce or eliminate the decrease in employability, the employer or insurer in conjunction with the rehabilitation consultant shall submit a specific plan of rehabilitation to the commissioner. If the employer does not provide rehabilitation consultation, when required by this section, within the time specified by this subdivision, the commissioner of labor and industry shall notify the employer and insurer that should they fail to provide rehabilitation consultation within 15 days from the receipt of the commissioner's notice, the division of vocational rehabilitation shall be authorized to provide the rehabilitation consultation for the employee. If the employee refuses to submit to any reasonable examinations and evaluative procedures to determine the need for and the details of a plan of rehabilitation, the amount of compensation may be reduced or the right to compensation may be suspended by an order of the division or workers' compensation court of appeals in a matter before it. In developing a plan, consideration shall be given to the employee's age, education, previous work history, interests and skills.~~ (a) An employer or insurer shall provide rehabilitation consultation by a qualified rehabilitation consultant or by another person permitted by rule to provide consultation to an injured employee within five days after the employee has 60 days of lost work time due to the personal injury, except as otherwise provided in this subdivision. Where an employee has incurred an injury to the back, the consultation shall be made within five days after the employee has 30 days of lost work time due to the injury. The lost work time in either case may be intermittent lost work time. If an employer or insurer has medical information at any time prior to the time specified in this subdivision that the employee will be unable

to return to the job the employee held at the time of the injury rehabilitation consultation shall be provided immediately after receipt of this information.

For purposes of this section "lost work time" means only those days during which the employee would actually be working but for the injury. In the case of the construction industry, mining industry, or other industry where the hours and days of work are affected by seasonal conditions, "lost work time" shall be computed by using the normal schedule worked when employees are working full time.

If the employee objects to the employer's selection of a qualified rehabilitation consultant, the employee shall notify the employer and the commissioner in writing of the objection.

Upon receipt of the notice of objection, the commissioner may schedule an administrative conference for the purpose of determining which qualified rehabilitation consultant may be mutually acceptable. The employee has the final decision on which qualified rehabilitation consultant is to be utilized.

The employee and employer shall enter into a program if one is prescribed in a rehabilitation plan. A copy of the plan, including a target date for return to work, shall be submitted to the commissioner.

(b) If the employer does not provide rehabilitation consultation as required by this section, the commissioner shall notify the employer that if the employer fails to appoint a qualified rehabilitation consultant or other persons as permitted by clause (a) within 15 days to conduct a rehabilitation consultation, the commissioner shall appoint a qualified rehabilitation consultant to provide the consultation at the expense of the employer unless the commissioner determines the consultation is not required.

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

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

Sec. 74. Minnesota Statutes 1982, section 176.102, subdivision 5, is amended to read:

Subd. 5. [ON THE JOB TRAINING.] On the job training is to be given consideration in developing a rehabilitation plan especially where it would produce an economic status similar to that enjoyed prior to disability. When a rehabilitation plan includes on the job training, the employee shall receive compensation while employed in an amount equal to the after tax wage the employee received at the time of the personal injury. This compensation shall be paid in whole or in part by the insurer liable for compensation for the employee's personal injury. The amount of compensation to be paid by this insurer shall be determined in the rehabilitation plan prepared pursuant to this section. Any difference between the amount of compensation the insurer is paying and the after tax wage the employee received at the time of the personal injury shall be paid by the on the job employer, but in no case shall this employer's amount exceed the prevailing wage for the job. After tax wage shall be determined by subtracting federal and state income tax from the employee's gross wage.

A rehabilitation plan which includes on the job training shall attempt to create an incentive for an employer to hire the employee for on the job training. This incentive may be in the form of reducing the on the job training employer's wages paid to the employee to a level which is less than the prevailing wage for the job, provided that the total compensation from the insurer, required by this section, and the wages paid by the on the job training employer is not less than the after tax wage received by the employee at the time of the personal injury. The compensation from the insurer and the on the job training employer paid pursuant to this subdivision is in lieu of

~~temporary total disability payments and the additional compensation provided in subdivision 11.~~

Sec. 75. Minnesota Statutes 1982, section 176.102, subdivision 6, is amended to read:

Subd. 6. [PLAN, ELIGIBILITY FOR REHABILITATION, APPROVAL AND APPEAL.] The commissioner ~~of labor and industry~~ shall determine eligibility for rehabilitation services and shall review, approve, modify or reject rehabilitation plans developed under subdivision 4. The commissioner shall also make determinations regarding rehabilitation issues not necessarily part of a plan including, but not limited to, determinations regarding whether an employee is eligible for further rehabilitation and the benefits under subdivisions 9 and 11 to which an employee is entitled. ~~Any persons aggrieved by~~ A decision of the commissioner may ~~appeal~~ be appealed to the rehabilitation review panel within 30 days of the commissioner's decision. The decision of the panel may be appealed to the workers' compensation court of appeals in the same manner as other matters appealed to the court. ~~The panel may approve or reject the decision of the commissioner. If it rejects the commissioner's decision it may formulate its own rehabilitation plan.~~

Sec. 76. Minnesota Statutes 1982, section 176.102, is amended by adding a subdivision to read:

Subd. 6a. [ELIGIBILITY DETERMINATION.] The commissioner has the sole authority under this chapter to determine eligibility for rehabilitation services under this section and to review, approve, modify, or reject rehabilitation plans and make other rehabilitation determinations pursuant to this chapter. These determinations shall not be made by a compensation judge but may be appealed to the rehabilitation review panel and workers' compensation court of appeals as provided by subdivision 6.

Sec. 77. Minnesota Statutes 1982, section 176.102, subdivision 7, is amended to read:

Subd. 7. [PLAN IMPLEMENTATION; REPORTS.] Upon request by

the commissioner, insurer ~~or~~, employer or employee, medical and rehabilitation reports shall be made by the provider of the medical and rehabilitation service to the commissioner ~~of labor and industry~~, insurer ~~and~~, employer or employee ~~of an employee's progress under a plan~~.

Sec. 78. Minnesota Statutes 1982, section 176.102, subdivision 8, is amended to read:

Subd. 8. [PLAN MODIFICATION.] Upon request ~~of~~ to the commissioner by the employer, the insurer, or employee ~~to the commissioner~~, or upon the commissioner's own request, the plan may be suspended, terminated or altered upon a showing of good cause ~~therefor~~, including:

(a) a physical impairment that does not allow the employee to pursue the ~~vocation being trained for~~ rehabilitation plan;

(b) the employee's performance level indicates ~~he cannot complete~~ the plan will not be successfully completed; ~~or~~

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

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

An employee may request a change in a rehabilitation plan once because ~~he~~ the employee feels ~~he is not suited~~ ill-suited for the type of work for which ~~training~~ rehabilitation is being provided ~~if the request is made within 90 days of the start of the plan~~ if the rehabilitation plan includes retraining, this request must be made within 90 days of the beginning of the retraining program. Any decision of the commissioner regarding a change in a plan may be appealed to the rehabilitation review panel within ~~15~~ 30 days of the decision.

Sec. 79. Minnesota Statutes 1982, section 176.102, subdivision 9, is amended to read:

Subd. 9. [PLAN, COSTS.] An employer is liable for the following rehabilitation expenses under this section:

(a) Cost of ~~vocational~~ rehabilitation ~~diagnosis~~ evaluation and preparation of a plan;

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

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

(d) Reasonable costs of travel and custodial daycare during the job interview process;

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

~~(d)~~ (f) Any other expense agreed to be paid.

Sec. 80. Minnesota Statutes 1982, section 176.102, subdivision 10, is amended to read:

Subd. 10. [REHABILITATION; CONSULTANTS.] The commissioner shall approve rehabilitation consultants who may propose and implement plans if they satisfy rules ~~promulgated~~ adopted by the commissioner for rehabilitation consultants. A consultant may be an individual or public or private entity, but may not be a vendor or the agent of a vendor of rehabilitation services.

Sec. 81. Minnesota Statutes 1982, section 176.102, subdivision 11, is amended to read:

Subd. 11. [~~COMPENSATION DURING REHABILITATION~~ RETRAINING.] ~~The insurer or employer shall pay up~~ Retraining is limited to 156 weeks ~~of compensation during rehabilitation under a plan in an amount equal to 125 percent of the employee's rate for temporary total disability. This payment is in lieu of payment for temporary total, temporary partial, or permanent total disability to which the employee might otherwise be entitled for this period under this chapter, but shall be considered to be the equivalent of temporary total disability for the purposes of~~

~~section 176.102. If on the job training is part of the rehabilitation program, the weeks during which the insurer or employer pays compensation pursuant to subdivision 5 shall be subtracted from the 156 weeks of retraining compensation which has been paid, if any, pursuant to this subdivision. This subdivision shall not apply to retraining benefits for which liability has been established prior to July 1, 1979.~~ An employee who has been approved for retraining may petition the commissioner for additional compensation not to exceed 25 percent of the compensation otherwise payable. If the commissioner determines that this additional compensation is warranted due to unusual or unique circumstances of the employee's retraining plan, the commissioner may award additional compensation in an amount the commissioner determines is appropriate, not to exceed the employee's request. This additional compensation shall cease at any time the commissioner determines the special circumstances are no longer present.

Sec. 82. Minnesota Statutes 1982, section 176.102, is amended by adding a subdivision to read:

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

Sec. 83. Minnesota Statutes 1982, section 176.102, is amended by adding a subdivision to read:

Subd. 12. [DISCONTINUANCE.] All benefits payable under chapter 176 may, after a determination and order by the commissioner, be discontinued or forfeited for any time during which the employee refuses to submit to any reasonable examinations and evaluative procedures ordered by the commissioner to determine the need for and details of a plan of rehabilitation, or refuses to participate in rehabilitation evaluation as required by this section or does not make a good faith effort to participate in a rehabilitation plan. A discontinuance under this section is governed by section 140.

Sec. 84. [176.103] [MEDICAL HEALTH CARE REVIEW.]

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

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

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

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

Subd. 2. [SCOPE.] The commissioner shall monitor the medical and surgical treatment provided to injured employees, the services of other health care providers and shall also monitor hospital utilization as it relates to the treatment of injured employees. This monitoring shall include determinations concerning the appropriateness of the service, whether the treatment is necessary and effective, the proper cost of services, the quality of the treatment, the right of providers to receive payment under this chapter for services rendered or the right to receive payment under this chapter for future services. The commissioner may penalize, disqualify, or suspend a provider from receiving payment for services rendered under this chapter, if the commissioner determines that the provider has violated any part of this chapter or rule adopted under this chapter. The commissioner's authority under this section also includes the authority to make determinations regarding any other activity involving the questions of utilization of medical services, and any other determination the commissioner deems necessary for the proper administration of this section.

The commissioner has the sole authority to make determinations under this section with a right of appeal to the medical services review board as provided in subdivision 3 and

the workers' compensation court of appeals. A compensation judge has no jurisdiction in making determinations under this section.

Subd. 3. [MEDICAL SERVICES REVIEW BOARD; SELECTION; POWERS.] (a) There is created a medical services review board composed of the commissioner or the commissioner's designee as an ex officio member, two persons representing chiropractic, one person representing hospital administrators, and six medical practitioners representing different specialties which the commissioner determines are the most frequently utilized by injured employees. The board shall also have one person representing employees, one person representing employers or insurers, and one person representing the general public. The members shall be appointed by the commissioner and shall be governed by section 15.0575. Terms of the board's members may be renewed. The board shall appoint from among its clinical members a clinical advisory subcommittee on clinical quality and a clinical advisory subcommittee on clinical cost containment. Each subcommittee shall consist of at least three members one of whom shall be a member who is not a chiropractor or licensed physician.

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

The clinical cost containment subcommittee shall review and recommend to the commissioner rates for individual clinical procedures and aggregate costs. The subcommittees shall make regular reports to the board and the commissioner which shall evaluate the reports for the purpose of determining whether or not a particular health care provider continues to qualify for payment under chapter 176 or is subject to any other sanctions or penalties authorized under this section and to determine whether an employee has been off work longer than necessary.

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

listed:

(1) the clinical effectiveness of the treatment;

(2) the clinical cost of the treatment; and

(3) the length of time of treatment.

In its consideration of these factors, the board shall utilize the information and recommendations developed by the subcommittees. In addition, the board shall utilize any other data developed by the subcommittees pursuant to the duties assigned to the subcommittees under this section.

After making a determination, the board shall submit its recommendation in writing to the commissioner. The board shall advise the commissioner on the adoption of rules regarding all aspects of medical care and services provided to injured employees.

(b) The board shall appoint three of its members to hear appeals from decisions of the commissioner regarding quality control and supervision of medical care; any other disputes regarding medical, surgical, and hospital care; decisions regarding the eligibility of medical providers to receive payments; or any other determinations of the commissioner pursuant to subdivision 2. The three-member panel shall be composed of one member who does not represent a health care specialty, one member who represents the same specialty as the specialty at issue or, if the same specialty is not available, one member whose specialty is as close as possible considering the board's composition, and one member representing a different specialty. The three-member panel shall conduct a hearing in the same manner, giving the same notice and following other procedures required of the rehabilitation review panel in section 176.102, subdivision 3a. A majority vote of the three-member panel constitutes the decision of the full board. This decision may be appealed to the workers' compensation court of appeals.

(c) In any situation where a conflict of interest prevents the appointment of a full three-member panel or in any other situation where the commissioner deems it necessary to resolve a

conflict of interest, the commissioner may appoint a temporary substitute board member to serve until the situation creating the conflict of interest has been resolved.

Sec. 85. [176.104] [REHABILITATION PRIOR TO DETERMINATION OF LIABILITY.]

Subdivision 1. [DISPUTE.] If there exists a dispute regarding whether an injury arose out of and in the course and scope of employment and an employee has been disabled for the requisite time under section 176.102, subdivision 4, prior to determination of liability, the employee shall be referred by the commissioner to the division of vocational rehabilitation which shall provide rehabilitation consultation. The services provided by the division of vocational rehabilitation and the scope and term of the rehabilitation are governed by section 176.102 and rules adopted pursuant to that section. Rehabilitation costs and services under this subdivision shall be approved, rejected, or modified by the commissioner.

Subd. 2. [LIABILITY FOR PAST REHABILITATION.] If liability is determined after the employee has commenced rehabilitation under this section the liable party is responsible for the cost of rehabilitation provided and approved by the commissioner. Future rehabilitation after liability is established is governed by section 176.102.

Sec. 86. Minnesota Statutes 1982, section 176.105, is amended by adding a subdivision to read:

Subd. 4. [LEGISLATIVE INTENT; RULES; LOSS OF MORE THAN ONE BODY PART.] (a) For the purpose of establishing a disability schedule pursuant to clause (b) of this subdivision, the legislature declares its intent that the commissioner establish a disability schedule which, assuming the same number and distribution of severity of injuries, the aggregate total of impairment compensation and economic recovery compensation benefits under section 176.101, subdivisions 3a to 3u be approximately equal to the total aggregate amount payable for permanent partial disabilities under section 176.101, subdivision 3, provided, however, that awards for specific

injuries under the proposed schedule need not be the same as they were for the same injuries under the schedule pursuant to section 176.101, subdivision 3. The schedule shall be determined by sound actuarial evaluation and shall be based on the benefit level which exists on January 1, 1983.

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

Temporary rules shall be adopted for this purpose not later than January 1, 1984. Prior to the adoption of these rules, at least one public hearing shall be held by the commissioner, in addition to the requirements of sections 14.29 to 14.36. Notwithstanding sections 14.29 to 14.36, the temporary rules adopted under this subdivision shall be effective until superseded by permanent rules. The rules shall promote objectivity and consistency in the evaluation of permanent functional impairment due to personal injury and in the assignment of a numerical rating to the functional impairment.

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

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

the schedule for permanent partial disability benefits:

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

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

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

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

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

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

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

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

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

(c) If an employee suffers a permanent functional disability of more than one body part due to a personal injury incurred in a single occurrence, the percent of the whole body

which is permanently partially disabled shall be determined by the following formula so as to ensure that the percentage for all functional disability combined does not exceed the total for the whole body:

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

where: A is the greater percentage whole body loss of the first body part; and B is the lesser percentage whole body loss otherwise payable for the second body part.

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

Sec. 87. Minnesota Statutes 1982, section 176.111, subdivision 6, is amended to read:

Subd. 6. [SPOUSE, NO DEPENDENT CHILD.] ~~(a)~~ If the deceased employee leaves a dependent surviving spouse and no dependent child, there shall be paid to the spouse, ~~at the option of the spouse, either:~~

~~(1) A lump sum settlement equal to ten full years of compensation at 50 percent of the daily wage at the time of the injury of the deceased, computed without regard to section 176.645, or~~

~~(2)~~ weekly workers' compensation benefits at 50 percent of the daily wage at the time of the injury for a period of ten years, including adjustments as provided in section 176.645.

~~(b) A dependent surviving spouse who has not accepted a lump sum settlement pursuant to clause (a)(1) and who remarries shall receive the lesser of either:~~

~~(1) A lump sum settlement equal to two full years of compensation at 50 percent of the daily wage at the time of the~~

injury of the deceased, computed without regard to section 176.645, or

(2) The remaining weekly workers' compensation benefits pursuant to clause (a)(2) at 50 percent of the daily wage, including adjustments as provided in section 176.645.

Sec. 88. Minnesota Statutes 1982, section 176.111, subdivision 7, is amended to read:

Subd. 7. [SPOUSE, ONE DEPENDENT CHILD.] (a) If the deceased employee leaves a surviving spouse and one dependent child, there shall be paid to the surviving spouse for the benefit of the spouse and child 60 percent of the daily wage at the time of the injury of the deceased until the child is no longer a dependent as defined in subdivision 1. At that time there shall be paid to the dependent surviving spouse, at the option of the spouse, either:

(1) A lump sum settlement equal to ten full years of compensation at a rate which is 16 2/3 percent less than the last weekly workers' compensation benefit payment, as defined in subdivision 8a, while the surviving child was a dependent, computed without regard to section 176.645, or

(2) weekly benefits at a rate which is 16 2/3 percent less than the last weekly workers' compensation benefit payment, as defined in subdivision 8a, while the surviving child was a dependent, for a period of ten years, including adjustments as provided in section 176.645.

(b) A surviving spouse who remarries shall receive:

(1) Compensation, for the benefit of the dependent child, according to the allocation provided in subdivision 10, until the child is no longer a dependent as defined in subdivision 1, and

(2) A lump sum settlement, for the benefit of the surviving spouse, equal to two full years of weekly benefits in an amount which equals the difference between the benefit otherwise payable under clause (a) and the amount payable to the dependent child pursuant to clause (b)(1).

Sec. 89. Minnesota Statutes 1982, section 176.111,

subdivision 8, is amended to read:

Subd. 8. [SPOUSE, TWO DEPENDENT CHILDREN.] ~~(a)~~ If the deceased employee leaves a surviving spouse and two dependent children, there shall be paid to the surviving spouse for the benefit of the spouse and children 66 2/3 percent of the daily wage at the time of the injury of the deceased until the ~~youngest~~ last dependent child is no longer dependent. At that time the dependent surviving spouse shall be paid, ~~at the option of the spouse, either:~~

~~(1) A lump sum settlement equal to ten full years of compensation at a rate which is 25 percent less than the last weekly workers' compensation benefit payment, as defined in subdivision 8a, while the last surviving child was a dependent, computed without regard to section 176.645, or~~

~~(2)~~ weekly benefits at a rate which is 25 percent less than the last weekly workers' compensation benefit payment, as defined in subdivision 8a, while the surviving child was a dependent, for a period of ten years, adjusted according to section 176.645.

~~(b) A surviving spouse who remarries shall receive compensation, for the benefit of the children, allocated according to subdivision 10, until the youngest dependent child is no longer dependent as defined in subdivision 1 and, for the benefit of the surviving spouse, a lump sum settlement equal to two full years of weekly benefits in an amount which equals the difference between the benefit otherwise payable pursuant to clause (a) and the amount payable to the dependent children allocated according to subdivision 10, computed without regard to section 176.645.~~

Sec. 90. Minnesota Statutes 1982, section 176.111, is amended by adding a subdivision to read:

Subd. 9a. [REMARRIAGE OF SPOUSE.] A surviving spouse who remarries and is receiving benefits under subdivisions 6, 7, or 8 shall continue to be eligible to receive weekly benefits for the remaining period that the spouse is entitled to receive benefits pursuant to this section.

Sec. 91. Minnesota Statutes 1982, section 176.111, subdivision 18, is amended to read:

Subd. 18. [BURIAL EXPENSE.] In all cases where death results to an employee from a personal injury arising out of and in the course of employment, the employer shall pay the expense of burial, not exceeding in amount ~~$1,000~~ $2,500. In case any dispute arises as to the reasonable value of the services rendered in connection with the burial, ~~such~~ its reasonable value shall be determined and approved by the commissioner ~~of the department of labor and industry~~, a compensation judge, or workers' compensation court of appeals, in cases upon appeal, before payment, after ~~such~~ reasonable notice to interested parties as is required by the commissioner ~~of the department of labor and industry~~. If the deceased leave no dependents, no compensation is payable, except as provided by this chapter.

Sec. 92. Minnesota Statutes 1982, section 176.121, is amended to read:

176.121 [COMMENCEMENT OF COMPENSATION.]

In cases of temporary total or temporary partial disability no compensation ~~shall be~~ is allowed for the three calendar days after the disability commenced, except as provided by section 176.135, nor in any case unless the employer has actual knowledge of the injury or is notified thereof within the period specified in section 176.141. If ~~such~~ the disability continues for 10 calendar days or longer, ~~such~~ the compensation ~~shall be~~ is computed from the commencement of the disability. Disability is deemed to commence on the first calendar day or fraction of a calendar day that the employee is unable to work.

Sec. 93. [176.129] [CREATION OF THE SPECIAL COMPENSATION FUND.]

Subdivision 1. [DEPOSIT OF FUNDS.] The special compensation fund is created for the purposes provided for in this chapter. The state treasurer is the custodian of the special compensation fund. Sums paid to the commissioner pursuant to this section shall be deposited with the state treasurer for the benefit of the fund and used to pay the

benefits under this chapter. Any interest or profit accruing from investment of these sums shall be credited to the special compensation fund. Subject to the provisions of this section, all the powers, duties, functions, obligations, and rights vested in the special compensation fund immediately prior to the effective date of this section are transferred to and vested in the special compensation fund recreated by this section. All rights and obligations of employers with regard to the special compensation fund which existed immediately prior to the effective date of this section continue, subject to the provisions of this section.

Subd. 2. [PAYMENTS TO FUND, DEATH.] In every case of death of an employee resulting from personal injury arising out of and in the course of employment where there are no persons entitled to monetary benefits of dependency compensation, the employer shall pay to the commissioner the sum of $25,000 for the benefit of the special compensation fund. In every case of death of an employee resulting from personal injury arising out of and in the course of employment where there are no persons entitled to at least $25,000 in monetary benefits of dependency compensation, the employer shall pay to the commissioner for the benefit of the special compensation fund the difference between the amounts actually paid for the dependency benefits and $25,000; but in no event shall the employer pay the commissioner less than $5,000.

Subd. 3. [PAYMENTS TO FUND, INJURY.] If an employee suffers a personal injury resulting in permanent partial disability, temporary total disability, temporary partial disability, permanent total disability, or death and the employee or the employee's dependents are entitled to compensation under sections 176.101 or 176.111 the employer shall pay to the commissioner a lump sum amount, without any interest deduction, equal to 20 percent of the total compensation payable. The rate under this subdivision shall remain constant and applies to injuries occurring after June 1, 1971, and prior to January 1, 1984, for payments made on or

after January 1, 1984. This payment is to be credited to the special compensation fund and shall be in addition to any compensation payments made by the employer under this chapter. Payment shall be made as soon as the amount is determined and approved by the commissioner.

Subd. 4. [TIME OF INJURY.] Subdivision 3 applies to all workers' compensation payments paid under sections 176.101, 176.102, 176.111, or 176.135, for an injury or death occurring on or after June 1, 1971, but before January 1, 1984.

Payments made for personal injuries that occurred prior to June 1, 1971, shall be assessed at the rate in effect on the date of occurrence.

Subd. 5. [DETERMINATION OF AMOUNT PAYABLE.] (a) In addition to assessments under subdivisions 2 and 3, an employer shall, beginning in calendar year 1984, pay an assessment as provided in this subdivision. The assessment base shall be determined according to a method established by rule adopted by the commissioner. In determining this method, the commissioner shall consider, among other things, the frequency of indemnity claims, equity, potential for retaliation by other states against Minnesota insurers, administrative convenience, records maintained by employer's insurers and self-insurers, verification of underlying records, and degree of risk refinement. The assessment base shall not be determined by paid losses.

(b) Using the assessment base method established in clause (a), the commissioner shall annually determine the amount of the assessment base of each employer.

(c) The commissioner shall annually establish a uniform percentage rate to be applied to the assessment base determined pursuant to clause (b). In establishing this rate, the commissioner shall consider, among other things, the likely expenditures to be made by the special fund in the next calendar year, the current fiscal status of the fund, future expenditure trends, and the assessments estimated to be collected under subdivisions 2 and 3. The assessment rate multiplied by the

assessment base of an employer is the assessment amount payable under this subdivision. The total amount assessed against all employers under this subdivision shall not exceed $25,000,000 in calendar year 1984. The total amount which may annually be assessed under this subdivision may be increased by up to ten percent beginning on January 1, 1985, and each January 1 thereafter.

(d) An amount assessed pursuant to this subdivision is payable to the commissioner within 45 days of mailing notice of the amount due.

Subd. 6. [PAYMENTS OUT OF FUND.] The workers' compensation division, a compensation judge, the workers' compensation court of appeals, or district court in cases before them shall direct the distribution of benefits provided by this chapter. These benefits are payable in the same manner as other payments of compensation.

Subd. 7. [REFUNDS.] In case deposit is or has been made under subdivision 2 and dependency later is shown, or if deposit is or has been made pursuant to subdivision 2 or 3 by mistake or inadvertence, or under circumstances that justice requires a refund, the state treasurer is authorized to refund the deposit under order of the commissioner, a compensation judge, the workers' compensation court of appeals, or a district court. There is appropriated to the commissioner from the fund an amount sufficient to make the refund and payment.

Subd. 8. [COMMISSIONER AS ADMINISTRATOR.] The commissioner is the administrator of the special compensation fund. The special fund shall be designated a party in an action regarding any right, obligation, and liability of the special fund. The state treasurer, as custodian, does not have standing in an action determining any right, obligation, or liability of the special fund. The attorney general shall represent the special fund in all legal matters in which the special fund has an interest.

Subd. 9. [POWERS OF FUND.] In addition to powers granted to the special compensation fund by this chapter the fund may do

the following:

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

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

(c) enter into settlements including but not limited to structured, annuity purchase agreements with appropriate parties under this chapter;

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

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

Subd. 10. [PENALTY.] Sums paid to the commissioner pursuant to this section shall be in the manner prescribed by the commissioner. The commissioner may impose a penalty of up to 15 percent of the amount due under this section but not less than $500 in the event payment is not made in the manner prescribed.

Subd. 11. [ADMINISTRATIVE PROVISIONS.] The accounting, investigation, and legal costs necessary for the administration of the programs financed by the special compensation fund shall be paid from the fund during each biennium commencing July 1, 1981. Staffing and expenditures related to the administration of the special compensation fund shall be approved through the regular budget and appropriations process.

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

Subd. 13. [EMPLOYER REPORTS.] All employers shall make reports to the commissioner as required for the proper

administration of this section and section 176.131.

Sec. 94. Minnesota Statutes 1982, section 176.131, subdivision 1, is amended to read:

Subdivision 1. If an employee incurs personal injury and suffers disability that is substantially greater, because of a pre-existing physical impairment, than what would have resulted from the personal injury alone, the employer shall pay all compensation provided by this chapter, but ~~he~~ the employer shall be reimbursed from the special compensation fund for all compensation paid in excess of 52 weeks of monetary benefits and $2,000 in medical expenses, subject to the following exceptions:

If the personal injury alone results in permanent partial disability to a scheduled member under ~~section 176.101~~ the schedule adopted by the commissioner pursuant to section 176.105, the monetary and medical expense limitations shall not apply and the employer ~~shall be~~ is liable for ~~such~~ the compensation, medical expense, and ~~retraining~~ rehabilitation attributable to the permanent partial disability, and ~~he~~ may be reimbursed from the special compensation fund only for compensation paid in excess of ~~such~~ the disability.

Sec. 95. Minnesota Statutes 1982, section 176.131, subdivision 1a, is amended to read:

Subd. 1a. If an employee is employed in an on the job retraining program pursuant to section 176.102 and the employee incurs a personal injury that aggravates the personal injury for which the employee has been certified to enter the on the job retraining program, the on the job training employer shall pay the medical expenses and compensation required by this chapter, ~~but~~ and shall be reimbursed from the special compensation fund for the compensation and medical expense that is attributable to the aggravated injury. The employer, at the time of the personal injury for which the employee has been certified for retraining, is liable for the portion of the disability that is attributable to that injury.

Sec. 96. Minnesota Statutes 1982, section 176.131, subdivision 2, is amended to read:

Subd. 2. If the employee's personal injury ~~shall result~~ results in disability or death, and if the injury, death, or disability would not have occurred except for the pre-existing physical impairment registered with the special compensation fund, the employer shall pay all compensation provided by this chapter, ~~but~~ and shall be fully reimbursed from the special compensation fund for ~~such~~ the compensation ~~only where the permanent physical impairment contributing to the second injury is diabetes, hemophilia or seizures~~ except that this full reimbursement shall not be made for cardiac disease or a condition registered pursuant to subdivision 8, clauses (t) or (u) unless the commissioner by rule provides otherwise.

Sec. 97. Minnesota Statutes 1982, section 176.131, subdivision 3, is amended to read:

Subd. 3. To entitle the employer to secure reimbursement from the special compensation fund, the following provisions must be complied with:

(a) Provisions of section 176.181, subdivisions 1 and 2.

(b) The employee with a pre-existing physical impairment must have been registered with the commissioner ~~of labor and industry~~ prior to the employee's personal injury or within 180 days after notice of the employee's personal injury is received by the employer. Registration subsequent to the injury shall be based on a medical report or record made prior to the injury indicating the pre-existing physical impairment.

Sec. 98. Minnesota Statutes 1982, section 176.131, subdivision 4, is amended to read:

Subd. 4. Any employer who hires or retains in ~~his~~ its employment any person who has a physical impairment shall file a formal registration for ~~each such~~ the employee with the commissioner ~~of the department of labor and industry in such~~ on a form as prescribed by the commissioner ~~may require~~.

Sec. 99. Minnesota Statutes 1982, section 176.131, subdivision 5, is amended to read:

Subd. 5. Registration under this section may be made by the employee or any employer provided:

(a) Registration ~~shall be~~ is accompanied by satisfactory evidence of ~~such~~ the physical impairment;

(b) Registration ~~shall be~~ is in effect as long as ~~said~~ the impairment exists;

(c) Upon request, a registered employee shall be furnished by the commissioner ~~of the department of labor and industry~~ with a registration card evidencing the ~~fact of~~ registration, and ~~such~~ other facts as the commissioner ~~of the department of labor and industry~~ deems advisable.

Sec. 100. Minnesota Statutes 1982, section 176.131, subdivision 6, is amended to read:

Subd. 6. When the employer claims reimbursement from the special compensation fund after paying compensation as prescribed by this section, ~~he~~ the employer shall file with the commissioner ~~of the department of labor and industry~~ written notice of intention to claim reimbursement in accordance with the rules ~~and regulations of~~ adopted by the commissioner ~~of the department of labor and industry~~.

Sec. 101. Minnesota Statutes 1982, section 176.131, subdivision 7, is amended to read:

Subd. 7. Under subdivisions 1 and 2, an occupational disease may be deemed to be the personal (second) injury.

If the subsequent disability for which reimbursement is claimed is an occupational disease, and if, subsequent to registration as provided by subdivisions 4 and 5, the employee has been employed by the employer in employment similar to that which initially resulted in ~~such~~ the occupational disease, no reimbursement shall be paid to the employer.

Sec. 102. Minnesota Statutes 1982, section 176.131, subdivision 8, is amended to read:

Subd. 8. As used in this section the following terms have the meanings given them:

"Physical impairment" means any physical or mental condition that is permanent in nature, whether congenital or due to injury, disease or surgery and which is or is likely to be a hindrance or obstacle to obtaining employment ~~provided~~ except

that, physical impairment as used herein is limited to the following:

(a) Epilepsy,

(b) Diabetes,

(c) Hemophilia,

(d) Cardiac disease,

(e) Partial or entire absence of thumb, finger, hand, foot, arm or leg,

(f) Lack of sight in one or both eyes or vision in either eye not correctable to 20/40,

(g) Residual disability from poliomyelitis,

(h) Cerebral Palsy,

(i) Multiple Sclerosis,

(j) Parkinson's disease,

(k) Cerebral vascular accident,

(l) Chronic Osteomyelitis,

(m) Muscular Dystrophy,

(n) Thrombophlebitis,

(o) Brain tumors,

(p) Pott's disease,

(q) Seizures,

(r) Cancer of the bone,

(s) Leukemia,

~~(e)~~ (t) Any other physical impairment ~~for which~~ resulting in a disability rating of at least ~~50 weeks or more of weekly benefits would be payable as permanent partial disability~~ ten percent of the whole body if the physical impairment were evaluated according to standards used in workers' compensation proceedings, and

~~(f)~~ (u) Any other physical impairments of a permanent nature which the ~~workers' compensation court of appeals~~ commissioner may by rule prescribe;

"Compensation" has the meaning defined in section 176.011;

"Employer" includes insurer;

"Disability" means, unless otherwise indicated, any condition causing either temporary total, temporary partial,

permanent total, permanent partial, death, medical expense, or ~~retraining~~ rehabilitation.

Sec. 103. Minnesota Statutes 1982, section 176.132, subdivision 1, is amended to read:

Subdivision 1. [ELIGIBLE RECIPIENTS.] (a) An employee who has suffered personal injury prior to the effective date of clause (b) for which benefits are payable under section 176.101 and who has been totally disabled for more than 104 weeks shall be eligible for supplementary benefits as ~~hereinafter~~ prescribed in this section after 104 weeks have elapsed and for the remainder of ~~his~~ the total disablement. Regardless of the number of weeks of total disability, no totally disabled person ~~shall~~ be is ineligible for supplementary benefits after four years have elapsed since the first date of ~~his~~ the total disability, except as provided by clause (b), provided that all periods of disability are caused by the same injury.

(b) An employee who has suffered personal injury after the effective date of this clause is eligible to receive supplementary benefits after the employee has been receiving temporary total or permanent total benefits for 208 weeks. Regardless of the number of weeks of total disability, no person who is receiving temporary total compensation shall be ineligible for supplementary benefits after four years have elapsed since the first date of the total disability, provided that all periods of disability are caused by the same injury.

Sec. 104. Minnesota Statutes 1982, section 176.132, is amended by adding a subdivision to read:

Subd. 5. [ROUNDING OF PAYMENTS.] A payment made under this section shall be rounded up to the nearest whole dollar.

Sec. 105. Minnesota Statutes 1982, section 176.134, subdivision 4, is amended to read:

Subd. 4. [ADMINISTRATION.] The commissioner ~~of labor and industry~~ shall administer the reopened case fund as part of the special compensation fund provided that the reopened case fund is under separate accounting and audit procedures from the special fund.

Sec. 106. Minnesota Statutes 1982, section 176.135, subdivision 1, is amended to read:

Subdivision 1. [MEDICAL, CHIROPRACTIC, PODIATRIC, SURGICAL, HOSPITAL.] The employer shall furnish ~~such~~ any medical, chiropractic, podiatric, surgical and hospital treatment, including nursing, medicines, medical, chiropractic, podiatric, and surgical supplies, crutches and apparatus, including artificial members, or, at the option of the employee, if the employer has not filed notice as hereinafter provided, Christian Science treatment in lieu of medical treatment, chiropractic medicine and medical supplies, as may reasonably be required at the time of the injury and any time thereafter to cure and relieve from the effects of the injury. ~~Such~~ This treatment shall include treatments necessary to physical rehabilitation. The employer shall furnish replacement or repair for artificial members, glasses, or spectacles, artificial eyes, podiatric orthotics, dental bridge work, dentures or artificial teeth, hearing aids, canes, crutches or wheel chairs damaged by reason of an injury arising out of and in the course of the employment. In case of his inability or refusal seasonably to do so the employer ~~shall be~~ is liable for the reasonable expense incurred by or on behalf of the employee in providing the same. The employer shall pay for the reasonable value of nursing services by a member of the employee's family in cases of permanent total disability. Orders of ~~a compensation judge~~ the commissioner or medical services review board with respect to this subdivision may be reviewed by the workers' compensation court of appeals on petition of an aggrieved party or by writ of certiorari to the supreme court.

Sec. 107. Minnesota Statutes 1982, section 176.135, subdivision 3, is amended to read:

Subd. 3. [LIMITATION OF LIABILITY.] The pecuniary liability of the employer for the treatment, articles and supplies required by this section shall be limited to ~~such~~ the charges therefor as prevail in the same community for similar

treatment, articles and supplies furnished to injured persons of a like standard of living when the same are paid for by the injured persons. On this basis the ~~compensation judge~~ commissioner, medical services review board, or workers' compensation court of appeals on appeal may determine the reasonable value of all such services and supplies and the liability of the employer is limited to the amount so determined.

Sec. 108. Minnesota Statutes 1982, section 176.136, is amended to read:

176.136 [MEDICAL FEE REVIEW.]

The commissioner ~~of insurance~~ shall by rule establish procedures for determining whether or not the charge for a health service is excessive. In order to accomplish this purpose, the commissioner ~~of insurance~~ shall consult with insurers, associations and organizations representing the medical and other providers of treatment services and other appropriate groups. The procedures established by the commissioner ~~of insurance~~ shall limit the charges allowable for medical, chiropractic, podiatric, surgical, hospital and other health care provider treatment or services, as defined and compensable under section 176.135, to the 75th percentile of usual and customary fees or charges based upon billings for each class of health care provider during all of the calendar year preceding the year in which the determination is made of the amount to be paid the health care provider for the billing. The procedures established by the commissioner for determining whether or not the charge for a health service is excessive shall be structured to encourage providers to develop and deliver services for rehabilitation of injured workers. The procedures shall incorporate the provisions of sections 144.701, 144.702, and 144.703 to the extent that the commissioner finds that these provisions effectively accomplish the intent of this section or are otherwise necessary to insure that quality hospital care is available to injured employees. If the commissioner ~~of insurance, a compensation judge~~, medical services review board, the workers' compensation court of

appeals or a district court determines that the charge for a health service or medical service is excessive, no payment in excess of the reasonable charge for that service shall be made under this chapter nor may the provider collect or attempt to collect from the injured employee or any other insurer or government amounts in excess of the amount payable under this chapter; ~~however, the commissioner of insurance shall by rule establish procedures allowing for a provider to appeal such determination.~~ The commissioner ~~of insurance~~ shall contract with a review organization as defined in section 145.61 for the purposes listed in section 145.61, subdivision 5, and report to the legislature by January 15, 1983 and thereafter on January 15 of every odd-numbered year, regarding the delivery of medical and health care services, including rehabilitation services, under the workers' compensation laws of this state.

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

The commissioner ~~of insurance~~ shall adopt temporary rules in order to implement the provisions of this subdivision. Notwithstanding the provisions of section 14.14, subdivision 1, and any amendments, the temporary rules adopted by the commissioner ~~of insurance~~ pursuant to this subdivision may be extended for an additional 180 days if the procedures for adoption of a rule pursuant to sections 14.13 to 14.20 or 14.21 to 14.28, and other provisions of the administrative procedure act related to final agency action and rule adoption have not been concluded.

Any rules adopted by the commissioner of insurance pursuant to this section shall remain in effect but may be amended, modified, or repealed only by the commissioner of labor and industry.

Sec. 109. [176.138] [MEDICAL DATA; ACCESS.]

Notwithstanding any other state laws related to the privacy of medical data or any private agreements to the contrary, the release of medical data related to a current claim for compensation under this chapter to the employee, employer, or insurer who are parties to the claim, or to the department of labor and industry, shall not require prior approval of any party to the claim. Requests for pertinent data shall be made in writing to the person or organization that collected or currently possesses the data. The data shall be provided by the collector or possessor within seven working days of receiving the request. In all cases of a request for the data, except when it is the employee who is making the request, the employee shall be sent written notification of the request by the party requesting the data at the same time the request is made. This data shall be treated as private data by the party who requests or receives the data and the employee or the employee's attorney shall be provided with a copy of all data requested by the requester.

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

The commissioner may impose a penalty of up to $200 payable to the special compensation fund against a party who does not release the data in a timely manner. A party who does not treat this data as private pursuant to this section is guilty of a misdemeanor.

Sec. 110. Minnesota Statutes 1982, section 176.155, subdivision 3, is amended to read:

Subd. 3. [REFUSAL TO BE EXAMINED.] If the injured employee refuses to comply with any reasonable request for examination, ~~his~~ the right to compensation may be suspended by order of the division, a compensation judge or workers' compensation court of appeals in a matter before it, and no compensation shall be paid while ~~he~~ the employee continues in ~~such~~ the refusal.

Sec. 111. Minnesota Statutes 1982, section 176.155, subdivision 5, is amended to read:

Subd. 5. [TESTIMONY OF ~~EXAMINING PHYSICIANS~~ HEALTH CARE PROVIDER.] Any physician or other health care provider designated by the commissioner ~~of the department of labor and industry~~, compensation judge, or workers' compensation court of appeals or whose services are furnished or paid for by the employer, who treats ~~or who makes~~, examines, or is present at any examination, of an injured employee, may be required to testify as to any knowledge acquired by ~~him~~ the physician or health care provider in the course of ~~such~~ the treatment or examination relative to the injury or disability resulting ~~therefrom~~ from the injury only if the commissioner or a compensation judge makes a written finding that the appearance of the physician or health care provider is crucial to the accurate determination of the employee's disability. In all other cases all evidence related to health care must be submitted by written report as prescribed by the chief hearing examiner. A party may cross-examine by deposition a physician or health care provider who has examined or treated the employee. If a physician or health care provider is not available for cross-examination prior to the hearing and the physician's or health care provider's written report is submitted at the hearing, the compensation judge shall, upon request of the adverse party, require the physician or health care provider to testify at the hearing for the purpose of being cross-examined by the adverse party. All written evidence relating to health care must be submitted prior to or at the time of the hearing and no evidence shall be considered which was submitted after the hearing unless the compensation judge orders otherwise.

Sec. 112. Minnesota Statutes 1982, section 176.179, is amended to read:

176.179 [PAYMENTS OF COMPENSATION RECEIVED IN GOOD FAITH.]

Notwithstanding section 176.521, subdivision 3, or any other provision of this chapter to the contrary, except as provided in this section, no lump sum or weekly payment, or settlement, which is voluntarily paid to an injured employee or

the survivors or a deceased employee in apparent or seeming accordance with the provisions of this chapter by an employer or insurer, or is paid pursuant to an order of the workers' compensation division, a compensation judge, or court of appeals relative to a claim by an injured employee or ~~his~~ the employee's survivors, and received in good faith by the employee or ~~his~~ the employee's survivors shall be refunded to the paying employer or insurer in the event that it is subsequently determined that the payment was made under a mistake in fact or law by the employer or insurer. When the payments have been made to a person who is entitled to receive further payments of compensation for the same injury, the mistaken compensation may be taken as a credit against future benefit entitlement; provided, however, that the credit applied against further payments of temporary total disability, temporary partial disability, permanent total disability, retraining benefits or death benefits shall not exceed 20 percent of the amount that would otherwise be payable.

Sec. 113. Minnesota Statutes 1982, section 176.181, is amended by adding a subdivision to read:

Subd. 2a. [APPLICATION FEE.] Every initial application filed pursuant to subdivision 2 requesting authority to self-insure shall be accompanied by a fee of $1,000. The fee is not refundable.

Sec. 114. Minnesota Statutes 1982, section 176.182, is amended to read:

176.182 [BUSINESS LICENSES OR PERMITS; COVERAGE REQUIRED.]

Every state ~~or local~~ licensing agency shall withhold the issuance of a license or permit to operate a business in Minnesota until the applicant presents acceptable evidence of compliance with the workers' compensation insurance coverage requirement of section 176.181, subdivision 2.

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

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

Sec. 115. Minnesota Statutes 1982, section 176.183, subdivision 1, is amended to read:

Subdivision 1. When any employee ~~shall sustain~~ sustains an injury arising out of and in the course of ~~his~~ employment while in the employ of an employer, other than the state or its political subdivisions, not insured or self-insured as provided for in this chapter, the employee or ~~his~~ the employee's dependents shall nevertheless receive benefits as provided for ~~therein~~ in this chapter from the special compensation fund, and the ~~state treasurer as custodian of such fund shall have~~ commissioner has a cause of action against ~~such~~ the employer for reimbursement for all moneys paid out or to be paid out, and, in the discretion of the court, as punitive damages an additional amount not exceeding 50 percent of all moneys paid out or to be paid out. An action to recover ~~such~~ the moneys shall be instituted unless the ~~custodian~~ commissioner determines that no recovery is possible. All moneys recovered shall be deposited in the general fund. There shall be no payment from the special compensation fund if there is liability for the injury under the provisions of section 176.215, by an insurer or self-insurer.

Sec. 116. Minnesota Statutes 1982, section 176.183, subdivision 1a, is amended to read:

Subd. 1a. When an employee or ~~his~~ the employee's dependent is entitled to benefits under this chapter from a self-insurer, present or past, other than the state and its municipal subdivisions, but the self-insurer fails to ~~be paid them~~ pay the benefits, the employee or ~~his~~ the employee's dependents, regardless of the date when the accident, personal injury, occupational disease, or death occurred, shall nevertheless receive ~~such~~ the benefits from the special compensation fund, ~~and. The state treasurer as custodian of such fund shall have~~

commissioner has a cause of action against ~~such~~ the self-insuring employer for reimbursement, for all ~~moneys~~ benefits and other expenditures paid out or to be paid out and, in the discretion of the court, as the self-insurer is liable for punitive damages in an ~~additional~~ amount not to exceed 50 percent of the total of all ~~moneys~~ benefits and other expenditures paid out or to be paid out. The commissioner shall institute an action to recover ~~such moneys shall be instituted~~ the total expenditures from the fund unless the ~~custodian~~ commissioner determines that no recovery is possible. All ~~moneys~~ proceeds recovered shall be deposited in the general fund.

Sec. 117. Minnesota Statutes 1982, section 176.183, is amended by adding a subdivision to read:

Subd. 3. (a) Notwithstanding subdivision 2, the commissioner may direct payment from the special compensation fund for compensation payable pursuant to subdivisions 1 and 1a, including benefits payable under sections 176.102 and 176.135, prior to issuance of an order of a compensation judge or the workers' compensation court of appeals directing payment or awarding compensation.

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

Sec. 118. Minnesota Statutes 1982, section 176.183, is amended by adding a subdivision to read:

Subd. 4. If the commissioner authorizes the special fund to commence payment under this section, the commissioner shall serve by certified mail notice upon the employer and other interested parties of the intention to commence payment. This notice shall be served at least ten calendar days before commencing payment and shall be mailed to the last known address of the parties. The notice shall include a statement that failure of the employer to respond within ten calendar days of the date of service will be deemed acceptance by the employer of the proposed action by the commissioner and will be deemed a waiver of defenses the employer has to a subrogation or

indemnity action by the commissioner. At any time prior to final determination of liability, the employer may appear as a party and present defenses the employer has, whether or not an appearance by the employer has previously been made in the matter. The commissioner has a cause of action against the employer to recover compensation paid by the special fund under this section.

Sec. 119. Minnesota Statutes 1982, section 176.185, subdivision 1, is amended to read:

Subdivision 1. [NOTICE OF COVERAGE, TERMINATION, CANCELLATION.] Within 10 days after the issuance of a policy of insurance covering the liability to pay compensation under this chapter written by ~~any~~ an insurer licensed to insure such liability in this state, the insurer shall file notice of coverage with the commissioner ~~of the department of labor and industry~~ under regulations and on forms prescribed by the commissioner ~~of the department of labor and industry~~. No policy shall be canceled by the insurer within the policy period nor terminated upon its expiration date until a notice in writing ~~shall be~~ is delivered or mailed to the insured and filed with the commissioner ~~of the department of labor and industry~~, fixing the date on which it is proposed to cancel it, or declaring that the insurer does not intend to renew the policy upon the expiration date. ~~Such~~ A cancellation or termination ~~shall~~ is not ~~become~~ effective until 30 days after written notice has been filed with the commissioner ~~of the department of labor and industry~~ in a manner prescribed by the commissioner unless prior to the expiration of ~~said~~ the 30 day period the employer obtains other insurance coverage or an order exempting ~~him~~ the employer from carrying insurance as provided in section 176.181. Upon receipt of ~~said~~ the notice the commissioner ~~of the department of labor and industry~~ shall notify the insured that ~~he~~ the insured must obtain coverage from some other licensed carrier and that, if unable to do so, ~~he~~ the insured shall request the ~~Compensation Rating Bureau~~ commissioner of insurance to ~~designate some carrier to issue a~~ require the issuance of a

policy as provided in section ~~79.25~~ 79.251, subdivision 4. Upon a cancellation or termination of a policy by the insurer the employer is entitled to have a policy assigned to him in accordance with sections ~~79.24 to 79.27~~ 79.251 and 79.252. Notice of cancellation or termination by the insured shall be served upon the insurer by written statement ~~to that effect~~ mailed or delivered to the insurer. Upon receipt of ~~such~~ the notice the insurer shall notify the commissioner ~~of the department of labor and industry~~ of the cancellation or termination and ~~thereupon~~ the commissioner ~~of the department of labor and industry~~ shall ask the employer for the reasons for ~~his~~ the cancellation or termination and notify ~~him~~ the employer of ~~his~~ the duty under this chapter to insure ~~his~~ the employer's employees.

Sec. 120. Minnesota Statutes 1982, section 176.185, is amended by adding a subdivision to read:

Subd. 10. [DATA COLLECTION CONTRACTS.] The commissioner may contract with other parties regarding the collection of appropriate data to assist in meeting the requirements of this section.

Sec. 121. [176.186] [RECORDS FROM OTHER STATE AGENCIES.] Notwithstanding any other state law to the contrary, the commissioner may obtain from the department of revenue, department of economic security, and office of the secretary of state, or any other state agency, upon request, names or lists of employers doing business in the state. This information shall be treated by the commissioner in the manner provided by chapter 13 and shall be used only for insurance verification by the commissioner.

Sec. 122. Minnesota Statutes 1982, section 176.191, is amended by adding a subdivision to read:

Subd. 5. Where a dispute exists between an employer, insurer, the special compensation fund, the reopened case fund, or the workers' compensation reinsurance association, regarding benefits payable under this chapter, the dispute may be submitted with consent of all interested parties to binding

arbitration pursuant to the rules of the American arbitration association. The decision of the arbitrator shall be conclusive with respect to all issues presented except as provided in subdivisions 6 and 7. Consent of the employee is not required for submission of a dispute to arbitration pursuant to this section and the employee is not bound by the results of the arbitration. An arbitration award shall not be admissible in any other proceeding under this chapter. Notice of the proceeding shall be given to the employee.

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

Sec. 123. Minnesota Statutes 1982, section 176.191, is amended by adding a subdivision to read:

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

Sec. 124. Minnesota Statutes 1982, section 176.191, is amended by adding a subdivision to read:

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

Sec. 125. Minnesota Statutes 1982, section 176.191, is amended by adding a subdivision to read:

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

Sec. 126. Minnesota Statutes 1982, section 176.195, is amended by adding a subdivision to read:

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

Sec. 127. Minnesota Statutes 1982, section 176.195, subdivision 2, is amended to read:

Subd. 2. [COMMENCEMENT OF PROCEEDINGS.] ~~Such~~ The commissioner of insurance may act under subdivision 1 or subdivision 1a upon his own motion, the recommendation of the commissioner ~~of the department~~ of labor and industry, the chief hearing examiner, or the workers' compensation court of appeals, or the complaint of any interested person.

Sec. 128. Minnesota Statutes 1982, section 176.195, is amended by adding a subdivision to read:

Subd. 7. [REPORT TO COMMISSIONER OF INSURANCE.] The commissioner may send reports to the commissioner of insurance regarding compliance with this chapter by insurers writing workers' compensation insurance. A report may include a recommendation for revocation of an insurer's license under this section and may also recommend the imposition of other penalties

which may be imposed upon insurers by the commissioner of insurance.

Sec. 129. Minnesota Statutes 1982, section 176.221, is amended to read:

176.221 [PAYMENT OF COMPENSATION AND TREATMENT CHARGES, COMMENCEMENT.]

Subdivision 1. [COMMENCEMENT OF PAYMENT.] Within 14 days of notice to or knowledge by the employer of an injury compensable under this chapter the payment of temporary total compensation ~~due pursuant to section 176.101, subdivision 1,~~ shall commence. Commencement of payment by an employer or insurer does not waive any rights to any defense the employer may have on any claim or incident either with respect to the compensability of the claim under chapter 176 or the amount of the compensation due. Where there are multiple employers, the first employer shall pay, unless it is shown that the injury has arisen out of employment with the second or subsequent employer. ~~When~~ If the employer or insurer has commenced payment of compensation under this subdivision but determines within 30 days of notice to or knowledge by the employer of the injury that the disability is not a result of a personal injury, payment of compensation may be ~~discontinued~~ terminated upon ~~notice of discontinuance pursuant to section 176.239~~ the filing of a notice of denial of liability. Upon the ~~determination~~ termination, payments made may be recovered by the employer if the commissioner or compensation judge finds that the employee's claim of work related disability was not made in good faith. A notice of denial of liability must state in detail specific reasons explaining why the claimed injury or occupational disease was determined not to be within the scope and course of employment and shall include the name and telephone number of the person making this determination.

~~Subd. 2. [GRANT OF EXTENSION.] Upon application made within 30 days after the date on which the first payment was due, the commissioner may grant an extension of time within which to determine liability. The extension shall not exceed 30~~

days.

Subd. 3. [PAYMENTS TO SPECIAL COMPENSATION FUND.] Where an employer or insurer fails to begin payment of compensation, charges for treatment under section 176.135 or retraining expenses under 176.102, subdivision 9 pursuant to subdivision 1, or to file a denial of liability within the 14-day period referred to in subdivision 1, or to request an extension of time within 30 days after the date on which the first payment was due, he it shall pay to the special compensation fund an amount equal to the total amount of compensation to which the employee is entitled because of the injury. In addition, each day subsequent to the end of the period and until a to receive up to the date compensation payment is made to the injured employee, the person responsible for payment of compensation shall pay to the special compensation fund an amount equal to the total compensation to which the injured employee is entitled.

Subd. 4. [FAILURE TO MAKE PAYMENTS AFTER EXTENSION.] Where an employer or insurer has been granted an extension of time within which to determine liability and fails to begin payment of compensation, charges for treatment under section 176.135 or retraining expenses under 176.102, subdivision 9 or to file a denial of liability within such extended period, he shall make the payments provided in subdivision 3.

Subd. 5. [DOUBLE PAYMENTS TO SPECIAL COMPENSATION FUND.] Where an employer or insurer has failed to make the payments required by subdivision 3 or subdivision 4 within 30 days from the end of the period or the extended period, the division may require him to pay to the special compensation fund, each day subsequent to the end of the period and until a compensation payment is made to the injured employee, a sum equal to double the total amount of compensation to which the employee is entitled because of the injury. In addition, the person responsible for compensation, charges for treatment under section 176.135 or retraining expenses under 176.102, subdivision 9 shall pay to the special compensation fund an amount equal to the total amount of compensation to which the

employee is entitled.

Subd. 6. [ASSESSMENT OF PENALTIES.] The division or compensation judge shall assess the penalty payments provided for by subdivisions subdivision 3 to 5, and any increase in benefit payments provided by section 176.225, subdivision 5, against either the employer or the insurer depending upon to whom the delay is attributable in making payment of compensation, charges for treatment under section 176.135 or retraining expenses under 176.102, subdivision 9. The insurer is not liable for a penalty payment assessed against it even if the delay is attributable to the employer.

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

Subd. 6a. [MEDICAL, REHABILITATION, ECONOMIC RECOVERY, AND IMPAIRMENT COMPENSATION.] The penalties provided by this section apply in cases where payment for treatment under section 176.135, rehabilitation expenses under section 176.102, subdivisions 9 and 11, economic recovery compensation or impairment compensation are not made in a timely manner as required by law or by rule adopted by the commissioner.

Subd. 7. [INTEREST.] Any payment of compensation, charges for treatment under section 176.135 or retraining rehabilitation expenses under 176.102, subdivision 9 not made when due shall bear interest at the rate of eight percent per annum a year from the due date to the date the payment is made or the rate set by section 549.09, subdivision 1, whichever is greater.

Subd. 8. [METHOD AND TIMELINESS OF PAYMENT.] Payment of compensation under this chapter shall be by immediately payable negotiable instrument, or if by any other method, arrangements shall be available to provide for the immediate negotiability of the payment instrument.

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

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

Sec. 130. Minnesota Statutes 1982, section 176.225, subdivision 1, is amended to read:

Subdivision 1. [GROUNDS.] Upon reasonable notice and hearing or opportunity to be heard, the division, a compensation judge, or upon appeal, the workers' compensation court of appeals or the supreme court may award compensation, in addition to the total amount of compensation award, of up to 25 percent of that total amount where an employer or insurer has:

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

(b) unreasonably or vexatiously delayed payment; or,

(c) neglected or refused to pay compensation; or,

(d) intentionally underpaid compensation.

Sec. 131. Minnesota Statutes 1982, section 176.225, subdivision 2, is amended to read:

Subd. 2. [EXAMINATION OF BOOKS AND RECORDS.] To determine whether an employer or insurer ~~has become subject to~~ is liable for the payment provided by subdivision 1, the division, a

compensation judge, or the workers' compensation court of appeals upon appeal may examine the books and records of the ~~person~~ employer or insurer relating to the payment of compensation, and may require ~~him~~ the employer or insurer to furnish any other information relating to the payment of compensation.

Sec. 132. Minnesota Statutes 1982, section 176.225, subdivision 3, is amended to read:

Subd. 3. [DEFIANCE OF DIVISION, COMPENSATION JUDGE, OR WORKERS' COMPENSATION COURT OF APPEALS, COMPLAINT.] ~~Where~~ If an insurer persists in an action or omission listed in subdivision 1, or does not permit the examination of ~~his~~ books and records, or fails to furnish ~~such~~ information as required, the commissioner or the chief hearing examiner shall file a written complaint with the insurance commissioner. The complaint shall specify the facts and recommend the revocation of the license of the insurer to do business in this state. The workers' compensation court of appeals may also file ~~such~~ a written complaint.

Sec. 133. Minnesota Statutes 1982, section 176.231, subdivision 3, is amended to read:

Subd. 3. [PHYSICIANS, CHIROPRACTORS, OR ~~SURGEONS~~ OTHER HEALTH CARE PROVIDERS TO REPORT INJURIES.] ~~Where~~ A physician ~~or surgeon~~, chiropractor, or other health care provider who has examined, treated, or has special knowledge of an injury to an employee which may be compensable under this chapter, ~~he~~ shall report to the commissioner ~~of the department of labor and industry~~ all facts relating to the nature and extent of the injury and disability, and the treatment provided for the injury or disability, within ten days after ~~he~~ the health care provider has received a written request for ~~such~~ the information from the commissioner ~~of the department of labor and industry~~ or any ~~member or employee thereof~~ an authorized representative of the commissioner.

Sec. 134. Minnesota Statutes 1982, section 176.231, subdivision 4, is amended to read:

Subd. 4. [SUPPLEMENTARY REPORTS.] The commissioner ~~of the department of labor and industry,~~ or ~~any member or employee thereof,~~ an authorized representative may require the filing of ~~such~~ supplementary reports of accidents as ~~it deems~~ is deemed necessary to provide information required by law.

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

Sec. 135. Minnesota Statutes 1982, section 176.231, subdivision 5, is amended to read:

Subd. 5. [FORMS FOR REPORTS.] The commissioner ~~of the department of labor and industry~~ shall prescribe forms for use in making the reports required by this section. The first report of injury form which the employer submits ~~with reference to an accident~~ shall include a declaration by the employer that ~~he~~ the employer will pay the compensation the law requires. Forms for reports required by this section shall be as prescribed by the commissioner and shall be the only forms used by an employer, insurer, self-insurer, group self-insurer, and all health care providers.

Sec. 136. Minnesota Statutes 1982, section 176.231, subdivision 9, is amended to read:

Subd. 9. [USES WHICH MAY BE MADE OF REPORTS.] Reports filed with the commissioner ~~of the department of labor and industry~~ under this section may be used in hearings held under this chapter, and for the purpose of state investigations and for statistics.

The division or office of administrative hearings or workers' compensation court of appeals may permit an attorney at law who represents an employer, insurer, or an employee or ~~his~~ a dependent to examine its file in a compensation case if the attorney furnishes written authorization to do so from ~~his~~ the attorney's client. Reports filed under this section and other information the commissioner has regarding injuries or deaths

shall be made available to the workers' compensation reinsurance association for use by the association in carrying out its responsibilities under chapter 79.

Sec. 137. Minnesota Statutes 1982, section 176.231, subdivision 10, is amended to read:

Subd. 10. [FAILURE TO FILE REQUIRED REPORT, PENALTY.] ~~Where~~ If an employer, physician, ~~or surgeon has failed~~ chiropractor, or other health provider fails to file with the commissioner ~~of the department of labor and industry~~ any report required by this section in the manner and within the time limitations prescribed, ~~he shall forfeit to the state $50~~ or otherwise fails to provide a report required by this section in the manner provided by this section, the commissioner may impose a penalty of up to $200 for each ~~such~~ failure.

The attorney general shall sue in a civil action to collect this penalty upon notification of the matter by the commissioner ~~of the department of labor and industry~~. The commissioner ~~of the department of labor and industry~~ shall certify to the attorney general each failure to report immediately upon its occurrence.

Penalties collected by the state under this subdivision shall be paid into the state treasury.

Sec. 138. Minnesota Statutes 1982, section 176.241, subdivision 2, is amended to read:

Subd. 2. [CONTINUANCE OF EMPLOYER'S LIABILITY; SUSPENSION.] Except ~~where~~ when the commissioner orders otherwise, until the copy of the notice and reports have been filed with the division, the liability of the employer to make payments of compensation continues.

When the division has received a copy of the notice of discontinuance, the statement of facts and available medical reports, the duty of the employer to pay compensation is suspended pending an investigation, hearing, and determination of the matter by the division or compensation judge as provided in the following subdivisions.

Sec. 139. Minnesota Statutes 1982, section 176.241,

subdivision 4, is amended to read:

Subd. 4. [ORDER.] When the hearing has been held, and ~~he has duly considered~~ the evidence duly considered, the person who held the hearing shall promptly enter an order directing the payment of further compensation or confirming the termination of compensation. ~~Where~~ If the order confirms a termination of compensation, ~~the commissioner of labor and industry shall notify the employer of the action. This notification~~ the service and filing of the order relieves the employer from further liability for compensation subject to the right of review afforded by this chapter, and to the right of the ~~division~~ compensation judge to set aside the order at any time prior to the review and to grant a new hearing pursuant to this chapter. Once an appeal to the workers' compensation court of appeals is filed, a compensation judge may not set aside the order but the court of appeals may remand the matter to a compensation judge for a new hearing.

Sec. 140. [176.242] [ADMINISTRATIVE CONFERENCE PRIOR TO DISCONTINUANCE OF COMPENSATION.]

Subdivision 1. [NOTICE OF DISCONTINUANCE; GROUNDS.] If an employer or insurer files a notice of intention to discontinue, the employer or insurer shall serve a copy upon the commissioner and the employee including detailed reasons for the intended discontinuance.

Subd. 2. [CONFERENCE, REQUEST.] (a) The employee has ten calendar days from the date the notice was served to request that the commissioner schedule an administrative conference to determine the appropriateness of the proposed discontinuance. The employer or insurer may request an administrative conference under this section at any time whether or not a notice of intent to discontinue is filed. The commissioner shall schedule an administrative conference to be held within ten calendar days after the commissioner receives timely notice of the employee's or employer's request for an administrative conference.

(b) If the employee does not, in a timely manner, request that the commissioner schedule an administrative conference, or

fails to appear, without good cause, at a scheduled conference, compensation may be discontinued, subject to the employee's right under section 176.241.

(c) An employee or employer may request a continuance of a scheduled administrative conference. If the commissioner determines that good cause exists for granting a continuance, the commissioner may grant the continuance which shall not exceed ten calendar days. No more than one continuance shall be granted. If the employee is granted a continuance, compensation need not be paid during the period of continuance but shall recommence upon the date of the conference unless the commissioner orders otherwise.

(d) The purpose of an administrative conference is to determine whether reasonable grounds exist for a discontinuance.

Subd. 3. [NECESSITY FOR CONFERENCE, COMMISSIONER'S DISCRETION.] The commissioner may determine that no administrative conference is necessary under this section and permit the employer or insurer to discontinue compensation, subject to the employee's right under section 176.241.

The commissioner may permit compensation to be discontinued at any time after a notice pursuant to subdivision 1 is received even if no administrative conference has been held, if the commissioner deems the discontinuance appropriate based on the information the commissioner has, subject to the employee's right under section 176.241.

Subd. 4. [ADMINISTRATIVE DECISION.] After considering the information provided by the parties at the administrative conference, the commissioner shall issue to all interested parties a written administrative decision permitting or denying the employer's or insurer's request to discontinue compensation. The decision shall be issued within five working days from the close of the conference. The commissioner's decision is binding on the parties. The commissioner shall advise all parties of the right to petition to the chief hearing examiner under section 176.241 and of the right to be represented by an attorney at a hearing before a compensation

judge.

Subd. 5. [OBJECTION TO DECISION.] If the commissioner grants the employer's or insurer's request to discontinue compensation and the employee objects to the discontinuance, the employee may file an objection to discontinuance under section 176.241. If the commissioner denies the request to discontinue compensation the employer or insurer may file a petition to discontinue under section 176.241.

Subd. 6. [EFFECT OF DECISION, APPEAL.] If an objection or a petition is filed under subdivision 5, the commissioner's administrative decision remains in effect and the parties obligations or rights to pay or receive compensation are governed by the commissioner's administrative decision, pending a determination by a compensation judge.

Subd. 7. [DECISION AS NOTICE.] If a party proceeds under subdivision 5, the commissioner's administrative decision under this section is deemed required notice to interested parties under section 176.241 and the commissioner's obligations under section 176.241 are deemed to be met.

Subd. 8. [WHEN DISCONTINUANCE ALLOWED.] Compensation shall not be discontinued prior to an administrative conference except as provided under subdivision 2, clause (b), or if the commissioner determines pursuant to subdivision 3 that no administrative conference is necessary. The employer may discontinue compensation immediately without having an administrative conference if the discontinuance is because the employee has returned to work.

Subd. 9. [NOTICE, FORMS.] Notice to the employee under subdivision 1 shall be on forms prescribed by the commissioner.

Subd. 10. [FINES, VIOLATIONS.] An employer or insurer who discontinues compensation in violation of this section is subject to a fine of up to $500 for each violation. Fines shall be paid to the special compensation fund.

Subd. 11. [APPLICATION.] This section is applicable to any notice of intent to discontinue which is filed after the effective date of this section, even if the injury occurred

prior to the effective date of this section.

Sec. 141. [176.243] [ADMINISTRATIVE CONFERENCE FOLLOWING RETURN TO WORK, SUBSEQUENT INABILITY TO WORK.]

Subdivision 1. [CONFIRMATION OF EMPLOYMENT AND WAGES.] If an insurer has discontinued compensation to an employee because the employee has returned to work, the insurer shall contact the employee 14 calendar days after return to work. The insurer shall determine whether the employee is still employed after 14 days and shall also ascertain the wages being paid to the employee.

Subd. 2. [NOTICE TO COMMISSIONER.] If upon contact the insurer determines that the employee is not working or that the employee is earning a lower wage than at the time of the injury, the insurer shall notify the commissioner in writing of this fact and shall also state the actions that the insurer has taken or intends to take regarding payment of compensation. A copy of this notice shall be served by the insurer by certified mail to the employee.

Subd. 3. [EMPLOYEE REQUEST FOR ADMINISTRATIVE CONFERENCE.] If the employee objects to the action of the insurer regarding payment of compensation upon the cessation of work by the employee, the employee may request an administrative conference with the commissioner to resolve disputed issues. A request for an administrative conference shall be made within ten calendar days after service of the notice on the employee. If the employee requests an administrative conference the commissioner shall schedule a conference to be held within 14 calendar days after the commissioner receives the request.

Subd. 4. [ADMINISTRATIVE DECISION.] After considering the information provided by the parties at the administrative conference the commissioner shall issue to all interested parties a written administrative decision regarding payment of compensation. The commissioner's decision is binding upon the parties and the rights and obligations of the parties are governed by the decision. The commissioner shall advise all parties of the right to petition to the chief hearing examiner

under section 176.241 and of the right to be represented by an attorney at a hearing before a compensation judge. A party aggrieved by the commissioner's decision may proceed under section 176.241.

Subd. 5. [DECISION BINDING PENDING COMPENSATION JUDGE DECISION.] If an aggrieved party files a petition under section 176.241, the commissioner's administrative decision remains in effect pending a determination by a compensation judge.

Subd. 6. [DECISION AS NOTICE.] If a party proceeds under section 176.241, the commissioner's administrative decision is deemed to fulfill the division's obligations under section 176.241.

Subd. 7. [OBLIGATIONS PRIOR TO ADMINISTRATIVE DECISION.] If an insurer has not voluntarily commenced compensation following the employee's cessation of work the insurer is not obligated to do so until an administrative conference is held and unless the commissioner determines that compensation shall be commenced.

Subd. 8. [NECESSITY OF ADMINISTRATIVE CONFERENCE.] If the commissioner deems it appropriate, based upon information the commissioner has, the commissioner may determine that an administrative conference is not necessary, in which case a party may proceed under section 176.241.

Subd. 9. [APPLICATION OF SECTION.] This section applies only when the employee has received at least 45 days of temporary total or temporary partial compensation prior to return to work and if no rehabilitation plan has been approved.

This section is applicable to all cases in which a return to work has occurred after the effective date of this section even if the injury occurred prior to the effective date.

Subd. 10. [NOTICE FORMS.] A notice under this section shall be on a form prescribed by the commissioner.

Subd. 11. [FINES, VIOLATIONS.] An employer or insurer who violates this section is subject to a fine of up to $500 for each violation which shall be paid to the special compensation fund.

Sec. 142. Minnesota Statutes 1982, section 176.281, is amended to read:

176.281 [ORDERS, DECISIONS, AND AWARDS; FILING; SERVICE.]

When the commissioner or compensation judge or office of administrative hearings or the workers' compensation court of appeals has rendered ~~an~~ a final order, decision, or award, or amendment to an order, decision, or award, it shall be filed immediately with the commissioner. ~~Where~~ If the commissioner, compensation judge, office of administrative hearings, or workers' compensation court of appeals has rendered ~~an~~ a final order, decision, or award, or amendment thereto, the commissioner or the office of administrative hearings or the workers' compensation court of appeals shall immediately serve a copy upon every party in interest, together with a notification of the ~~time~~ date the ~~same~~ order was filed.

Sec. 143. Minnesota Statutes 1982, section 176.285, is amended to read:

176.285 [SERVICE OF PAPERS AND NOTICES.]

Service of papers and notices shall be by mail or ~~by such other means~~ otherwise as the commissioner ~~of the department of labor and industry directs~~ or the chief hearing examiner may by rule direct. Where service is by mail, service is effected at the time mailed if properly addressed and stamped. If it is so mailed, it is presumed the paper or notice reached the party to be served. However, a party may show by competent evidence that ~~he~~ that party did not receive it or that it had been delayed in transit for an unusual or unreasonable period of time. In case of ~~such~~ non-receipt or delay, an allowance shall be made for the party's failure to assert a right within the prescribed time.

The commissioner ~~of the department of labor and industry~~ and the chief hearing examiner shall ~~keep a careful record of each service including the time when made~~ ensure that proof of service of all papers and notices served by their respective agencies is placed in the official file of the case.

Sec. 144. [176.312] [AFFIDAVIT OF PREJUDICE.]

An affidavit of prejudice for cause may be filed by a party

to the claim against a compensation judge, in the same manner as an affidavit of prejudice is filed pursuant to law or rule of district court. The filing of an affidavit of prejudice against a compensation judge has the same effect and shall be treated in the same manner as in district court.

Sec. 145. Minnesota Statutes 1982, section 176.321, subdivision 1, is amended to read:

Subdivision 1. [FILING, SERVICE.] Within ~~twenty~~ 20 days after ~~he has been served with a copy~~ service of the petition, an adverse party ~~may~~ shall serve and file ~~a verified~~ an answer to the petition. ~~When he files the answer,~~ The party shall also serve a copy of the answer on the petitioner or ~~his~~ the petitioner's attorney.

~~Within five days after he has been served with a copy of the answer, the petitioner may file a verified reply admitting or denying new matter set forth in the answer.~~

Sec. 146. Minnesota Statutes 1982, section 176.331, is amended to read:

176.331 [AWARD BY DEFAULT.]

~~Where~~ If an adverse party ~~has failed~~ fails to file and serve an answer, ~~if~~ and the petitioner presents proof of ~~such~~ this fact, the commissioner or compensation judge ~~shall~~ may enter whatever award or order to which the petitioner is entitled on the basis of the facts alleged in the petition, but the compensation judge may require proof of an alleged fact. If the commissioner requires ~~such~~ proof, ~~he~~ the commissioner shall request the chief hearing examiner to assign the matter to a compensation judge ~~to summarily hear and determine the same~~ for an immediate hearing and ~~to promptly~~ make an prompt award or other order.

Where in ~~such~~ a default case the petition does not state facts sufficient to support an award, the compensation judge shall give the petitioner or ~~his~~ the petitioner's attorney written notice of this deficiency. The petitioner may thereupon serve and file another petition as in the case of an original petition.

Sec. 147. Minnesota Statutes 1982, section 176.341, is amended to read:.

176.341 [HEARING ON PETITION.]

Subdivision 1. [TIME.] ~~When the reply has been filed or the time has expired in which to file a reply~~ Upon receipt of a matter from the commissioner, the chief hearing examiner shall fix a time and place for hearing the petition. The hearing shall be held as soon as practicable and at a time and place determined by the chief hearing examiner to be the most convenient for the parties, keeping in mind the intent of chapter 176 as ~~expressed in section 176.001~~ and the requirements of section 176.306.

Subd. 2. [PLACE.] Unless otherwise ordered by the ~~commissioner of the department of labor and industry or compensation judge~~ chief hearing examiner, the hearing shall be held in the county where the injury or death occurred.

Subd. 3. [NOTICE MAILED TO EACH PARTY.] At least ~~five~~ 30 days prior to the date of hearing, the ~~workers' compensation division~~ chief hearing examiner shall mail a notice of the time and place of hearing to each interested party. This subdivision does not apply to hearings which have been continued from an earlier date. In those cases, the notice shall be given in a manner deemed appropriate by the chief hearing examiner after considering the particular circumstances in each case.

Sec. 148. Minnesota Statutes 1982, section 176.361, is amended to read:

176.361 [INTERVENTION.]

~~Where~~ A person who has an interest in any matter before the workers' compensation court of appeals, or commissioner, or compensation judge ~~of~~ such ~~a character~~ that ~~he~~ the person may either gain or lose by an order or decision, ~~he~~ may intervene in the proceeding by filing an application in writing stating the facts which show ~~such~~ the interest.

The commissioner ~~of the department of labor and industry~~ and workers' compensation court of appeals shall adopt rules to govern the procedure for intervention.

If the department of public welfare or the department of economic security seeks to intervene in any matter before the division, a compensation judge or the workers' compensation court of appeals, a non-attorney employee of the department, acting at the direction of the staff of the attorney general, may prepare, sign, serve and file motions for intervention and related documents and appear at prehearing conferences. This activity shall not be considered to be the unauthorized practice of law.

Sec. 149. Minnesota Statutes 1982, section 176.371, is amended to read:

176.371 [AWARD OR DISALLOWANCE OF COMPENSATION.]

The compensation judge to whom a petition has been assigned for hearing, shall hear all competent, relevant evidence produced at the hearing~~, and, as soon after the hearing as possible, make findings of fact, conclusions of law~~. All questions of fact and law submitted to a compensation judge at the hearing shall be disposed of and the judge's decision shall be filed with the commissioner within 60 days after the submission, unless sickness or casualty prevents a timely filing, or the time is extended by written consent of the parties, or the chief hearing examiner extends the time for good cause. The compensation judge's decision shall include a determination of all contested issues of fact and law and an award or disallowance of compensation or other order as the pleadings, evidence, this chapter and rule require. A compensation judge's decision shall include a memorandum only if necessary to delineate the reasons for the decision or to discuss the credibility of witnesses. A memorandum shall not contain a recitation of the evidence presented at the hearing but shall be limited to the compensation judge's basis for the decision.

No part of the salary of a compensation judge shall be paid unless the chief hearing examiner determines that all decisions of that judge have been issued within the time limit prescribed by this section.

Sec. 150. Minnesota Statutes 1982, section 176.421, subdivision 3, is amended to read:

Subd. 3. [NOTICE OF APPEAL.] The appellant or ~~his~~ the appellant's attorney shall prepare and sign a written notice of appeal specifying:

(1) the order appealed from;

(2) that appellant appeals from the order to the workers' compensation court of appeals;

(3) the particular finding of fact or conclusion of law which ~~he~~ the appellant claims was unwarranted by the evidence or procured by fraud, coercion, or other improper conduct; and

~~(4) the testimony or other part of the record of the hearing necessary to be transcribed in order for the court of appeals to consider the appeal; and~~

~~(5)~~ any other ground upon which the appeal is taken.

An appeal initiates the preparation of a typewritten transcript of the entire record unless the appeal is solely from an award of attorney's fees or an award of costs and disbursements or unless otherwise ordered by the court of appeals. On appeals from an award of attorney's fees or an award of costs and disbursements, the appellant must specifically delineate in the notice of appeal the portions of the record to be transcribed in order for the court of appeals to consider the appeal.

Sec. 151. Minnesota Statutes 1982, section 176.421, subdivision 4, is amended to read:

Subd. 4. [SERVICE AND FILING OF NOTICE; COST OF TRANSCRIPT.] Within the 30 day period for taking an appeal, the appellant shall:

(1) Serve a copy of the notice of appeal on each adverse party;

(2) File the original notice, with proof of service by admission or affidavit, with the chief hearing examiner and file a copy with the commissioner;

(3) In order to defray the cost of the preparation of the record of the proceedings appealed from, pay to the state

treasurer, office of administrative hearings account the sum of $25; and

~~(4) Submit a request that the chief hearing examiner order the preparation of a transcript of that part of the hearing delineated in the notice of appeal.~~

~~A party who desires a transcript of more of the hearing than has been requested by the appellant shall, within five working days of service of the notice of appeal, make a request of the chief hearing examiner that the additional testimony be transcribed.~~

~~The first party requesting the preparation of the transcript or any part~~ to file an appeal is liable for the original cost of preparation of the transcript. Cross-appellants or any other persons requesting a copy of the transcript are liable for the cost of the copy. The cost of a transcript prepared by a non-governmental source shall be paid directly to that source and shall not exceed the cost that the source would be able to charge the state for the same service.

Upon a showing of cause, the chief hearing examiner may direct that a transcript be prepared without expense to the party requesting its preparation, in which case the cost of the transcript shall be paid by the office of administrative hearings.

All fees received by the office of administrative hearings for the preparation of the record for submission to the workers' compensation court of appeals or for the cost of transcripts prepared by the office shall be deposited in the office of administrative hearings account in the state treasury and shall be used solely for the purpose of keeping the record of hearings conducted under this chapter and the preparation of transcripts of those hearings.

Sec. 152. Minnesota Statutes 1982, section 176.421, subdivision 6, is amended to read:

Subd. 6. [POWERS OF WORKERS' COMPENSATION COURT OF APPEALS ON APPEAL.] On an appeal taken under this section, the workers' compensation court of ~~appeals~~ appeals' review is limited to the

issues raised by the parties in the notice of appeal or by a cross-appeal. In these cases, on those issues raised by the appeal, the workers' compensation court of appeals may:

(1) disregard the findings of fact which the compensation judge has made;

(2) examine the record;

(3) substitute for the findings of fact made by the compensation judge ~~such~~ findings as based on the total evidence ~~requires~~; and,

(4) make an award or disallowance of compensation or other order as based on the facts and findings ~~require~~.

Sec. 153. Minnesota Statutes 1982, section 176.421, subdivision 7, is amended to read:

Subd. 7. [RECORD OF PROCEEDINGS.] At the division's own expense, the commissioner shall make a complete record of all proceedings before ~~himself~~ the commissioner and shall provide a stenographer or an audio magnetic recording device to make a the record of the proceedings ~~before him~~.

The commissioner shall furnish a transcript of these proceedings to any person who requests it and who pays a reasonable charge ~~and shall fix the amount of this charge~~ which shall be set by the commissioner. Upon a showing of cause, the commissioner may direct that a transcript be prepared without expense to the person requesting the transcript, in which case the cost of the transcript shall be paid by the division. Transcript fees received under this subdivision shall be paid to the workers' compensation division account in the state treasury and shall be annually appropriated to the division for the sole purpose of providing a record and transcripts as provided in this subdivision.

Sec. 154. Minnesota Statutes 1982, section 176.442, is amended to read:

176.442 [APPEALS FROM DECISIONS OF COMMISSIONER ~~OF DEPARTMENT OF LABOR AND INDUSTRY~~.]

Any decision or determination of the commissioner ~~of the department of labor and industry~~ affecting a right, privilege,

benefit, or duty which is imposed or conferred under this chapter is subject to review by the workers' compensation court of appeals. A person aggrieved by ~~such~~ the determination may appeal to the workers' compensation court of appeals by filing a notice of appeal with the commissioner in the same manner and within the same time as if the appeal were from an order or decision of a compensation judge to the workers' compensation court of appeals.

Sec. 155. Minnesota Statutes 1982, section 176.461, is amended to read:

176.461 [SETTING ASIDE AWARD.]

Except ~~where~~ when a writ of certiorari has been issued by the supreme court and the matter is still pending in that court or ~~where~~ if as a matter of law the determination of the supreme court cannot be subsequently modified, the workers' compensation court of appeals, for cause, at any time after an award, upon application of either party and not less than five working days after written notice to all interested parties, may set the award aside and grant a new hearing and refer the matter for a determination on its merits to the chief hearing examiner for assignment to a compensation judge, who shall make ~~such~~ findings of fact, conclusions of law, and an order of award or disallowance of compensation or other order as based on the pleadings and the evidence produced and as required by the provisions of this chapter ~~shall require~~ or rules adopted under it.

Sec. 156. Minnesota Statutes 1982, section 176.521, subdivision 2, is amended to read:

Subd. 2. [APPROVAL.] Settlements shall be approved only ~~where~~ if the terms conform with this chapter.

The division, a compensation judge, the workers' compensation court of appeals, and the district court shall exercise discretion in approving or disapproving a proposed settlement.

The parties to the agreement of settlement have the burden of proving that the settlement is reasonable, fair, and in

conformity with this chapter. A settlement agreement where both the employee or ~~his~~ the employee's dependent and the employer or insurer and intervenors in the matter are represented by an attorney shall be conclusively presumed to be reasonable, fair, and in conformity with this chapter except when the settlement purports to be a full, final, and complete settlement of an employee's right to medical compensation under this chapter or rehabilitation under section 176.102. A settlement which purports to do so must be approved by the division, a compensation judge, or workers' compensation court of appeals.

The conclusive presumption in this subdivision applies to a settlement agreement entered into on or after January 15, 1982, whether the injury to which the settlement applies occurred prior to or on or after January 15, 1982.

Sec. 157. Minnesota Statutes 1982, section 176.521, subdivision 2a, is amended to read:

Subd. 2a. [SETTLEMENTS NOT SUBJECT TO APPROVAL.] When a settled case is not subject to approval, upon receipt of the stipulation for settlement, a compensation judge ~~or~~, a settlement judge, or the workers' compensation court of appeals shall immediately sign the award and file it with the commissioner. Payment pursuant to the award shall be made within 14 days after it is filed with the commissioner. The commissioner may correct mathematical or clerical errors at any time.

Sec. 158. Minnesota Statutes 1982, section 176.521, subdivision 3, is amended to read:

Subd. 3. [SETTING ASIDE AWARD UPON SETTLEMENT.] Notwithstanding the provisions of section 176.521, subdivision 1, 2, or 2a, or any provision in the agreement of settlement to the contrary, upon the filing of a petition by any party to the settlement and after a hearing on the petition, the workers' compensation court of appeals may set aside an award made upon a settlement, pursuant to this chapter. In those cases, the workers' compensation court of appeals shall refer the matter to the chief hearing examiner for assignment to a compensation

judge for hearing.

Sec. 159. [176.5211] [NOTICE TO EMPLOYER.]

An employer shall be notified by the insurer 30 days after any final valid settlement is approved or otherwise made final under any provision of this chapter. The notice shall include all terms of the settlement including the total amount of money required to be reserved in order to pay the claim.

Sec. 160. Minnesota Statutes 1982, section 176.561, is amended to read:

176.561 [WORKERS' COMPENSATION COURT OF APPEALS POWERS AND DUTIES AS TO STATE EMPLOYEES; PROCEDURE FOR DETERMINING LIABILITY.]

The division, a compensation judge and the workers' compensation court of appeals have the same powers and duties in matters relating to state employees as they have in relation to other employees.

Except as specifically provided otherwise ~~herein~~ in this chapter, the procedure for determining the liability of the state for compensation is the same as that applicable in other cases.

Sec. 161. Minnesota Statutes 1982, section 176.571, subdivision 6, is amended to read:

Subd. 6. [FORMAL HEARING ON OBJECTIONS.] If the commissioner ~~of the department of labor and industry shall hold~~ determines that a formal hearing on the objections which have been filed to the proposed order ~~where the circumstances warrant such~~ is warranted, the commissioner shall refer the matter to the chief hearing examiner for the assignment of a compensation judge who shall hold a hearing. ~~The hearing shall be before a compensation judge.~~

Sec. 162. [176.572] [CONTRACT WITH INSURANCE CARRIERS.]

The commissioner may contract with group health insurance carriers or health maintenance organizations to provide health care services and reimburse health care payments for injured state employees entitled to benefits under this chapter.

Sec. 163. Minnesota Statutes 1982, section 176.66, is

amended by adding a subdivision to read:

Subd. 10. [MULTIPLE EMPLOYERS OR INSURERS; LIABILITY.] The employer liable for the compensation for a personal injury under this chapter is the employer in whose employment the employee was last exposed in a significant way to the hazard of the occupational disease. In the event that the employer who is liable for the compensation had multiple insurers during the employee's term of employment, the insurer who was on the risk during the employee's last significant exposure to the hazard of the occupational disease is the liable party. Where there is a dispute as to which employer is liable under this section, the employer in whose employment the employee is last exposed to the hazard of the occupational disease shall pay benefits pursuant to section 176.191, subdivision 1.

Sec. 164. Minnesota Statutes 1982, section 176.66, is amended by adding a subdivision to read:

Subd. 11. [AMOUNT OF COMPENSATION.] The compensation for an occupational disease is 66-2/3 percent of the employee's weekly wage on the date of injury subject to a maximum compensation equal to the maximum compensation in effect on the date of last exposure. The employee shall be immediately eligible for supplementary benefits if that employee's compensation is less than 65 percent of the statewide average weekly wage.

Sec. 165. [176.83] [RULES.]

In addition to any other section under this chapter giving the commissioner the authority to adopt rules, the commissioner may adopt, amend, or repeal rules to implement the provisions of this chapter. The rules include but are not limited to:

(a) rules necessary to implement and administer section 176.102, including the establishment of qualifications necessary to be a qualified rehabilitation consultant and the requirements to be an approved registered vendor of rehabilitation services. In this regard, the commissioner shall impose fees under section 16A.128 sufficient to cover the cost of approving, registering and monitoring qualified rehabilitation consultants

and approved vendors of rehabilitation services. The rules may also provide for penalties to be imposed by the commissioner against insurers or self-insured employers who fail to provide rehabilitation consultation to employees pursuant to section 176.102.

These rules may also establish criteria for determining "reasonable moving expenses" under section 176.102.

The rules shall also establish criteria, guidelines, methods, or procedures to be met by an employer or insurer in providing the initial rehabilitation consultation required under this chapter which would permit the initial consultation to be provided by an individual other than a qualified rehabilitation consultant. In the absence of rules regarding an initial consultation this consultation shall be conducted pursuant to section 176.102;

(b) rules establishing standards for reviewing and evaluating the clinical consequences of services provided by qualified rehabilitation consultants, approved registered vendors of rehabilitation services, and services provided to an employee by health care providers;

(c) rules establishing standards and procedures for determining whether or not charges for health services or rehabilitation services rendered under this chapter are excessive. In this regard, the standards and procedures shall be structured to determine what is necessary to encourage providers of health services and rehabilitation services to develop and deliver services for the rehabilitation of injured employees.

The procedures shall include standards for evaluating hospital care, other health care and rehabilitation services to insure that quality hospital, other health care, and rehabilitation is available and is provided to injured employees;

(d) in consultation with the medical services review board or the rehabilitation review panel, rules establishing standards and procedures for determining whether a provider of health care services and rehabilitation services, including a provider of

medical, chiropractic, podiatric, surgical, hospital or other services, is performing procedures or providing services at a level or with a frequency that is excessive, based upon accepted medical standards for quality health care and accepted rehabilitation standards.

If it is determined by the commissioner that the level, frequency or cost of a procedure or service of a provider is excessive according to the standards established by the rules, the provider shall not be paid for the excessive procedure, service, or cost by an insurer, self-insurer, or group self-insurer. In addition, the provider shall not be reimbursed or attempt to collect reimbursement for the excessive procedure, service, or cost from any other source, including the employee, another insurer, the special compensation fund, or any government program.

A health or rehabilitation provider who is determined by the commissioner to be consistently performing procedures or providing services at an excessive level or cost may be prohibited from receiving any further reimbursement for procedures or services provided under chapter 176. A prohibition imposed on a provider under this clause may be grounds for revocation or suspension of the provider's license or certificate of registration to provide health care or rehabilitation service in Minnesota by the appropriate licensing or certifying body.

The rules adopted under this clause shall require insurers, self-insurers, and group self-insurers to report medical and other data necessary to implement the procedures required by this clause;

(e) rules establishing procedures and standards for the certification of physicians, chiropractors, podiatrists, and other health care providers in order to assure the coordination of treatment, rehabilitation, and other services and requirements of chapter 176 for carrying out the purposes and intent of this chapter;

(f) rules necessary for implementing and administering the

provisions of sections 176.131, 176.132, 176.134, sections 176.242 and 176.243; sections 176.251, 176.66 to 176.669, and rules regarding proper allocation of compensation under section 176.111. Under the rules adopted under section 176.111 a party may petition for a hearing before a compensation judge to determine the proper allocation. In this case the compensation judge may order a different allocation than prescribed by rule;

(g) rules establishing standards or criteria under which a physician, podiatrist, or chiropractor is selected or under which a change of physician, podiatrist, or chiropractor is allowed under section 176.135, subdivision 2;

(h) rules to govern the procedure for intervention pursuant to section 176.361;

(i) joint rules with either or both the workers' compensation court of appeals and the chief hearing examiner which may be necessary in order to provide for the orderly processing of claims or petitions made or filed pursuant to chapter 176;

(j) rules establishing criteria to be used by the division, compensation judge, and workers' compensation court of appeals to determine "suitable gainful employement" and "independent contractor".

The chief hearing examiner shall adopt rules relating to procedures in matters pending before a compensation judge in the office of administrative hearings.

The commissioner may adopt rules regarding requirements which must be met by individuals who are employed by insurers or self-insurers or claims servicing or adjusting agencies and who work as claims adjusters in the field of workers' compensation insurance.

The commissioner may adopt temporary rules establishing qualifications necessary to be a qualified rehabilitation consultant and penalties to be imposed against qualified rehabilitation consultants or approved vendors who violate this chapter or rules, including temporary rules, adopted under this chapter. In addition to the provisions of sections 14.29 to

14.36, at least one public hearing shall be held prior to the adoption of these temporary rules.

The commissioner may prescribe forms and other reporting procedures to be used by an employer, insurer, medical provider, qualified rehabilitation consultant, approved vendor of rehabilitation services, attorney, employee, or other person subject to the provisions of this chapter.

Sec. 166. [176.84] [SPECIFICITY OF NOTICE OR STATEMENT.]

All notices or statements required by this chapter including, but not limited to, notices or statements pursuant to sections 176.102; 176.221; 176.241; 176.242; and 176.243 shall be sufficiently specific to convey clearly, without further inquiry, the basis upon which the party issuing the notice or statement is acting. If the commissioner or compensation judge determines that a notice or statement is not sufficiently specific to meet the standard under this section, the notice or statement may be rejected as unacceptable and the party issuing it shall be informed of this. The rejected notice or statement may be amended to meet the requirement of this section or a new one may be filed.

Sec. 167. [176.85] [PENALTIES; APPEALS.]

Subdivision 1. [APPEAL PROCEDURE.] If the commissioner has assessed a penalty against a party subject to this chapter and the party believes the penalty is not warranted, the party may request that a formal hearing be held on the matter. Upon a request for a hearing the commissioner shall refer the matter to the chief hearing examiner for assignment to a compensation judge or hearing examiner.

The chief hearing examiner shall keep a record of the proceeding and provide a record pursuant to section 176.421.

The decision of the compensation judge or hearing examiner shall be final and shall be binding and enforceable. The decision may be appealed to the workers' compensation court of appeals.

Subd. 2. [EXCEPTION.] This section does not apply to penalties for which another appeal procedure is provided,

including but not limited to penalties imposed pursuant to section 176.102 or section 84.

Subd. 3. [HEARING COSTS.] For purposes of this section, a hearing before a hearing examiner shall be treated in the same manner as a hearing before a compensation judge and no costs may be charged to the commissioner for the hearing, regardless of who hears it.

Sec. 168. Minnesota Statutes 1982, section 268.08, subdivision 3, is amended to read:

Subd. 3. [NOT ELIGIBLE.] An individual shall not be eligible to receive benefits for any week with respect to which he is receiving, has received, or has filed a claim for remuneration in an amount equal to or in excess of his weekly benefit amount in the form of

(1) termination, severance, or dismissal payment or wages in lieu of notice whether legally required or not; provided that if a termination, severance, or dismissal payment is made in a lump sum, the employer may allocate such lump sum payment over a period equal to the lump sum divided by the employee's regular pay while employed by such employer; provided any such payment shall be applied for a period immediately following the last day of work but not to exceed 28 calendar days; or

(2) vacation allowance paid directly by the employer for a period of requested vacation, including vacation periods assigned by the employer under the provisions of a collective bargaining agreement, or uniform vacation shutdown; or

(3) compensation for loss of wages under the workers' compensation law of this state or any other state or under a similar law of the United States, or under other insurance or fund established and paid for by the employer except that this does not apply to an individual who is receiving temporary partial compensation pursuant to section 176.101, subdivision 3k; or

(4) 50 percent of the pension payments from any fund, annuity or insurance maintained or contributed to by a base period employer including the armed forces of the United States

if the employee contributed to the fund, annuity or insurance and all of the pension payments if the employee did not contribute to the fund, annuity or insurance; or

(5) 50 percent of a primary insurance benefit under Title II of the social security act as amended, or similar old age benefits under any act of congress or this state or any other state.

Provided, that if such remuneration is less than the benefits which would otherwise be due under sections 268.03 to 268.24, he shall be entitled to receive for such week, if otherwise eligible, benefits reduced by the amount of such remuneration; provided, further, that if the appropriate agency of such other state or the federal government finally determines that he is not entitled to such benefits, this provision shall not apply.

Sec. 169. Minnesota Statutes 1982, section 471.982, subdivision 2, is amended to read:

Subd. 2. The commissioner of insurance is authorized to ~~promulgate~~ adopt administrative rules, including emergency rules pursuant to sections 14.01 to 14.70. These rules may provide standards or guidelines governing the formation, operation, administration, dissolution of self insurance pools, and other reasonable requirements to further the purpose of this section ~~and~~. In developing the rules under this section, the commissioner shall ~~at a minimum require~~ consider the following:

(a) The requirements for self-insuring pools of political subdivisions shall be no more restrictive and may be less restrictive than the requirements for self-insuring pools of private employers;

(b) All participants in the pool are jointly and severally liable for all claims and expenses of the pool;

~~(b)~~ (c) Each pool shall contract with a service company licensed by the commissioner to provide or contract for all administrative services required by the pool. No vendor of risk management services or entity administering a self insurance plan under this section may transact such business in this state

unless it is licensed to do so by the commissioner. An applicant for a license shall state in writing the type of activities it seeks authorization to engage in and the type of services it seeks authorization to provide. The license shall be granted only when the commissioner is satisfied that the entity possesses the necessary organization, background, expertise, and financial integrity to supply the services sought to be offered. The commissioner may issue a license subject to restrictions or limitations upon the authorization, including the type of services which may be supplied or the activities which may be engaged in. The license fee shall be $100. All licenses shall be for a period of two years;

~~(c)~~ (d) The service company has sole responsibility for the settlement of all claims against the pool or its members for which the pool may provide indemnification;

~~(d)~~ (e) A minimum premium volume for each pool shall be established. The minimum premium volume may differ because of the kinds of coverage provided, and the limits of liability for the coverage;

~~(e)~~ (f) All premiums or other assessments due to the pool from members shall be payable prior to the period for which coverage is being provided, or at equal intervals throughout the period;

~~(f)~~ (g) Premiums shall ~~either be established by an actuary approved by the commissioner or shall be premiums filed by a licensed rate service organization with reductions permitted solely for administrative or premium tax savings~~ neither excessive, inadequate, nor unfairly discriminatory;

~~(g)~~ (h) The commissioner may require each pool to purchase excess insurance above certain limits and in a particular form. The limits or form of the excess insurance may differ based on the kinds of coverage offered by a pool, the limits of liability of the coverage, and the revenues available to pool members for the payment of premiums or assessments;

~~(h)~~ (i) Each pool shall be audited annually by a certified public accountant;

~~(i)~~ (j) Whether limitations on the payment of dividends to pool members ~~may be established~~ as are necessary to assure the solvency of the pool in view of the taxing and levying authority of political subdivisions;

~~(j)~~ (k) No participant may withdraw from a pool for a period of at least three years after its initial entry into the pool;

~~(k)~~ (l) The amount of any liabilities in excess of assets shall be assessed to members of the pool within 30 days after a deficiency is identified and shall be payable by the member within 90 days;

~~(l)~~ (m) The investment policies of the pool shall be governed by the laws governing investments by cities pursuant to section 475.66;

~~(m)~~ (n) Pools shall be subject to the standards of unfair methods of competition and unfair or deceptive acts or practices established in chapter 72A;

~~(n)~~ (o) Other requirements that are necessary to protect the solvency of the pool, the rights and privileges of claimants against the pool, and citizens of the members of the pool shall be included in the rules.

Sec. 170. Minnesota Statutes 1982, section 471.982, is amended by adding a subdivision to read:

Subd. 3. Self-insurance pools established and open for enrollment on a statewide basis by the Minnesota league of cities insurance trust, the Minnesota school boards association insurance trust or the Minnesota association of counties insurance trust are exempt from the requirements of this section.

Sec. 171. [CITY OF DULUTH; GROUP WORKER'S COMPENSATION SELF-INSURANCE POOLS.]

Subdivision 1. [FORMATION OF POOLS WITH PRIVATE EMPLOYERS.] Notwithstanding any contrary provision of other law, ordinance, or charter, the city of Duluth may enter into a self-insurance pool with private employers to self-insure worker's compensation liability of pool members. Any pool formed pursuant to this section shall be operated under bylaws

established by members of the pool. The initial bylaws and amendments to them shall not be effective unless approved by the city of Duluth and the commissioner of insurance. The bylaws shall address the following subjects:

(a) Qualifications for group self-insurer membership, including underwriting standards.

(b) The method of selecting the board of directors, including the directors' terms of office.

(c) The procedure for amending the bylaws or plan of operation.

(d) Investment of assets of the fund.

(e) Frequency and extent of loss control or safety engineering services provided to members.

(f) A schedule for payment and collection of premiums.

(g) Expulsion procedures, including expulsion for nonpayment of premiums and expulsion for excessive losses.

(h) Delineation of authority granted to the administrator.

(i) Delineation of authority granted to the service company.

(j) Basis for determining premium contributions by members including any experience rating program.

(k) Procedures for resolving disputes between members of the group, which shall not include submitting them to the commissioner.

(l) Basis for determining distribution of any surplus to the members, or assessing the membership to make up any deficit.

(m) Provisions for security to be furnished by private employers to insure assessments are paid in case of private employer insolvency.

The members participating in the pool may establish a joint board with appropriate powers to manage the pool. Each member of the pool shall pay to the pool the amounts assessed against it pursuant to the bylaws. A member may withdraw only after it has reimbursed the pool for the amounts for which it is obligated under the terms of the agreement.

Subd. 2. [APPROVAL OF COMMISSIONER.] A pool formed pursuant to this section shall not be effective or begin

operation until it has been approved by the commissioner of insurance in the manner provided in Minnesota Statutes, section 471.982. Section 471.982 and any applicable rules adopted pursuant to it shall apply to any pool formed pursuant to this section. A pool formed pursuant to this section shall be a member of the workers' compensation reinsurance association and shall be bound by its plan of operation.

Sec. 172. [APPROPRIATIONS; COMPLEMENT INCREASE.]

Subdivision 1. [DEPARTMENT OF LABOR AND INDUSTRY.] (a) There is appropriated to the department of labor and industry for the fiscal years ending June 30 of the year indicated from the general fund in the state treasury:

1984	1985
$1,947,500	$2,142,400

The approved complement of the department of labor and industry is increased by 90 of which 2 shall be federally funded and 19 shall be from the special compensation fund. The increased complement shall be allocated as follows:

(1) workers' compensation administration, 1;

(2) records and compliance, 15;

(3) rehabilitation service, 20;

(4) legal services, 1;

(5) settlement and docket, 3;

(6) mediation and arbitration, 6;

(7) research and education, 8;

(8) information management service, 6;

(9) state employee fund, 6;

(10) general support, 8; and

(11) special compensation fund, 19.

The appropriation provided by this clause (a) is for the purpose of paying for the increased general fund complement and expenses related to their duties except that $100,000 shall be used for the recodification of chapter 176.

The authorized complement for the records and compliance section shall be reduced by four positions by June 30, 1985.

(b) There is appropriated to the department of labor and

industry for the fiscal years ending June 30 of the year indicated from the general fund in the state treasury:

1984	1985
$437,500	$875,000

The appropriation provided by this clause (b) is for the purpose of paying the state's premium to the workers' compensation reinsurance association. The commissioner of finance shall transfer to the general fund from each federal fund, dedicated or special revenue fund, or revolving fund the proportion of premium costs attributable to that fund as calculated pursuant to section 10. The amounts necessary for this transfer are appropriated from the various funds in the state treasury from which salaries are paid.

(c) There is appropriated to the department of labor and industry for the fiscal years ending June 30 of the year indicated from the special compensation fund in the state treasury:

1984	1985
$614,000	$646,400

The funds appropriated by this clause (c) are to pay the expenses of the increased complement provided for the fund by clause (a) and expenses related to their duties and to reimburse the general fund for legal services performed on behalf of the fund by the attorney general.

Subd. 2. [OFFICE OF ADMINISTRATIVE HEARINGS.] There is appropriated to the office of administrative hearings for the fiscal years ending June 30 of the year indicated from the general fund in the state treasury:

1984	1985
$85,400	$86,300

The approved complement of the office of administrative hearings is increased by two. The appropriation provided by this subdivision is for the purpose of paying for the increased complement and expenses related to their duties.

Subd. 3. [INSURANCE DIVISION.] There is appropriated to the department of commerce for its insurance division for the

fiscal years ending June 30 of the year indicated from the general fund in the state treasury:

1984	1985
$230,800	$229,100

The approved complement of the insurance division of the department of commerce is increased by seven. The appropriation provided by this subdivision is for the purpose of paying for the increased complement and expense related to their duties.

Subd. 4. [ATTORNEY GENERAL.] There is appropriated to the office of the attorney general for the fiscal years ending June 30 of the year indicated from the general fund in the state treasury:

1984	1985
$201,500	$204,900

The approved complement of the office of attorney general is increased by six. The appropriation provided by this subdivision is for the purpose of providing for the increased complement and expenses related to their duties.

Sec. 173. [REPEALER.]

Minnesota Statutes 1982, sections 8.31, subdivision 4; 79.51, subdivision 2; and 79.63 are repealed effective July 1, 1983. Minnesota Statutes 1982, sections 175.07; 175.101, subdivision 3; 175.36; 176.101, subdivision 3; 176.102, subdivision 12; 176.131, subdivisions 9, 10, 11, and 12; 176.152; and 176.262 are repealed effective January 1, 1984.

Sec. 174. [SEVERABILITY.]

If any provision of this act is found to be unconstitutional and void, the remaining provisions of the act shall remain valid, unless the court finds the valid provisions of the article are so essentially and inseparably connected with, and so dependent upon, the void provisions that the court cannot presume the legislature would have enacted the remaining valid provisions without the void one; or unless the court finds the remaining valid provisions, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent.

Sec. 175. [SMALL BUSINESS PREMIUM COST STUDY.]

The commissioner shall conduct a study on the effect of sections 44 to 64 on small businesses located in Minnesota, including to what extent benefits payable pursuant thereto affect small businesses' workers' compensation insurance premium costs. The commissioner shall report to the legislature by January 30, 1985.

Sec. 176. [EFFECTIVE DATE.]

Sections 1 to 6, 12, 14, 19 to 25, 28, 32, 35 to 41, 69 to 83, 85, section 86, except for section 86, clause (c) which is effective upon the adoption of temporary rules under section 86, 92, 95, 97 to 101, 110 to 129, except for those portions of section 129, subdivision 6a relating to economic recovery compensation and impairment compensation which are effective upon the adoption of temporary rules under section 86, 130 to 162, 165 to 167, 169 to 172, and 174 are effective July 1, 1983. Sections 8, 17, 18, 26, 27, 31, 34, 84, 87 to 91, 103 to 109, 163 and 164 are effective October 1, 1983. Sections 7, 9, 10, 11, 13, 68, and 93 are effective January 1, 1984. Sections 15, 16 and 173 are effective the day after final enactment. Sections 29, 30, 33, 42 to 67, 94, 96, 102 and 168 are effective upon adoption of temporary rules under section 86.

RECEIVED
Agency Exh. No. 13 NOV 9 1982
File No. INS-83-004-JL ADMINISTRATIVE HEARINGS
Date 12-21-82

Rules as proposed (all new material)

4 MCAR S 1.9140 Definitions.

A. Applicability. For the purposes of 4 MCAR SS 1.9140-1.9143, the terms defined in this rule have the meanings given them.

B. Rating Association. "Rating Association" means the Workers' Compensation Insurance Rating Association.

C. Commissioner. "Commissioner" means the commissioner of insurance.

D. Data service organization; organization. "Data service organization" or "organization" means the same as it is defined in Minnesota Statutes, section 79.52, subdivision 3.

E. Classification plan; classification. "Classification plan" or "classification" means the same as it is defined in Minnesota Statutes, section 79.52, subdivision 4.

F. Rates. "Rates" means the same as it is defined in Minnesota Statutes, section 79.52, subdivision 5.

G. Insurer. "Insurer" means the same as it is defined in Minnesota Statutes, section 79.52, subdivision 13.

H. Pure premium rate. "Pure premium rate" means that portion of a rate designated for claim payments.

I. Pure premium. "Pure premium" means that portion of a premium, as defined in Minnesota Statutes, section 79.52, subdivision 7, designated for claim payments.

J. Pure premium relativities. "Pure premium relativities" means the mathematical relationship of pure premium rates for each reporting classification one to another, to a base class or classes, or to some common index or indices.

K. Pure premium base rate schedule. A "pure premium base rate schedule" is a set of pure premium rates with no adjustments for trend and with only partial loss development reflecting some additional development but not developed to the ultimate expected loss level.

4 MCAR S 1.9141 Licensing of data service organizations.

A. Application information. A data service organization

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shall apply to the commissioner for a license. The Workers' Compensation Insurance Rating Association shall submit an application to be licensed as a data service organization by January 1, 1983. An application to be a data service organization shall include all information required by Minnesota Statutes, section 79.62. In addition, the application shall include:

1. the organization's plan of operation including:

a. the establishment of necessary facilities;

b. a description of the management and operation of the organization, including a description of major staff positions and necessary qualifications for the positions;

c. the operating rules of the organization;

d. a list of members and their responsibilities; and

2. a plan for data collection and analysis, and other activities of the data service organization, including:

a. a plan for the collection and reporting of exposure base and of loss data from individual insureds of each member;

b. a system for the classification of risks to be used for reporting by member insurers, in calculating pure premium relativities, and for other relevant rate-related or data analytic activities;

c. data reporting requirements for members and monitoring procedures. Expense data shall not be reported. Premium data may be reported to the extent needed to monitor the quality and integrity of the data bases. Following the approval of a pure premium base rate schedule, the data service organization may require premium data to be reported at that level, provided that reporting need not be required of companies writing a small volume of Minnesota workers' compensation premiums. The criteria for being excused from reporting will be determined by the data service organization subject to the commissioner's approval;

d. a plan for the collection of any other data not prohibited in c. and a description of these data;

e. a plan for and description of the ratemaking report

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required by Minnesota Statutes, section 79.61;

f. plans for disseminating information to members of the organization and to the commissioner;

g. plans for audit procedures to ensure that data reporting requirements are met by organization members; and

h. a plan for compiling expense data reported to the commissioner for development of advisory rates, rating plan values, and discount factors.

B. Progress reports. Data service organizations shall submit semiannual progress reports to the commissioner on the implementation of their organizational plan. The report shall include progress made on satisfying the requirements of Minnesota Statutes, sections 79.61 and 79.62 and requirements of 4 MCAR SS 1.9140-1.9143. The reports must be submitted semiannually between the time of application and January 1, 1986.

4 MCAR S 1.9142 Rate petitions and hearings.

A. Manual rates; creation and adjustment.

1. A petition for modification of the schedule of rates shall be filed by the Rating Association by January 1, 1983, for the purpose of producing a schedule of manual rates by classification. This petition shall be considered in a hearing conducted pursuant to Minnesota Statutes, section 79.071.

2. After approval of a schedule of manual rates by the commissioner, insurers may modify the rates by adjustment of the pure premium rates and expense allowances within a range allowing for downward deviations that are unlimited and upward deviations of at most 15 percent of the approved rate.

3. Insurers may adjust premiums by the application of discount factors as defined in Minnesota Statutes, section 79.52, subdivision 8 and merit rating as defined in Minnesota Statutes, section 79.52, subdivision 9. Insurers may use their own plans or plans developed by a data service organization in which they maintain membership.

4. All data and calculations used to develop actual premiums from the manual rates approved by the commissioner shall be clearly documented.

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5. An insurer's rates and rating plans, along with clearly documented justification, shall be filed with the commissioner 30 days prior to use.

B. Pure premiums; creation and modification.

1. A petition for modification of the schedule of rates shall be filed by the Rating Association by January 1, 1984, for the purpose of producing a schedule of pure premium rates. These rates must not contain trend adjustments. A hearing conducted pursuant to Minnesota Statutes, section 79.071 must be held on the petition.

2. The petition must contain an analysis of trended data as specified in 4 MCAR S 1.9143 B.1.g. The analysis shall be disseminated to all members of the Rating Association when filed.

3. Following approval of a schedule of pure premium rates, insurers may calculate final rates by:

a. the modification of pure premium rates allowing for downward deviations that are unlimited and upward deviations of at most 15 percent from the pure premium rates approved by the commissioner;

b. application of trend factors based on the analysis provided by the Rating Association or on their own interpretations of underlying data; or

c. adjustments to reflect the insurer's expected expense requirements. Neither the Rating Association nor any data service organization shall publish recommended expected expense allowances.

4. Insurers may adjust premiums by the application of discount factors as defined in Minnesota Statutes, section 79.52, subdivision 8 and merit rating as defined in Minnesota Statutes, section 79.52, subdivision 9. Insurers may use their own plans or plans developed by a data service organization in which they maintain membership.

5. All data and calculations used by an insurer to develop actual premiums from the pure premium rates shall be clearly documented.

6. An insurer's rates and rating plans, along with

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clearly documented justification, shall be filed with the commissioner 30 days prior to use.

C. Other rate petitions, hearings. The Rating Association or other data service organizations may make other filings. All petitions proposing rates, pure premium rates, or pure premium relativities for an effective period prior to January 1, 1986, shall be considered in hearings conducted pursuant to Minnesota Statutes, section 79.071.

4 MCAR S 1.9143 Ratemaking report.

A. Data service organizations.

1. Licensed data service organizations shall make yearly ratemaking reports to the commissioner. Insurers may not make reference to a report in their filings until it has been filed with the commissioner.

2. In 1985 licensed data service organizations must prepare a ratemaking report in a form prescribed by the commissioner. The outline of the report should be submitted to the commissioner for comment by January 1, 1985. A draft of the report should be submitted to the commissioner for comment by July 1, 1985. The final ratemaking report must be submitted no later than January 1, 1986.

3. After 1985, licensed data service organizations must submit an outline of their annual ratemaking report to the commissioner for comment by July 1 of each year. A draft of the report should be submitted to the commissioner for comment by October 1. The final ratemaking report must be submitted no later than January 1 of the succeeding year. Interim reports on the effect of changes in the law on rates may be submitted at any time during a year.

B. Contents of ratemaking report.

1. A ratemaking report shall meet all requirements of Minnesota law and, in addition, may contain information useful to data service organization members regarding factors pertinent to Minnesota workers' compensation business such as legislative concerns, Workers' Compensation Reinsurance Association operations, loss control programs, and programs developed by

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insurers that may be of interest and applicability to workers' compensation insurers. A ratemaking report shall include:

a. a compilation of financial data collected under Minnesota Statutes, section 79.61 without adjustments for either premium or loss development or trend. Financial data must be reconcilable to that reported by insureds in their annual financial statements to the commissioner;

b. a compilation of reporting classification data collected under Minnesota Statutes, section 79.61 without adjustments for either premium development or loss development or premium trend or loss trend;

c. a calculation of factors to adjust reported loss data to a common development level. The development level is subject to approval by the commissioner;

d. a calculation of factors to reflect any benefit level changes mandated by statute or by the courts;

e. the development of a schedule of pure premium base rates using the data reported by insurers and the factors calculated in c.;

f. a schedule of pure premium relativities, based on the pure premium base rate schedule;

g. an analysis and calculation of factors to adjust reported premium and loss data to an expected ultimate level. The analysis shall be in detail so as to permit insurers to select and modify the factors based on their own interpretations of underlying data;

h. an analysis and calculation of trended data to reflect future conditions through the use of factors or some other method. The analysis shall be in detail so as to permit insurers to select and modify the factors or utilize other trending methods based on their own interpretations of underlying data;

i. a calculation of any other quantitative factor or modifications and a description of any subjective considerations reflected in the determination of pure premiums in a manner so as to permit insurers to evaluate and modify the factors and

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considerations based on their own interpretations of underlying data; and

j. a calculation of any other quantitative factors required to maintain advisory discount factors as defined in Minnesota Statutes, section 79.52, subdivision 8 and advisory merit rating plans as defined in Minnesota Statutes, section 79.52, subdivision 9.

2. The ratemaking report shall be disseminated to all members of the data service organization.

C. Use of ratemaking report.

1. After the ratemaking report has been filed with the commissioner, insurers may develop and use rates based upon the pure premium base rates contained in the report. Effective January 1, 1986, insurers may also develop and use rates based upon any reasonable factors.

2. If an insurer uses the pure premium base rates contained in the ratemaking report, then the insurer may calculate rates by:

a. application of trend factors based on the analysis provided by the data service organization or on the insurer's own interpretations of underlying data;

b. application of loss development factors reflecting expected development beyond that in the pure premium base rate schedule to the ultimate loss level;

c. application of a factor to reflect the insurer's expected expense requirements. No data service organization shall publish recommended expected expense allowances;

d. application of any other factor based on the analysis provided by the data service organization or on the insurer's own interpretation of underlying data.

3. Insurers may adjust premiums by application of discount factors as defined in Minnesota Statutes, section 79.52, subdivision 8 and merit rating as defined in Minnesota Statutes, section 79.52, subdivision 9. Insurers may use their own plans or plans developed by a data service organization in which they maintain membership.

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4. All data and calculations used to calculate rates from the pure premium base rate schedule shall be clearly documented.

5. Prior to January 1, 1986, an insurer's rates and rating plans, along with clearly documented justification, must be filed with the commissioner 30 days prior to use.

Repealer. Rule 4 MCAR S 1.9142 is repealed effective January 1, 1986.

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OFFICE OF THE REVISOR OF STATUTES

Proposed Rule

Agency: Department of Commerce RD278

Division: Insurance Division

Agency Contact: Mary Huntstiger

Rule Numbers: 4 MCAR S 1.9140-1.9143

Title: Proposed Rules Governing Workers' Compensation Insurance Rates

Type of Rules: Permanent

Incorporations by Reference: None
Rule Number: Material Incorporated:

Duplication of Statutory Language: None
Rule Number: Statutory Section Duplicated:

The attached rules are approved as to form.

Steven C. Cross
Revisor of Statutes

John C. Fuller
Assistant Revisor
Phone: 296-0955
Date: 9/29/82

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE
COMMISSIONER OF INSURANCE

In the Matter of Proposed Rules Governing Deregulation of Workers' Compensation Insurance Rates (4 MCAR §§ 1.9140-1.9143).

AMENDED FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULES

Rules in the above-entitled matter were adopted on May 13, 1983. On May 23, 1983, the Legislature amended Minn. Stat. § 79.51.

After reviewing the amendments that have been made to Minn. Stat. § 79.51, I find the following:

FINDINGS OF FACT

1. The transition period provided by Minn. Stat. § 79.51, subd. 2 (1982) has been eliminated, and competitive rating will now begin on January 1, 1984.

2. As a result of the elimination of the transition period, 4 MCAR §§ 1.9141D and 1.9142 and the repealer provision are no longer necessary since these sections were applicable only to the transition period.

3. In order to be consistent with the requirements of Minn. Stat. § 79.51 (1982), as amended, certain dates in 4 MCAR § 1.9143 must be amended:

a. 4 MCAR § 1.9143A.1 must be amended so it reads "Beginning in 1984, . . .;"

b. Paragraph 2 of the same section A must be amended to provide requirements that must be

met in 1983. The outline will now be required by September 1, 1983, and the draft will be required by November 1, 1983; and

c. Paragraph 3 of the same section A must be amended so it reads "After 1984, ..."

4. For the same reasons, it is also necessary to amend 4 MCAR § 1.9143C.1. so the second sentence therein reads "Effective January 1, 1984, ..."

5. The findings contained in the Findings of Fact, Conclusions, and Order Adopting Rules in this matter, dated May 13, 1983, are adopted except where inconsistent with the above findings.

Based upon the foregoing Findings of Fact, I make the following:

CONCLUSIONS

1. The recently-enacted amendments to Minn. Stat. § 79.51 (1982) necessitate making the above amendments to the rules.

2. The conclusions contained in the Findings of Fact, Conclusions, and Order Adopting Rules in this matter, dated May 13, 1983, are adopted.

NOW, THEREFORE, IT IS HEREBY ORDERED pursuant to the authority vested in me by Minn. Stat. §§ 14.05, subd. 3 and 79.51 (1982), as amended, that these rules identified as 4 MCAR §§ 1.9140-1.9143 are amended by withdrawing 4 MCAR §§ 1.9141D and 1.9142 and the repealer provision, and by

amending the dates in 4 MCAR §§ 1.9143A.1 and 1.9143C.1.

Dated: June 1, 1983.

Reynaud L. Harp

REYNAUD L. HARP
Commissioner of Insurance
Department of Commerce

500 Metro Square Building
St. Paul, Minnesota 55101
Telephone: (612) 296-6907

Rec'd 11-9-82

STATE OF MINNESOTA
DEPARMENT OF COMMERCE
INSURANCE DIVISION

In the Matter of the Proposed Adoption of Rules Governing Workers' Compensation Insurance Rates

ORDER FOR HEARING

IT IS ORDERED this 29th day of October, 1982, that a public hearing on the above proposed rules be held in the hearing room at 500 Metro Square Bldg., St. Paul, MN, on December 21, 1982, at 9:00 a.m., and continuing until all interested persons or groups have had an opportunity to be heard.

IT IS FURTHERED ORDERED, that notice of the hearing be given to all persons who have registered their names with the Insurance Division for that purpose and be published in the State Register.

Thomas L. O'Malley
Temporary Commissioner of Insurance

Agency Exh. No. 15
File No. INS-83-004-JL
Date 12-21-82

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ADMINISTRATIVE HEARINGS

DEPARTMENT OF COMMERCE
INSURANCE DIVISION

Proposed Rules Governing Deregulation of Workers' Compensation Insurance Rates During Transition to Competitive Rating Effective January 1, 1986 (4 MCAR §§ 1.9140 - 1.9143)

Notice of Hearing

Notice is given that a public hearing will be held pursuant to Minn. Stat. § 15.0412, subd. 4 in the above-entitled matter in the hearing room at 500 Metro Square Bldg., St. Paul, MN, on December 21, 1982, commencing at 9:00 a.m. and continuing until all representatives of associations or other interested groups or persons have had an opportunity to be heard, concerning adoption of the proposed rules captioned above, by submitting either oral or written data, statements or arguments.

Written material may be submitted and recorded in the hearing record for five working days after the public hearing ends, or for a longer period not to exceed 20 calendar days if ordered by the hearing examiner. Statements or briefs may be submitted without appearing at the hearing. Written comments may be submitted to Hearing Examiner Jon L. Lunde at the Office of Administrative Hearings, 3rd Floor Summit Bank Bldg., 310 South 4th Avenue, Mpls, MN 55415.

The Commissioner proposes to adopt rules governing transition from regulated workers' compensation insurance rate setting to a competitive system. The proposed rules establish an interim process for the determination of workers' compensation insurance rates (and premiums) which impose limits upon allowable rate deviations by individual insurers while allowing increased ratemaking flexibility for individual insurers to react to market conditions. The rules relate to the following components of that transition: licensing of data service organizations; rate petitions and hearings; and ratemaking reports.

The proposed rules may be modified as a result of the hearing process. Therefore if you are affected in any manner by the proposed rules you are urged to participate in the rules hearing process.

The authority for the adoption of these rules is contained in Minn. Stat. § 79.51. These rules were published as proposed rules in the State Register of October 18, 1982, 7 S.R. pages 582 - 586.

The rule hearing procedure is covered by Minn. Stat. §§ 15.0411-15.0417 and 15.052, and by 9 MCAR §§ 2.101-2.113. Questions about the procedure may be directed to Hearing Examiner Jon L. Lunde at (612) 341-7645.

Lobbyists must register with the State Ethical Practices Board. A "lobbyist" is defined by Minn. Stat. § 10A.01, subd. 11.

"Lobbyist" means any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials;

(b) Who spends more than $250, not including his own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

"Lobbyist" does not include any:

(a) Public official or employee of the state or any of its political subdivisions or public bodies acting in his official capacity;

(b) Party or his representative appearing in a proceeding before a state board, commission or agency of the executive branch unless the board, commission or agency is taking administrative action;

(c) Individual while engaged in selling goods or services to be paid for by public funds;

(d) News media or their employees or agents while engaged in the publishing or broadcasting of news items, editorial comments or paid advertisements which directly or indirectly urge official action;

(e) Paid expert witness whose testimony is requested by the body before which he is appearing, but only to the extent of preparing or delivering testimony;

(f) Stockholder of a family farm corporation as defined in Secton 500.24, subd. 1, who does not spend over $250, excluding his own travel expenses, in any year in communicating with public officials; or

(g) Party or his representative appearing to present a claim to the legislature and communicating to legislators only by the filing of a claim form and supporting documents and by appearing at public hearings on the claim.

Any questions should be directed to the State Ethical Practices Board, Room 41, State Office Bldg., 435 Park Street, St. Paul, MN 55155, (612) 296-5148.

Notice: Any person may request notification of the date on which the hearing examiner's report will be available, after which date the agency may not take any final action on the rules for a period of five working days. Any person may request notification of the date on which the hearing record has been submitted (or resubmitted) to the Attorney General by the agency. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the hearing examiner (in the case of the hearing examiner's report), or to the agency (in the case of the agency's submission or resubmission to the Attorney General).

Notice is given that 25 days prior to the hearing, a statement of need and reasonableness will be available for review at the Insurance Division and at the Office of Administrative Hearings. This statement of need and reasonableness will include evidence justifying both the need for and the reasonableness of the proposed rules. Copies of the statement of need and reasonableness may be obtained from the Office of Administrative Hearings at a minimal charge.

One free copy of this notice and the proposed rules may be obtained by contacting Ms. Nancy Myers, Insurance Division, 500 Metro Square Building, St. Paul, MN 55101, (612) 296-8591. Additional copies will be available at the door on the date of the hearing.

Thomas L. O'Malley
Temporary Commissioner of Insurance

1/3.

Proposed Rules Governing Deregulation of Workers' Compensation Insurance Rates During Transition to Competitive Rating Effective January 1, 1986 (4 MCAR §§ 1.9140 - 1.9143)

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ADMINISTRATIVE HEARINGS

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

AFFIDAVIT OF MAILING

Debbi J. Lindlief, being first duly sworn, deposes and says:

That on the 10th day of November, 1982, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Hearing by depositing in the State of Minnesota Central Mail System for United States mailing at said City of St. Paul, a copy properly enveloped, with postage prepaid, on all persons and associations who have reuqested that their names be placed on file with the Insurance Division for the purpose of receiving notice of the proposed adoption of rules.

A copy of the notice of hearing, and the proposed rules as published in the State Register on October 18, 1982 is attached.

Debbi J. Lindlief

Subscribed to and sworn before me this 10th day of November, 1982.

11/10/82

VIRGIL V. PETERSON
NOTARY PUBLIC-MINNESOTA
HENNEPIN COUNTY
My Comm. Expires Sept. 12, 1983

Agency Exh. No. 2
File No. INS-83-004-JL
Date 12-21-82

Alliance of American Insurers
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Associated Builders & Contractors
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Minneapolis, MN 55416

James C. Shipman
Executive Director
Association of Minnesota Counties
2305 Ford Parkway
St. Paul, MN 55116

Colonial Penn Group, Inc.
Law Department, 11th Floor
5 Penn Center Plaza
Philadelphia, PA 19181

Nicholas T. Kakos
Comp., Insurance Benefit Fund
Federal Cartridge Corp./Admin.
Twin Cities Army Ammunition Plant
New Brighton, MN 55112

Murray M. McColloch
Sr. Vice Pres., Secretary & Counsel
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2020 Live Oak
Dallas, TX 75221

Jerrold T. Miller
J. T. Miller Company
1000 Currie Avenue
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John B. LaMacchia & Associates
Actuaries Management Consultants
12 North Central Avenue
St. Louis, MO 63105

Richard D. Kothe, Vice President
League Service Corporation
575 University Avenue
St. Paul, MN 55103

Compliance Services
Metropolitan Property & Liability
Insurance Company
700 Quaker Lane, P.O. Box 350
Warwick, RI 02887

Mr. Ronald R. Radtke, Manager
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Metropolitan Prop. & Liability Ins. Co.
700 Quaker Lane

Minnesota Motor Transport Assn.
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Abe Rosenthal
Executive Vice President
Minnesota Transport Services Assn.
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Mr. Paul C. Blume, Vice President
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William R. Anderson, Counsel
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National Assoc. of Prof. Surplus
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Roswell, GA 30077

J. Robert Hunter, FCAS
President, The National Insurance
Consumer Organization
344 Commerce Street
Alexandria, VA 22314

NIARS Corporation
Three Eighteen West Franklin
Minneapolis, MN 55404

Ohio State Life Insurance Company
Attn: Harold I. Phillian
471 E. Broad Street
Columbus, OH 43215

Bruce A. Poulsen, Counsel
Prudential Insurance Co. of America
8th Fl., P.O. Box 1143
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James M. Shamberger
Vice President-Government Relations
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Washington, D.C. 20036

Security Insurance Company
P. O. Box 42
Hartford, CT 06141

Snyder Larsen & Peters
2636 Portland Avenue
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Robert E. Swift, Vice President
Title Insurance Company of MN
400 Second Avenue South
Minneapolis, MN 55401

Trauner, King & Cohen
Attn: Kevin King
38 Old Ivy Road, N.E.
Atlanta, GA 30342

Union Fidelity Life Insurance Co.
Union Fidelity Office Park
Trevose, PA 19049
Attn: Edward G. Farmer, Jr., V.P.

Wisconsin Employers Insurance Co.
Contracts Department
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DePere, WI 54115

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Jean Dawson
Minn. Government Report
B-12 Press Room, State Capitol
St. Paul, MN 55155

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Peterson, Popovich, Knutson & Flynn
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100 North Minnesota Street
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Charles A. Schaffer
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480 Cedar Street
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Dan Gustafson
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Minneapolis, MN 55421

2.

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ADMINISTRATIVE HEARINGS

STATE OF MINNESOTA

COUNTY OF RAMSEY

CERTIFICATE

Proposed Rules Governing Deregulation of Workers' Compensation Insurance Rates During Transition to Competitive Rating Effective January 1, 1986 (4 MCAR §§ 1.9140 - 1.9143)

I certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minn. Stat. § 15.0412, subd. 4, that their names be placed on file with and maintained by the Insurance Division for the purpose of receiving notice of the hearing is accurate and complete as of 9:00 a.m., this 10th day of November, 1982.

Agency Exh. No. 3
File No. INS-83-004-JL
Date 12-21-82

PROPOSED RULES

Pursuant to Minn. Laws of 1980, § 15.0412, subd. 4h, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
2. that no public hearing will be held unless seven or more persons make a written request for a hearing within the 30-day comment period;
3. of the manner in which persons shall request a hearing on the proposed rules;

and

4. that the rule may be modified if modifications are supported by the data and views submitted.

If, during the 30-day comment period, seven or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of § 15.0412, subds. 4 through 4g, which state that if an agency decides to hold a public hearing, it must publish in the *State Register* a notice of its intent to do so. This notice must appear at least 30 days prior to the date set for the hearing, along with the full text of the proposed rules. (If the agency has followed the provisions of subd. 4h and has already published the proposed rules, a citation to the prior publication may be substituted for republication.)

Pursuant to Minn. Stat. § 15.0412, subd. 5, when a statute, federal law or court order to adopt, suspend or repeal a rule does not allow time for the usual rulemaking process, temporary rules may be proposed. Proposed temporary rules are published in the *State Register*, and for at least 20 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Department of Commerce
Insurance Division

Proposed Rules Governing Workers' Compensation Insurance Rates

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Insurance Division proposes to adopt the above-entitled rules without a public hearing. The Commissioner of Insurance has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minn. Stat. § 15.0412, subd. 4h (1980).

Persons interested in these rules shall have 30 days to submit comments. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change.

No public hearing will be held unless seven or more persons make a written request for a hearing within the 30-day comment period. In the event a public hearing is required, the agency will proceed according to the provisions of Minn. Stat. § 15.0412, subd. 4-4f.

Persons who wish to submit comments or a written request for a public hearing should submit them to Ms. Nancy Myers, Insurance Division, 500 Metro Square Building, St. Paul, MN 55101. Copies of this notice and the proposed rules are also available and may be obtained by contacting Ms. Myers.

Authority for the adoption of these rules is contained in Minn. Stat. § 79.51. Additionally, a statement of need and reasonableness describing the need for and reasonableness of each provision and identifying the data and information relied upon to support the proposed rules has been prepared and is available upon request.

Upon adoption of the final rules without a public hearing, the proposed rules, this notice, the statement of need and reasonableness, all written comments received, and the final rules as adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to receive a copy of the final rules as proposed for adoption should submit a written statement of such request to Ms. Nancy Myers, Insurance Division, 500 Metro Square Building, St. Paul, MN 55101.

A copy of the proposed rules is attached to this notice.

Thomas L. O'Malley
Temporary Commissioner of Insurance

Rules as proposed (all new material)

4 MCAR § 1.9140 Definitions.

A. Applicability. For the purposes of 4 MCAR §§ 1.9140-1.9143, the terms defined in this rule have the meanings given them.

B. Rating Association. "Rating Association" means the Workers' Compensation Insurance Rating Association.

C. Commissioner. "Commissioner" means the commissioner of insurance.

D. Data service organization; organization. "Data service organization" or "organization" means the same as it is defined in Minnesota Statutes, section 79.52, subdivision 3.

E. Classification plan; classification. "Classification plan" or "classification" means the same as it is defined in Minnesota Statutes, section 79.52, subdivision 4.

F. Rates. "Rates" means the same as it is defined in Minnesota Statutes, section 79.52, subdivision 5.

G. Insurer. "Insurer" means the same as it is defined in Minnesota Statutes, section 79.52, subdivision 13.

H. Pure premium rate. "Pure premium rate" means that portion of a rate designated for claim payments.

I. Pure premium. "Pure premium" means that portion of a premium, as defined in Minnesota Statutes, section 79.52, subdivision 7, designated for claim payments.

J. Pure premium relativities. "Pure premium relativities" means the mathematical relationship of pure premium rates for each reporting classification one to another, to a base class or classes, or to some common index or indices.

K. Pure premium base rate schedule. A "pure premium base rate schedule" is a set of pure premium rates with no adjustments for trend and with only partial loss development reflecting some additional development but not developed to the ultimate expected loss level.

4 MCAR § 1.9141 Licensing of data service organizations.

A. Application information. A data service organization shall apply to the commissioner for a license. The Workers' Compensation Insurance Rating Association shall submit an application to be licensed as a data service organization by January 1, 1983. An application to be a data service organization shall include all information required by Minnesota Statutes, section 79.62. In addition, the application shall include:

1. the organization's plan of operation including:

a. the establishment of necessary facilities;

b. a description of the management and operation of the organization, including a description of major staff positions and necessary qualifications for the positions;

c. the operating rules of the organization;

d. a list of members and their responsibilities; and

2. a plan for data collection and analysis, and other activities of the data service organization, including:

a. a plan for the collection and reporting of exposure base and of loss data from individual insureds of each member;

b. a system for the classification of risks to be used for reporting by member insurers, in calculating pure premium relativities, and for other relevant rate-related or data analytic activities;

c. data reporting requirements for members and monitoring procedures. Expense data shall not be reported. Premium data may be reported to the extent needed to monitor the quality and integrity of the data bases. Following the approval of a pure premium base rate schedule, the data service organization may require premium data to be reported at that level, provided that reporting need not be required of companies writing a small volume of Minnesota workers' compensation premiums. The criteria for being excused from reporting will be determined by the data service organization subject to the commissioner's approval;

d. a plan for the collection of any other data not prohibited in c. and a description of these data;

e. a plan for and description of the ratemaking report required by Minnesota Statutes, section 79.61;

f. plans for disseminating information to members of the organization and to the commissioner;

g. plans for audit procedures to ensure that data reporting requirements are met by organization members; and

h. a plan for compiling expense data reported to the commissioner for development of advisory rates, rating plan values, and discount factors.

B. Progress reports. Data service organizations shall submit semiannual progress reports to the commissioner on the

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

implementation of their organizational plan. The report shall include progress made on satisfying the requirements of Minnesota Statutes, sections 79.61 and 79.62 and requirements of 4 MCAR §§ 1.9140-1.9143. The reports must be submitted semiannually between the time of application and January 1, 1986.

4 MCAR § 1.9142 Rate petitions and hearings.

A. Manual rates; creation and adjustment.

1. A petition for modification of the schedule of rates shall be filed by the Rating Association by January 1, 1983, for the purpose of producing a schedule of manual rates by classification. This petition shall be considered in a hearing conducted pursuant to Minnesota Statutes, section 79.071.

2. After approval of a schedule of manual rates by the commissioner, insurers may modify the rates by adjustment of the pure premium rates and expense allowances within a range allowing for downward deviations that are unlimited and upward deviations of at most 15 percent of the approved rate.

3. Insurers may adjust premiums by the application of discount factors as defined in Minnesota Statutes, section 79.52, subdivision 8 and merit rating as defined in Minnesota Statutes, section 79.52, subdivision 9. Insurers may use their own plans or plans developed by a data service organization in which they maintain membership.

4. All data and calculations used to develop actual premiums from the manual rates approved by the commissioner shall be clearly documented.

5. An insurer's rates and rating plans, along with clearly documented justification, shall be filed with the commissioner 30 days prior to use.

B. Pure premiums; creation and modification.

1. A petition for modification of the schedule of rates shall be filed by the Rating Association by January 1, 1984, for the purpose of producing a schedule of pure premium rates. These rates must not contain trend adjustments. A hearing conducted pursuant to Minnesota Statutes, section 79.071 must be held on the petition.

2. The petition must contain an analysis of trended data as specified in 4 MCAR § 1.9143 B.1.g. The analysis shall be disseminated to all members of the Rating Association when filed.

3. Following approval of a schedule of pure premium rates, insurers may calculate final rates by:

a. the modification of pure premium rates allowing for downward deviations that are unlimited and upward deviations of at most 15 percent from the pure premium rates approved by the commissioner;

b. application of trend factors based on the analysis provided by the Rating Association or on their own interpretations of underlying data; or

c. adjustments to reflect the insurer's expected expense requirements. Neither the Rating Association nor any data service organization shall publish recommended expected expense allowances.

4. Insurers may adjust premiums by the application of discount factors as defined in Minnesota Statutes, section 79.52, subdivision 8 and merit rating as defined in Minnesota Statutes, section 79.52, subdivision 9. Insurers may use their own plans or plans developed by a data service organization in which they maintain membership.

5. All data and calculations used by an insurer to develop actual premiums from the pure premium rates shall be clearly documented.

6. An insurer's rates and rating plans, along with clearly documented justification, shall be filed with the commissioner 30 days prior to use.

C. Other rate petitions, hearings. The Rating Association or other data service organizations may make other filings. All petitions proposing rates, pure premium rates, or pure premium relativities for an effective period prior to January 1, 1986, shall be considered in hearings conducted pursuant to Minnesota Statutes, section 79.071.

4 MCAR § 1.9143 Ratemaking report.

A. Data service organizations.

1. Licensed data service organizations shall make yearly ratemaking reports to the commissioner. Insurers may not make reference to a report in their filings until it has been filed with the commissioner.

2. In 1986 licensed data service organizations must prepare a ratemaking report in a form prescribed by the commissioner. The outline of the report should be submitted to the commissioner for comment by January 1, 1985. A draft of the report should be submitted to the commissioner for comment by July 1, 1985. The final ratemaking report must be submitted no later than January 1, 1986.

3. After 1985, licensed data service organizations must submit an outline of their annual ratemaking report to the commissioner for comment by July 1 of each year. A draft of the report should be submitted to the commissioner for comment by October 1. The final ratemaking report must be submitted no later than January 1 of the succeeding year. Interim reports on the effect of changes in the law on rates may be submitted at any time during a year.

B. Contents of ratemaking report.

1. A ratemaking report shall meet all requirements of Minnesota law and, in addition, may contain information useful to data service organization members regarding factors pertinent to Minnesota workers' compensation business such as legislative concerns, Workers' Compensation Reinsurance Association operations, loss control programs, and programs developed by insurers that may be of interest and applicability to workers' compensation insurers. A ratemaking report shall include:

a. a compilation of financial data collected under Minnesota Statutes, section 79.61 without adjustments for either premium or loss development or trend. Financial data must be reconcilable to that reported by insureds in their annual financial statements to the commissioner;

b. a compilation of reporting classification data collected under Minnesota Statutes, section 79.61 without adjustments for either premium development or loss development or premium trend or loss trend;

c. a calculation of factors to adjust reported loss data to a common development level. The development level is subject to approval by the commissioner;

d. a calculation of factors to reflect any benefit level changes mandated by statute or by the courts;

e. the development of a schedule of pure premium base rates using the data reported by insurers and the factors calculated in c.;

f. a schedule of pure premium relativities, based on the pure premium base rate schedule;

g. an analysis and calculation of factors to adjust reported premium and loss data to an expected ultimate level. The analysis shall be in detail so as to permit insurers to select and modify the factors based on their own interpretations of underlying data;

h. an analysis and calculation of trended data to reflect future conditions through the use of factors or some other method. The analysis shall be in detail so as to permit insurers to select and modify the factors or utilize other trending methods based on their own interpretations of underlying data;

i. a calculation of any other quantitative factor or modifications and a description of any subjective considerations reflected in the determination of pure premiums in a manner so as to permit insurers to evaluate and modify the factors and considerations based on their own interpretations of underlying data; and

j. a calculation of any other quantitative factors required to maintain advisory discount factors as defined in Minnesota Statutes, section 79.52, subdivision 8 and advisory merit rating plans as defined in Minnesota Statutes, section 79.52, subdivision 9.

2. The ratemaking report shall be disseminated to all members of the data service organization.

C. Use of ratemaking report.

1. After the ratemaking report has been filed with the commissioner, insurers may develop and use rates based upon the pure premium base rates contained in the report. Effective January 1, 1986, insurers may also develop and use rates based upon any reasonable factors.

2. If an insurer uses the pure premium base rates contained in the ratemaking report, then the insurer may calculate rates by:

a. application of trend factors based on the analysis provided by the data service organization or on the insurer's own interpretations of underlying data;

b. application of loss development factors reflecting expected development beyond that in the pure premium base rate schedule to the ultimate loss level;

c. application of a factor to reflect the insurer's expected expense requirements. No data service organization shall publish recommended expected expense allowances;

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

d. application of any other factor based on the analysis provided by the data service organization or on the insurer's own interpretation of underlying data.

3. Insurers may adjust premiums by application of discount factors as defined in Minnesota Statutes, section 79.52, subdivision 8 and merit rating as defined in Minnesota Statutes, section 79.52, subdivision 9. Insurers may use their own plans or plans developed by a data service organization in which they maintain membership.

4. All data and calculations used to calculate rates from the pure premium base rate schedule shall be clearly documented.

5. Prior to January 1, 1986, an insurer's rates and rating plans, along with clearly documented justification, must be filed with the commissioner 30 days prior to use.

Repealer: Rule 4 MCAR § 1.9142 is repealed effective January 1, 1986.

State Board of Education
Department of Education
Executive Division

Proposed Amendments to or Repeal of Rules Governing Chapter One—EDU 1, EDU 2, EDU 3, EDU 4, EDU 5, EDU 6, EDU 7, EDU 9, 5 MCAR § 1.0010; Chapter Two—EDU 20, EDU 21, EDU 22, EDU 23; Chapter Two-A—EDU 30, EDU 31, EDU 32; Chapter Three—EDU 40, EDU 41, EDU 42, EDU 43, EDU 44, EDU 45, EDU 46; Chapter Eight—EDU 140, EDU 141, EDU 142; Chapter Nine—EDU 160, EDU 161, EDU 162; Chapter Seventeen—EDU 327; Chapter Twenty-Two—EDU 420, EDU 421, EDU 422, EDU 423, EDU 424, EDU 425; Chapter Thirty-Five—EDU 700, EDU 701, EDU 702, EDU 703, EDU 704, EDU 705, EDU 706; Chapter Thirty-Eight—5 MCAR §§ 1.0760-1.0764, 1.0766-1.0769; Chapter Forty—5 MCAR §§ 1.0800-1.0805

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the State Board of Education proposes to revise the above-entitled rules without a public hearing. The board has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minn. Stat. § 15.0412, subd. 4h.

The proposed changes to the rules cited above would remove obsolete or redundant provisions.

Persons interested in these rules shall have 30 days to submit comments on the proposed rules. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language.

Unless seven or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to provisions of Minn. Stat. § 15.0412, subds. 4–4f.

Persons who wish to submit comments or a written request for a public hearing should submit such comments or requests to:

Dr. E. Raymond Peterson
Associate Commissioner
Department of Education
713 Capitol Square Building
550 Cedar Street
St. Paul, MN 55101
Telephone: (612) 296-2414

Authority for the adoption of these rules is contained in Minn. Stat. § 121.11, subd. 12. Additionally, a statement of need and reasonableness that describes the need for and reasonableness of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available from Dr. E. Raymond Peterson upon request.

Upon adoption of the final rules without a public hearing, the proposed rules, this notice, and the statement of need and reasonableness, all written comments received, and the final rules as adopted will be delivered to the Attorney General for

INS-83-004-JL

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF COMMERCE
INSURANCE DIVISION

In the Matter of Proposed Rules Governing Deregulation of Workers' Compensation Insurance Rates during Transition to Competitive Rating Effective January 1, 1986 (4 MCAR §§ 1.9140-1.9143).

ORDER OF THE
CHIEF HEARING EXAMINER

WHEREAS, a hearing was held on December 21, 1982, before Jon L. Lunde, a Hearing Examiner of the State Office of Administrative Hearings, on the above-entitled matter in compliance with the rule-making provisions of Minn. Stat. Ch. 14 (1982); and

WHEREAS, the Report of Hearing Examiner made pursuant to Minn. Stat. § 14.50, was issued to the Insurance Division and;

WHEREAS, the Insurance Division has now determined to adopt rules; and

WHEREAS, the Insurance Division has submitted said rules to the Chief Hearing Examiner for review pursuant to Minn. Stat. §§ 14.16, 14.51, and 9 MCAR § 2.111; and

WHEREAS, the Chief Hearing Examiner finds that the final proposed rules are not substantially different from those proposed at the public hearing and that the Insurance Division has cured the defects in the rule as required.

NOW, THEREFORE, upon receipt of this Order, the Insurance Division has the responsibility of submitting the complete hearing record and the rules as adopted by the Insurance Division to the Attorney General and to publish in the State Register if approved by the Attorney General.

Dated: April 7th, 1983.

Duane R. Harves

DUANE R. HARVES
Chief Hearing Examiner

INS-83-004-JL

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF COMMERCE
INSURANCE DIVISION

In the Matter of Proposed Rules Governing Deregulation of Workers Compensation Insurance Rates during Transition to Competitive Rating Effective January 1, 1986 (4 MCAR §§ 1.9140-1.9143).

REPORT OF THE
CHIEF HEARING EXAMINER

The above-entitled matter came on for review by the Chief Hearing Examiner pursuant to the provisions of Minn. Stat. § 14.15, subds. 3 and 4 (1982) which provide in part:

> If the [hearing examiner's] report contains a finding that the proposed rule is substantially different from that which was proposed at the public hearing, or that the agency has not met the requirements of sections 14.13 to 14.18 it shall be submitted to the chief hearing examiner for approval. If the chief hearing examiner approves the finding of the hearing examiner, he shall advise the agency of actions which will correct the defects, and the agency shall not adopt the rule until the chief hearing examiner determines that the defects have been corrected. If the chief hearing examiner determines that the need for and reasonableness of the rule has not been established pursuant to section 14.14, subdivision 2, and if the agency does not elect to follow the suggested actions of the hearing examiner to correct that defect, then the agency shall submit the proposed rule to the legislative commission to review administrative rules for the commission's advice and comment. The agency shall not proceed to adopt the rule until it has received and considered the advice of the commission; provided, that the agency is not required to delay adoption longer than 30 days after the commission's receipt of the agency's submission.

Based upon a review of the record in this proceeding, the Chief Hearing Examiner hereby approves the Report of the Hearing Examiner in all respects.

In order to correct the defects enumerated by the Hearing Examiner, the agency shall either take the action recommended by the Hearing Examiner or reconvene the rule hearing if appropriate. If the agency chooses to reconvene the rule hearing, it shall do so as if it is initiating a new rule hearing, complying with all substantive and procedural requirements imposed on the agency by law or rule.

If the agency chooses to take the action recommended by the Hearing Examiner, it shall, prior to submitting the rules to the Attorney General for review, submit to the Chief Hearing Examiner a copy of the rules as initially published in the State Register, a copy of the rules as proposed for final adoption in the form required by the State Register for final publication, and a copy of the agency's Findings of Fact and Order Adopting Rules. The Chief Hearing Examiner will then make a determination as to whether the defects have been corrected and whether the modifications in the rules are substantial changes.

Should the agency make changes in the rules other than those recommended by the Hearing Examiner, it shall also, prior to submitting the rule to the Attorney General, submit the complete record to the Chief Hearing Examiner for a review in regard to substantial changes.

Dated: February 14, 1983.

Duane R. Harves

DUANE R. HARVES
Chief Hearing Examiner

INS-83-004-JL

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF COMMERCE
INSURANCE DIVISION

In the Matter of Proposed Rules Governing Deregulation of Workers Compensation Insurance Rates during Transition to Competitive Rating Effective January 1, 1986 (4 MCAR §§ 1.9140-1.9143).

REPORT OF THE HEARING EXAMINER

The above-entitled matter came on for hearing before Jon L. Lunde, duly appointed Hearing Examiner on Tuesday, December 21, 1982, commencing at 9:00 a.m. in the Large Hearing Room at 500 Metro Square Building, St. Paul, Minnesota, pursuant to an Order for Hearing dated October 29, 1982. The Agency made its presentation at that time and questions and comments were received from interested public participants. At the conclusion of the hearing, on motion of Abe Rosenthal, Executive Vice President and General Manager of Minnesota Transport Services Association (MTSA), the hearing was recessed to Friday, January 14, 1983, pursuant to 9 MCAR § 2.104. The second hearing was held at 9:00 a.m. at the same location as the original hearing and continued until all interested persons had had an opportunity to participate and respond to the new evidence presented by the Department at the original hearing. This was a rulemaking proceeding held pursuant to Minn. Stat. § 14.05 et seq. (1982) to determine whether or not the Commissioner of Insurance (hereinafter the "Commissioner") has authority to adopt the rules proposed and whether the rules are necessary and reasonable and may be adopted.

John C. Bjork, Special Assistant Attorney General, 1100 Bremer Tower, Seventh Place and Minnesota Street, St. Paul, Minnesota 55101, appeared as counsel for the Insurance Division of the Minnesota Department of Commerce (hereinafter "Insurance Division"). Also appearing on behalf of the Insurance Division were its actuary, Nancy R. Myers, and its regulatory policy analyst, Judith Hale. Approximately 16 persons attended the hearings and 12 signed the hearing registers. After the hearing, but before the expiration of the five working-day period authorized by the Hearing Examiner, three public comments and one comment from the Insurance Division were filed with the Office of Administrative Hearings.

The Commissioner of Insurance must wait at least five working days before taking any final action on the rules; during that period, this Report must be made available to all interested persons upon request.

Pursuant to the provisions of Minn. Stat. § 14.15, subd. 3 (1982), this Report has been submitted to the Chief Hearing Examiner for his approval. If the Chief Hearing Examiner approves the findings of this Report, he will advise the Commissioner of actions which will correct the defects and the Commissioner may not adopt the rule until the Chief Hearing Examiner determines that the defects have been corrected. However, in those instances where the Chief Hearing Examiner identifies defects which relate to the issues of need or reasonableness, the Commissioner may either adopt the Hearing Examiner's recommendations to cure the defects or, in the alternative, if the Commissioner does not elect to

adopt the recommendations, he may submit the proposed rule to the Legislative Commission to Review Administrative Rules for the Commission's advice and comment. Provisions relating to this submission to the Commission may be found in Minn. Stat. § 14.15, subd. 4 (1982).

If the Commissioner elects to adopt the recommendations of the Hearing Examiner and makes no other changes and the Chief Hearing Examiner determines that the defects have been corrected, then the Commissioner shall submit the rule to the Attorney General for review of form and legality. If the Commissioner makes changes in the rule other than those recommended by the Hearing Examiner, then he shall submit the rule, with the complete record, to the Chief Hearing Examiner for a review of the changes before adopting it and submitting it to the Attorney General. Procedures relating to this subsequent review by the Chief Hearing Examiner are set forth in Minn. Stat. § 14.16 (1982).

When the Commissioner submits the rule to the Attorney General, he shall give notice on the day of submission to all persons who requested that they be informed of the submission to the Attorney General.

Based upon all the testimony, exhibits and written comments, the Hearing Examiner makes the following:

FINDINGS OF FACT

Procedural Requirements

1. On November 9, 1982,, the Insurance Division filed the following documents with the Chief Hearing Examiner:

(a) A copy of the proposed rules.
(b) The Order for Hearing.
(c) The Notice of Hearing proposed to be issued.
(d) A Statement of the number of persons expected to attend the hearing and estimated length of the Agency's presentation.

2. On Monday, November 15, 1982, the Notice of Hearing was published at 7 State Register 743-744. Pursuant to Minn. Stat. § 14.25, the Notice referred to the text of the rules as originally published on October 18, 1982 in 7 State Register 582-586 when the Insurance Division originally gave notice of its intent to adopt the rules without a public hearing.

3. On November 10, 1982, the Insurance Division mailed the Notice of Hearing to all persons and associations who had registered their names with the Insurance Division for the purpose of receiving such notice.

4. On December 15, 1982, less than 25 days prior to hearing, the Insurance Division filed the following documents[1] with the Hearing Examiner:

(a) The Notice of Hearing as mailed.
(b) The Agency's certification that its mailing list was accurate and complete.
(c) The Affidavit of Mailing the Notice to all persons on the Agency's list.
(d) The Statement of Need and Reasonableness.
(e) The names of Insurance Division personnel who will represent the Agency at the hearing together with the names of any other witnesses solicited by the Agency to appear on its behalf.
(f) A copy of the State Register containing the proposed rules.

- -

[1] After this rulemaking proceeding was commenced, the Administrative Procedure Act was recodified by the Revisor of Statutes from Minn. Stat. § 15.041 et seq. to Minn. Stat. § 14.01 et seq. (1982). The Agency's prehearing documents properly cited provisions in Ch. 15 which had not been recodified at the time they were prepared.

(g) The Petition signed by eight employers requesting a hearing on the proposed rules pursuant to Minn. Stat. § 14.25 (1982).

The documents were available for inspection at the Office of Administrative Hearings from the date of filing to the date of the hearing.

5. The record remained open through Friday, January 21, 1983 for the receipt of written comments and statements. The period authorized for the submission of such comments and statements was not extended beyond the five-working-day period authorized by law because the hearing was recessed once giving interested persons an adequate period of time to submit written comments.

Procedural Defects and Motions.

6. Rules of the Office of Administrative Hearings, 9 MCAR § 2.105, require that an agency file its Statement of Need and Reasonableness and other related prehearing documents 25 days prior to the date and time of the hearing. In this case, the Agency filed the required documents on December 15, 1982, only six days prior to the hearing. The prompt filing of the documents listed in 9 MCAR § 2.105 is important. This is especially true of the Statement of Need and Reasonableness (hereinafter the "SONR") which contains a summary of the evidence and argument the Agency anticipates it will present to justify the rules proposed. After filing with the Office of Administrtive Hearings, the SONR is available to interested persons so that they may examine an agency's evidence and argument in preparation for a meaningful hearing. If the SONR is not filed within the time limit specified, individuals interested in that document may not have an adequate opportunity to prepare. In this case, however, no prehearing request was submitted to the Office of Administrative Hearings for copies of the SONR, and copies were made available to interested persons who requested them from the Agency.

7. Deviations from the rulemaking procedures set out in the rules of the Office of Administrative Hearings do not necessarily invalidate a rulemaking proceeding and require that it be recommenced. Rather, the effect of a failure to comply with the filing requirements will depend upon the nature and effect of the deviation in a particular case. The usual rule is that technical defects in compliance with procedural requirements which do not reflect bad faith undermining the purpose of the procedure and which do not prejudice the rights of those intended to be protected by them will not suffice to overturn governmental action. City of Minneapolis v. Wurtele, 291 N.W.2d 386, 391 (Minn. 1980). This general rule has been applied to the rulemaking proceedings of administrative agencies where the courts have required only substantial compliance. "Tote", Inc. v. Ohio State Racing Comm'n., 121 N.E.2d 463, motion dismd., 98 Ohio App. 494, 130 N.E.2d 455 (1954); Kingery v. Chappie, 504 P.2d 831 (Alaska 1972); Anderson, Leech & Morse, Inc. v. Washington State Liquor Control Board, 88 Wash.2d 688, 575 P.2d 221 (1978). The Minnesota Supreme Court has yet to apply the "substantial compliance" doctrine to defects in administrative rulemaking procedures. It was asked to adopt that doctrine in Johnson Bros. Wholesale Liquor v. Novak, 295 N.W.2d 238 (Minn. 1980), but refused to do so because the agency in that case had engaged in no rulemaking proceedings whatsoever. It did not hold that the doctrine would not be applied in an appropriate case, and its applicability to rulemaking proceedings under the Minnesota Administrative Procedures Act has been suggested. See,

Auerbach, Administrative Rulemaking in Minnesota, 63 Minn. L. Rev. 151, 215 (1979).

In this case, there is no evidence of bad faith in the Agency's late filing of the prehearing documents required by rule. The late filing did not undermine the purpose of the filng requirements and no prejudice resulted to any parties by the late filing because no requests for copying or inspecting the documents was made prior to the hearing. It is concluded, therefore, that application of the substantial compliance doctrine is appropriate and that the late filing in this case was not a substantial deviation from required procedures invalidating this proceeding. A finding of substantial compliance is especially appropriate where the hearing is recessed to a later date, as it was in this case.

8. Pursuant to 9 MCAR § 2.104, the Agency's SONR must be prepared with sufficient specificity to enable interested persons to fully prepare for the hearing. An Agency's presentation of evidence or testimony not summarized in the SONR, and which is not bona fide rebuttal evidence, may result in the recessing of the hearing upon motion of an interested person to allow that person time to meet such new evidence. In this case, the Insurance Division filed prehearing testimony of two witnesses. That testimony was not contained in the SONR and was not subject to prehearing examination by interested parties. MTSA objected to the introduction of this evidence and requested a recessing of the hearing. Due to MTSA's objection, and with the concurrence of the Insurance Division, the hearing was recessed to January 14, 1983 to give interested parties an opportunity to examine the prefiled testimony and to meet and respond to it. Notice of the date of the recessed hearing was mailed to all interested persons, including those on the Agency's certified rulemaking list. Recesses for that purpose are specifically authorized under 9 MCAR § 2.104.

9. At the commencement of the hearing, MTSA also moved that the Hearing Examiner dismiss this proceeding on the grounds that the SONR is inadequate because it does not, as a matter of law, contain an affirmative presentation of facts justifying the need for and the reasonableness of the proposed rules. That Motion was denied at the hearing and that denial is reaffirmed.

Under the Administrative Procedure Act, Minn. Stat. § 14.01 et seq. (1982), the Hearing Examiner has no authority to dismiss rulemaking proceedings based on the insufficiency of an agency's SONR, but may only suggest dismissal to the agency. Furthermore, dismissal at the commencement of the hearing would be premature in any event. The SONR is not required to contain all the evidence an agency presents at a rulemaking proceedings or all the evidence that may be used to support the need and reasonableness of the rules proposed. On the contrary, under 9 MCAR § 2.104, it may contain only a summary of the agency's evidence and arguments. Additional support for the need and reasonableness of the rules may come from bona fide rebuttal and from facts presented by others on the record during the rulemaking proceedings. Minn. Stat. § 14.14, subd. 2 (1982). In addition, if the SONR is deficient in some areas, it does not follow that all rules proposed are unsupported by affirmative facts. For all these reasons, dismissal at the commencement of the hearing would be premature in most cases.

Assuming that some or all the rules are not supported by affirmative facts in the record, the Hearing Examiner would still be without authority to dismiss the proceeding. Under Minn. Stat. § 14.15, subd. 4, if it is determined that the need for or the reasonableness of a rule has not been established by an agency, and the agency does not elect to follow the actions suggested by the Hearing Examiner and the Chief Hearing Examiner to correct that defect, the agency must submit the rule to the Legislative Commission to Review Administrative Rules for advice and comment. Regardless of the Commission's advice and comment, and absent action by the Attorney General or a court of record, the agency may proceed to adopt the rule even if a Hearing Examiner and the Chief Hearing Examiner found that its need and reasonableness was not established. Other defects in the agency's rules must be corrected by them before a rule may be adopted. Minn. Stat. § 14.15, subd. 3. It is clear from this that the lack of affirmative facts in the record is treated differently from other substantive or procedural defects and that dismissal for a lack of such facts is not authorized. The Chief Hearing Examiner has consistently held that rules may be adopted by an agency even without affirmative factual support in the record under § 14.15, subd. 4. This holding applies when the facts are insufficient to show the need and reasonableness of the rule, when the facts support a finding that the rule is unnecessary or unreasonable, and when there are no facts in the record to support adoption of the rule. In all cases, the agency may adopt the rule if it goes to the Legislative Commission. For all these reasons, MTSA's Motion to dismiss is denied.

Statutory Authority.

10. As its authority for the promulgation of the rules proposed, the Insurance Division cited Minn. Stat. § 79.51 (1982) in its Notice of Hearing. That statute reads as follows:

> Subdivision 1. Adoption; when. The commissioner shall adopt rules to implement provisions of chapter 79. The rules shall be finally adopted after May 1, 1982. By January 15, 1982, the commissioner shall provide the legislature a description and explanation of the intent and anticipated effect of the rules on the various factors of the rating system.
>
> Subd. 2. Transition period; rules govern. Insurance rates from July 1, 1983, to December 31, 1985, shall be determined in accordance with rules adopted by the Commissioner. The rules shall require (1) that a hearing be held pursuant to the provisions of section 79.071 to consider any petition requesting modification of rates and (2) that following the hearing the commissioner shall adopt a schedule of rates.
>
> Subd. 3. Rules; subject matter. (a) The commissioner in issuing rules shall consider:
>
> (1) Data reporting requirements, including types of data reported, such as loss and expense data;
>
> (2) Experience rating plans;
>
> (3) Retrospective rating plans;
>
> (4) General expenses and related expense provisions;
>
> (5) Minimum premiums;
>
> (6) Classification systems and assignment of risks to classifications;
>
> (7) Loss development and trend factors;
>
> (8) The workers' compensation reinsurance association;
>
> (9) Restrictions, prohibitions, and requirements with respect to the activities of the workers' compensation insurers rating association of Minnesota during the period from July 1, 1983 to January 1, 1986;
>
> (10) Requiring substantial compliance with the rules mandated by this section as a condition of workers' compensation carrier licensure;

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

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

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

(b) The rules shall provide for the following:

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

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

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

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

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

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

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

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

Under the language cited above, the Commissioner is required to adopt rules dealing with the subject matter of the rules proposed. Hence, the statute constitutes general authority for the rules and establishes a prima facie need for their adoption. Unless specifically found to the contrary below, it is concluded that § 79.51 authorizes the rules proposed for purposes of Minn. Stat. § 14.05, subd. 1, and establishes their need for purposes of Minn. Stat. § 14.14, subd. 2.

It is also concluded that the record contains affirmative facts supporting the reasonableness of the rules proposed. The SONR, standing alone, may not contain sufficient facts, but as supplemented by the prefiled testimony of two agency witnesses, the record is sufficient. It is true that the bulk of the facts relied upon by the Agency are of the legislative type. However, legislative facts representing policy decisions made by an agency can be relied upon to estabish the reasonableness of a proposed set of rules. The legislative facts relied on were expansive, but that resulted, in part, from the Agency's lack of experience in dealing with the problems inherent in proceeding into a competitive rating system. Since the Insurance Division considered the factors specified in Minn. Stat. § 79.51, subd. 3(a), since the advisory committee accepted the rules proposed, and since broad policy decisions were necessary due to the absence of reliable experience in this area, it is concluded that the rules are reasonable.

Introduction.

11. The rules proposed govern the adoption of workers' compensation insurance rates from July 1, 1983 to December 31, 1985. Their adoption is required

by Minn. Stat. § 79.51, subd. 1 (1982). The rules are needed for the transition from the current regulated rating system for workers' compensation insurance rates to the deregulated, competitive system to become operative in 1986. In drafting the rules, the Commissioner appointed an advisory committee to offer recommendations. The advisory committee included representatives of insurers, employers and employees as required by Minn. Stat. § 79.51, subd. 4 (1982).

The rules proposed frequently use the discretionary word "may". However, in all cases where such discretionary language is used, discretion is given to insurers in the manner in which they calculate their rates and rating factors. Such discretion is consistent with Minn. Stat. § 79.50 et seq. Unless specifically found to the contrary herein, no impermissible, unfettered discretion is granted to the Commissioner for purposes of Minn. Stat. § 14.02, subd. 4, and the use of the discretionary language proposed is necessary and reasonable.

Definitions.

12. Section 1.9140. Ten definitions are proposed to clarify the meaning of words used in the rules. None of the definitions proposed were challenged in public comments, and it is concluded that their need and reasonableness was established by an affirmative presentation of facts in the record and that the definitions are necessary to make the law enforced and administered specific for purposes of Minn. Stat. § 14.02, subd. 4. Some parts of this section incorporate statutory definitions by reference. Incorporations by reference are authorized under Minn. Stat. § 14.07, subd. 4. The form of the rule, including the incorporations by reference, were approved by the Revisor of Statutes.

13. Section 1.9140 B. As published, the definition of the term "Rating Association" was ". . . the Workers' Compensation Insurance Rating Association." This was a misnomer. The entity referred to is the Workers' Compensation Insurers Rating Association of Minnesota. Minn. Stat. §§ 79.01, subd. 6, and 79.52, subd. 3 (1982). In its posthearing comments, the Insurance Division proposed to amend the definition by substituting the words "Insurers" for the word "Insurance". This correction is necessary and reasonable and does not constitute a substantial change for purposes of 9 MCAR § 2.111, or Minn. Stat. § 14.05, subd. 2.

OK p. 1

As a technical matter, however, the words "of Minnesota" should be added to the name of the Association so that its correct legal name, the Workers' Compensation Insurers Rating Association of Minnesota appears in the definition.

OK p. 1

Licensing of Data Service Organizations.

14. Section 1.9141 A. This section pertains to the licensing of data service organizations (DSOs) and implements Minn. Stat. § 79.62 which requires the Commissioner of Insurance (hereinafter the "Commissioner") to license them. It specifically requires the Rating Association to submit its application for licensure by January 1, 1983. This requirement is outside the scope of the Commissioner's authority. In Mason v. Farmers Insurance Companies, 281 N.W.2d 344, 348 (Minn. 1979), the Court held that an agency may adopt retroactive rules where it is reasonable to do so. This is the generally accepted view. See, e.g., 73 C.J.S., Public Administrative Bodies and Procedure, § 107 p. 429.

When the Mason decision was issued, however, the definition of the word "rule" in former Minn. Stat. § 15.0413 (now § 14.02, subd. 4), did not include the words "of future effect" as it now does. The issue is, therefore, whether an agency may adopt rules with retroactive effect under the current definition.

15. The Uniform Model State Administrative Procedure Act (ULA) § 1-102 (1981), does not contain the words "of future effect" in its definition of a rule. However, the Federal Administrative Procedure Act, 5 USCA § 551(4) (1967), does contain those words. The words "of future effect" were omitted from the Model Act in 1961. They were considered redundant since any statement of general applicability must, by its very nature, have future effect. Bonfield, The Iowa Administrative Procedure Act: Background, Construction, Applicability, Public Access to Agency Law, the Rulemaking Process, 60 Iowa L.Rev. 731, 829-30 (1975). The words "of future effect" were included in the Federal act in an attempt by Congress to distinguish between rulemaking and adjudication. They were not intended to bar retroactive application of rules as a matter of course. Colyer v. Harris, 519 F.Supp. 692, 696-98 (S.D. Ohio 1981). Given this historical background, it is concluded that the Mason case is still applicable and that rules adopted under the Minnesota Administrative Procedure Act may have retroactive application under the limitations contained in existing case law. Although rules do not have the force and effect of law until adopted and published under Minn. Stat. § 14.38, the court in the Mason case did not apply that language to bar the adoption of retroactive rules. There is no reason to think that they would do so now, and no facts are known to the Hearing Examiner indicating that the Legislature used the words "future effect" to limit agencies' generally accepted authority to adopt retroactive rules in an appropriate case.

16. The requirement that the Rating Association file its application for licensure as a DSO by January 1, 1983, is not, however, a reasonable retroactive rule. It is not reasonable to apply retroactive licensing deadlines. Such a requirement would, in effect, circumvent the clear provisions of Minn. Stat. § 14.38, that rules do not have the force and effect of law until their adoption and publication. Rules which impose retroactive duties or deadlines for their performance involve prohibited retroactivity. For that reason, the filing deadline contained in the current rule constitutes a substantive violation of law for purposes of Minn. Stat. § 14.14, subd. 2. To correct this defect, the date must be changed to a reasonable date subsequent to the adoption of the rules. The Commissioner may amend these rules to legitimize the applications filed, if any, by the Rating Association on or after January 1, 1983. A rule doing that would not constitute a substantial change for purposes of 9 MCAR § 2.111.

amended to July 1, 83 p.2

17. Part A. also identifies the Rating Association as the Workers' Compensation Insurance Rating Association. Here, as in § 1.9140 B., the Insurance Division now proposes to correct the terminology to read "the Workers' Compensation Insurers Rating Association." This is a necessary and reasonable amendment that does not constitute a substantial change for purposes of 9 MCAR § 2.111. However, it is recommended that the rules use the words "Rating Association" rather than the Workers' Compensation Insurers Rating Association because the latter term is already defined in the rule and its use here defeats

corrected, amended p.2.

the purpose of the definition.

18. K. Craig Wildfang, Wildfang, Rude, McIntosh and Murray, Chtd., Attorneys at Law, 270 Grain Exchange Building, Minneapolis, Minnesota 55415, counsel for some 2,500 licensed motor carrier and public warehouse employees in Minnesota, submitted written posthearing comments questioning the requirement that the Rating Association file an application. His comments stated in part (p. 2):

> In U. S. v. Southern Motor Carriers Rates Conference, 672 F.2d 469 (5th Cir. 1982), the Court held that, for anticompetitive conduct to be exempt from the federal antitrust laws under the state action exemption, three criteria must be met. First, the challenged restraint must be one clearly articulated and affirmatively expressed as state policy. Second, the policy must be actively supervised by the state, itself. And finally, the activity must be compelled by the state. See, also, California Retail Liquor Dealers Association v. Midcal Aluminum, Inc., 445 U.S.97, 100 S.Ct. 937, 1980-1 Trade Cases ¶ 63,201 (1980); Goldfarb v. Virginia State Bar Association, 421 U.S. 773, 95 S.Ct. 2004 (1975).
>
> In light of the above-referenced case law, the plaintiff class in the Minnesota Express case believes that the proposed rule should not mandate any potentially anti-competitive activity on the part of insurers that is not already mandated by Ch. 79.

Wildfang suggested that the mandatory application in § 1.9141 A., as well as the mandatory rate petitions required in § 1.9142 A.1. and B.1., and the mandatory dissemination of information requirement in § 1.9142 B.2. may violate the Sherman Act, 15 U.S.C.A. § 1 (1973). The Sherman Act prohibits contracts, trusts or conspiracies in restraint of trade. His comments only hinted that problems under the Sherman Act could arise under the cited sections, and did not set forth any clearly identifiable problems. In rulemaking proceedings, parties challenging proposed rules must make a specific and persuasive showing that a rule is ultra vires or inconsistent with federal laws. Hiserote Homes, Inc. v. Riedemann, 277 N.W.2d 911, 913 (Iowa 1979). Parties are required to do more than submit conclusiory statements of possible conflicts with federal laws before a rule should be rejected. That showing was not made.

19. Assuming that the Southern Motor Carriers case is applicable here, the Court in that decision clearly indicated that the activities of a state agency, like the Department of Commerce here, are weighed differently than the activities of other public defendants when determining whether "state compulsion" is involved in any particular case. In addition, the Court cited, as still valid, the decision in Parker v. Brown, 317 U.S. 341, 63 S.Ct. 307, 87 L.Ed. 315 (1943), finding an exemption from the Sherman Act for the optional price regulation of raisins based on petitions to a state agency. 672 F.2d 472, and n.3. Wildfang's comments assume that state compulsion must result from legislative action, but the cases cited do not so hold. See, e.g., Goldfarb v. Virginia State Bar Association, supra.

20. More importantly, the comment does not consider the effects of the McCarron-Ferguson Act, 15 U.S.C.A. § 1012 (1976), which limits the Sherman Act's applicability to the business of insurance. That Act makes the Sherman Act applicable only to the extent that the business of insurance is not regulated by state law. This Act was passed in response to Parker v. Brown and was intended to grant a partial antitrust immunity for the insurance industry

which had been historically regulated by the states. Thus, it has been held that a state statute requiring all automobile liability insurance carriers to join an automobile rate administrative office and adhere to the rating plans and classes promulgated by that office and approved by a state agency were not subject to the Sherman Act. Allstate Insurance Co. v. Lanier, 242 F.Supp. 73 (E.D.N.C. 1965), aff'd. 361 F.2d 870, cert. den. 87 S.Ct. 290, 385 U.S. 930, 17 L.Ed.2d 212. Since the insurance industry is treated differently than other businesses for purposes of the Sherman Act, and since that difference was not discussed at all in the comments submitted, it is concluded that no showing has been made that the mandatory provisions cited violate the Sherman Act.

21. Section 1.9141 A.1. The application to be filed by a DSO must include the information required by Minn. Stat. § 79.62 and the licensee's proposed operating plan, including:

> a. The establishment of necessary facilities;
> b. A description of the management and operation of the organization, including a description of major staff positions and necessary qualifications for the positions;
> c. The operating rules of the organization;
> d. A list of members and their responsibilities. . . .

These are necessary and reasonable requirements. A DSO, to be effective, would need a physical premises, a management team to perform the duties required by law, and equipment and supplies.

22. Section 1.9141 A.1.a. This part requires that the applicant's plan of operation include "the establishment of necessary facilities." The words "facilities" is a broad term which is generally defined as the "means used to facilitate an action or process; convenience; provision. . . ." The American Heritage Dictionary of the English Language, 469 (New College Addition, 1981). It can include almost any business property, equipment, contracts, or records. Black's Law Dictionary, 705 (4th Ed. 1957). The words "necessary facilities" in this part fail to make the law enforced or administered specific as required by Minn. Stat. § 14.02, subd. 4. This constitutes a substantive violation of law for purposes of Minn. Stat. § 14.14, subd. 2. To correct this defect, this part must be deleted or replaced with a specific list of the facilities that must be described. For example, the rule could require the applicants's plan of operation to include: "A description of the applicant's operating premises and computer capabilities." so amended #.2.

23. Section 1.9141 A.1.c. This part requires that the operating rules of the organization be submitted with the application. This requirement appears on its face to be redundant. Part A already requires the applicant to submit the information required by Minn. Stat. § 79.62. Among other things, the statute requires an applicant to submit a copy of its constitution, articles of incorporation, by-laws and "other rules pertaining to the conduct of its business" (Subd. 2(a)). The statute does not make it clear what rules pertain to the conduct of a DSO's business, and the rules proposed do not clarify that requirement. This constitutes a failure to make the laws enforced or administered specific, as required by Minn. Stat. § 14.02, subd. 4, and is a substantive violation of law for purposes of Minn. Stat. § 14.14, subd. 2. To correct this defect, Part A.1.c. should be deleted or the meaning of the "operating rules" must be clarified. deleted #.2.

24. Section 1.9141 A.2. This part requires the applicant for licensure as a DSO to submit its plan for data collection and analysis and "other activities of the data service organization including its plan for the collection and reporting of exposure base and loss data, a system for the classification of risks to be used by its members, a system for calculating pure premium relativities and other things. The plans and systems listed are all necessary and reasonable. However, the language used does present some problems.

25. Section 1.9141 A.2.a. This part pertains to the reporting of exposure base and loss date. The Insurance Division proposes to change the prepositions in this part by amending it to read as follows:

> a. a plan for the collection and reporting of exposure base and loss data of individual insureds from each member;

amended p.2

This is a necessary and reasonable technical amendment of no substantive effect. It does not constitute a substantial change for purposes of 9 MCAR § 2.111.

26. Section 1.9141 A.2.b. This part requires that the plan for data collection and analysis include a system for the classification of risks to be used for reporting by member insurers, in calculating pure opinion relativities, "and for other relevant rate-related or data analytic activities. . . . " The quoted language fails to make the data reporting requirements specific as required by Minn. Stat. § 14.02, subd. 4. This constitutes a substantive violation of law for purposes of Minn. Stat. § 14.14, subd. 2. It is impossible to determine what other activities will be considered "relevant" by the Commissioner or the various DSOs. Rules adopted by an agency must make the law enforced or administered specific and cannot leave the administrator with unfettered discretion in determining what is or what isn't relevant for purposes of license application. To correct this defect, the other rate-related or data analytic activities which must be included in the system can be specified or the quoted language can be eliminated. It can be amended to read as follows:

> b. a system for the classification of risks to be used for reporting by member insurers and for calculating pure premium relativities, and all other rate-related or data analytic activities it proposes to undertake.

so amended p.2

27. Section 1.9141 A.2.c. Among other things, this part authorized DSOs to adopt criteria under which some insurers may be excused from reporting premium data. Criteria for being excused from reporting under the rule will be determined by the DSO subject to the Commissioner's approval. As written, this part permits the Commissioner to use his unfettered discretion in approving or disapproving the criteria adopted by a particular DSO. This violates the provisions of Minn. Stat. § 14.02, subd. 4, which requires that the rules adopted by an agency make the law enforced or administered by it specific. The Attorney General has consistently held that any rule provision which leaves a particular administrative decision to the unfettered discretion of an administrative officer fails to make the rule enforced specific and is unauthorized. As such, the rule constitutes a substantive violation of law for purposes of Minn. Stat. § 14.14, subd. 2. To correct this defect, the last sentence of part A.2.c. should be amended to eliminate Commissioner approval or specific criteria for approval should be adopted and included in the rule. The criteria adopted will, of course, be subject to approval under 9 MCAR § 2.111 to determine

eliminated p.3

whether or not the criteria constitute a substantial change which may not be implemented in this rulemaking proceeding.

28. Part A.2.c. also provides that expense data shall not be reported. It is intended to implement Minn. Stat. § 79.61, subd. 1(c)(iv), which prohibits the collection of expense or profit data by a DSO. Currently, loss adjustment data is treated as an expense, but in substance, such costs are more like a loss and they are treated as losses in most lines of insurance. If this data cannot be collected by DOSs, insurance carriers will be forced to use nationwide data in their ratemaking computations. The Insurance Division has determined that insurance carriers should be encouraged to use Minnesota loss adjustment data and that DSOs should be permitted to collect it for that purpose. To make that clear, the Insurance Division proposes to amend this part, as recommended by MTSA, by adding a new sentence to read as follows:

> Loss adjustment costs may be reported.

This is a necessary and reasonable amendment and does not constitute a substantial change for purposes of 9 MCAR § 2.111. Although the collection of expense data is prohibited under § 79.61, subd. 1(c)(iv), the expense data covered by the statute is not defined, and it is concluded that the rule is not inconsistent with the terms of the statute.

29. An agency, in adopting rules, must make the law it enforces specific. Minn. Stat. § 14.02, subd. 4. To make the law specific, agencies must interpret and clarify statutory language and fill in the interstices in the general framework created by the Legislature. In so doing, the agency's interpretation of the statute is entitled to great weight, especially where its rules are adopted contemporaneously with new legislation. Bremer v. Commissioner of Taxation, 246 Minn. 446, 75 N.W.2d 470 (1956).

Chapter 79 contains a preference for the use of Minnesota data. Minn. Stat. § 79.58, subd. 2, prohibits approval of a rating plan based upon data other than Minnesota data except in limited circumstances. Since the exclusion of loss adjustment costs does not conflict with the clear language of Ch. 79, involves a contemporaneous construction of new legislation and encourages the use of Minnesota data, the amendment proposed is within the scope of the Commissioner's rulemaking authority and is entitled to deference.

However, instead of the amendment proposed, it is recommended that the first full sentence of Part A.2.c. be amended to read as follows:

> A data service organization may not collect or report expense or profit data from its members but may collect loss adjustment costs.

so amended p. 3.

This amendment includes profit data and uses the word "collect" in addition to the word "report", consistent with § 79.61, subd. 1(c)(iv).

30. Section 1.9141 B. This part requires DSOs to submit periodic reports to the Commissioner on the implementation of "organizational plans". It is necessary and reasonable to require periodic reports which enable the Insurance Division to monitor plan implementation. However, it is not clear what plans are "organizational" for purposes of the rule. Section 1.9141A. does not refer to organizational plans but only to a "plan of operation" and a "plan for data collection and analysis." This ambiguity violates Minn. Stat. § 14.02, subd.

p. 14 states this finding is reason for adoption of .9141 D. N.B. .9141 D is to be withdrawn

4, which requires that rules be specific, and constitutes a substantive violation of law for purposes of Minn. Stat. § 14.14, subd. 2. To correct this defect, the words "organizational plan" can be replaced with the words "plans of operation and plans for data collection and analysis" or other clarifying amendment can be made.

Rate Petitions and Hearings.

NB. All of 9142 to be withdrawn

31. Section 1.9142 A.1. In order to produce a schedule of manual rates by classification, this part requires the Rating Association to file a petition for modification of the existing schedule of rates by January 1, 1983. The purpose of the rules, as described in the SONR (p.5), is to gradually introduce employers, insurers and DSOs to their responsibilities under a competitive market. The January 1 date was selected for the filing of this petition because the Department determined that the phasing-in process should begin promptly and because the last petition for a change in the schedule of rates was approved in 1979. Once the new schedule of manual rates is approved, insurers will be permitted to modify the rates by various adjustments. This is intended to be the first step toward a competitive market.

32. Three distinct issues are presented by this part: Can the Rating Association be required to file such a Petition, is January 1, 1983 an appropriate date, and is the mandatory filing requirement reasonable and necessary. Minn. Stat. § 79.51, which requires the adoption of rules governing the transition to a competitive market, does not require the Rating Association to file a petition for modification of the existing schedule of rates. It merely provides that insurance rates from July 1, 1983 to December 31, 1985 shall be determined in accordance with rules adopted by the Commissioner and that any hearing held to consider a petition requesting a modification of the schedule of rates must be held pursuant to Minn. Stat. § 79.071.

Among other things, the purposes of Minn. Stat. §§ 79.50 to 79.63 include the following:

> (d) Promote price competition and provide rates that are responsive to competitive market conditions;
>
> * * *
>
> (g) Provide for an orderly transition from regulated rates to competitive market conditions. . . .

The Commissioner has authority for these purposes to require rate filings. The schedule of rates adopted in 1979 may not be responsive to competitive market conditions if recent loss experience or expenses have changed to any significant degree since the time of the last rate hearing. One way to make rates responsive to competition is to make sure that they are currently accurate and not artificially depressed. This can be done by requiring a rate filing based on current data. The Commissioner's authority to order rate hearings is not new. He currently has authority under Minn. Stat. § 79.071, subd. 1a, if he determines that the loss experience of insurance carriers indicates a change in the schedule of rates, to order a rate hearing to determine whether and by what percentage the existing schedule of rates should be changed. For these reasons, it is concluded that the filing requirement in this part is authorized, and for the reasons previously discussed, does not violate the Sherman Act.

33. However, the requirement that that petition be filed by January 1, 1983 is unauthorized. As was discussed at Finding 16, it is not reasonable to adopt a rule imposing retroactive duties on the public. Again, the date selected constitutes a substantive violation of law for purposes of Minn. Stat. § 14.14, subd. 2. To cure this defect, the date for the mandatory filing of a petition for a change in the schedule of manual rates must be changed to some reasonable date subsequent to the effective date of the rules. The rule may be written to make petitions that may have already been filed acceptable under its terms.

34. Section 1.9142 A.2. Under this section, after approval of a new schedule of manual rates, insurers may modify the rates approved by adjusting the pure premium rates and expense allowances established by the Commissioner. Unlimited downward deviations are permitted but upward deviations cannot exceed 15% of the established rates. The SONR (p. 6), in discussing the deviations permitted by the proposed rule, states in part as follows:

> Allowing limited upward deviations is consistent with the movement toward open competition. Freedom to move in both directions will encourage innovation and experimentation. Given the freedom to deviate upward, companies are more likely to risk a downward deviation when individual class experience indicates such is warranted. The ability to adjust rates quickly in response to market conditions or errors in judgment is a key feature of competitive rating. . . .
>
> The freedom of limited deviation will also encourage companies to begin adjusting the rate making process. More current data may be used. A company's own experience for a particular class may be reflected. Different subsets of data can be examined; for example, the most recent five or ten years of data might be analyzed. The current process determines the rate for an average risk in an average class using industry wide data. Deviations allow companies to reflect their own experience and analysis to the extent required to respond to market forces.

35. Since the power to adjust manual rates is consistent with the move toward open competition in the pricing of workers' compensation insurance, and since the power to adjust premiums upward or downward may encourage innovation and experimentation, it is concluded that the rule as written is necessary and reasonable to the extent that it involves the concept of permitting both upward and downward deviations from established manual rates. It is not rational to believe that competition would be encouraged if insurance carriers are merely invited to lower their rates. The only issue is whether the 15% upward deviation permitted is necessary and reasonable as proposed. Abe Rosenthal argued that the Agency failed to establish the need and reasonableness of the 15% factor. Rosenthal noted that the Insurance Division conducted no research to determine whether the 15% figure was appropriate and that its witnesses even testified that they did not know if the 15% ceiling will be adequate or excessive.

36. Under the current system for computing workers' compensation insurance rates, a separate rate is established by the Commissioner for each employment classification. This is an average rate based on industry-wide data and may not reflect the experience of any particular insurer. The Insurance Division did not present any figures or undertake any studies to determine the historical distribution of pure premium losses or expenses around an average, and there are no facts in the record showing the number of insurers whose loss ratios for any classification exceed manual rates or average pure premiums by

15% or more. However, the absence of such data and the failure to conduct such studies does not render the 15% figure proposed by the Insurance Division unreasonable. The primary reason for this conclusion is Minn. Stat. § 79.54, which provides that a competitive market is presumed to exist, and Minn. Stat. § 79.55, subd. 2, which provides that no premium is excessive in a competitive market. While no premium is excessive in a competitive market, it does not follow that any premium is permissible during the transition period. On the contrary, the Commissioner has authority to limit rates during the transition period under Minn. Stat. § 79.51, subd. 2.

Moreover, the Insurance Division is attempting to introduce competition into the pricing of workers' compensation insurance. In order to introduce competition, insurers must be able to adjust premiums both upward and downward from the average rates established after a hearing. Whatever percentage is adopted, insurers cannot arbitrarily increase all their rates by that maximum. On the contrary, several safeguards are built into the system to prevent unjustifiable increases in the schedule of rates established. Under Minn. Stat. § 79.56, an insurer's deviations from the rates and rating plans established by a DSO must be filed with the Commissioner and those rates may be disapproved by the Commissioner after a hearing under Minn. Stat. § 79.58. Similarly, DSOs' rating plans are subject to approval by the Commissioner under Minn. Stat. § 79.81, subd. 2. The Commissioner may also make a determination that the market is not competitive under Minn. Stat. § 79.54, and may then require rates to be filed and approved prior to their effective date under Minn. Stat. § 79.57. Under Minn. Stat. § 79.55, no premiums charged can be excessive, inadequate, or unfairly discriminatory. These statutory provisions and safeguards, coupled with the need for an orderly transition to full competition, render the 15% figure necessary and reasonable.

Minnesota employers may have a legitimate concern that insurers will increase rates when they are justified in doing so but may refuse to lower rates in similar circumstances. However, that appears to be authorized under Minn. Stat. § 79.55, subd. 4, which requires that the differences in rates reflect the differences in rating factors "with reasonable accuracy." The Insurance Division could have adopted specific safeguards in this area but concluded the very existence of competition will suffice. This policy decision supports the need and reasonableness of its approach. If insurance carriers adjust their expense components so as to increase premiums, more efficient carriers who do not do so will presumably be able to offer cheaper coverage. In this way, competition contains its own safeguards. Employers may be skeptical but the policy decision made is subject to deference.

37. In response to MTSA's concern for smaller employers who lack leverage in the marketplace, the Insurance Division proposes to add the following words to the end of Part A.2.: "Except that employers that are not experience rated will be charged no more than the approved manual rate." This is a necessary and reasonable change which will protect small employers without any leverage in the market from having their rates altered during the initial stage of the transition period. It does not constitute a substantial change for purposes of 9 MCAR § 2.111

38. Section 1.9142 A.5. This part requires each insurer to file its rates and rating plans along with clearly documented justification 30 days prior to their use. In order to clarify the meaning of the word "clearly documented justification", the Insurance Division proposes to amend this part to read as follows:

> If an individual insurer develops rates and rating plans, these shall be filed with the Commissioner 30 days prior to use. Such rates and rating plans shall be supported by actuarily sound analysis.

The amendment to the language of this part is necessary and reasonable to clarify what the words "clearly documented justification" mean and the change proposed in the language to this part does not constitute a substantial change for purposes of 9 MCAR § 2.111.

39. However, the part as written is inconsistent with the statute. Under Minn. Stat. § 79.56, subd. 1, each insurer must file its rates and rating plan with the Commissioner 15 days after their effective dates, but an insurer need not file its rating plan, if it uses a rating plan filed by a data service organization. The Commissioner may require rates to be filed 30 days before their effective date but only after he makes one of the determinations required by Minn. Stat. § 79.56, subd. 2, or finds that the insurance market is not competitive under Minn. Stat. § 79.57. Effective July 1, 1983, there is a statutory presumption that the market is competitive until the Commissioner, after a hearing, determines that it is not. The Commissioner may not adopt rules that conflict with the plain language of the statutes under which they are promulgated. Since the determinations and orders required by Minn. Stat. §§ 79.56 and 79.57 have not been issued, insurers cannot be required to file their rates and rating plans 30 days prior to their effective dates. Until such orders are issued, Minn. Stat. § 79.56, subd. 1, is controlling. It requires that the rates and rating plan be filed within 15 days after their effective dates. For that reason, part A.5. is unauthorized. This constitutes a substantive violation of law for purposes of Minn. Stat. § 14.14, subd. 2 (1982). To correct this defect, the part must be amended and made consistent with the applicable statutory requirements. This part could be amended to read as follows:

> In a competitive market, and unless otherwise ordered by the Commissioner under Minnesota Statutes, section 79.56, subdivision 2, each insurer shall file a complete set of its rates and all changes and amendments thereto within 15 days after their effective dates. In a competitive market, and except as otherwise ordered pursuant to Minnesota Statutes, section 79.56, subdivision 2, each insurer not using a rating plan filed by a data service organization, or each insurer using the rating plan of a data service organization but deviating from it must file with the Commissioner a copy of its rating plan and all changes, amendments or deviations thereto within 15 days after their effective dates. The rates and rating plans must be supported by actuarily sound analysis and must result in premiums that are not inadequate or unfairly discriminatory.

40. Section 1.9142 B.1. This part requires the Rating Association to file a petition to modify the schedule of rates by January 1, 1984. The purpose of this petition is to produce a schedule of pure premium rates. Development of a pure premium rate schedule will be the second step toward a competitive market system. The pure premium rates will not contain trend adjustments, will

have only partial loss development and will not include expense factors. Development of a set of pure premium rates is necessary for an orderly transition to a competitive market, and it is reasonable to require the Rating Association to file a petition. Under Minn. Stat. § 79.52, subd. 3, the Rating Association is "considered" to be a DSO. It is already in existence and may be the only data service organization licensed in time to adopt the schedule of pure premium rates necessary for an orderly transition process. Therefore, the required petition is necessary and reasonable and within the scope of the Commissioner's authority.

41. Part B.1. also requires that the hearing on the petition be held pursuant to Minn. Stat. § 79.071. Minn. Stat. § 79.51, subd. 2, requires that any hearings during the transition period be conducted pursuant to § 79.071. John A. Knapp, Hessian, McKasy & Soderberg, P.A., 1500 Midwest Plaza West Building, Minneapolis, Minnesota 55402, suggested that the reference to Minn. Stat. § 79.071 in this part and in § 1.9142 A.1. and C. be changed to read "pursuant to Minnesota Statutes 1982, § 79.071". The ostensible reason for this recommendation is that the referenced statute is repealed effective July 1, 1983. Knapp's recommendation cannot be adopted because Laws of Minnesota, 1981, Ch. 346, section 145, does not repeal Minn. Stat. § 79.071, effective July 1, 1983. On July 1, 1983, only subdivision 1 is repealed. The remaining subdivisions are not repealed until January 1, 1986, after the rate petitions required in the rules have been filed.

42. It is necessary and reasonable to prohibit trend adjustments in any pure premium rate hearings requested by the Rating Association or any other DSO, but to require that an analysis of trended data be submitted when any rate petition is filed. This procedure is implicit in Minn. Stat. § 79.61, subd. 1(a)(ii). As noted by the Insurance Division, this will require individual insurers to make their own trend analysis and establish their own rates accordingly, thereby fostering competition.

43. Section 1.9142 B.3. After a schedule of pure premium rates is approved, individual insurers may modify those rates, either upward or downward, but upward deviations may not exceed 15% of the pure premium rates approved by the Commissioner. In order to promote competition, insurers must be permitted to alter pure premium rates based on their individual experience. The 15% factor in this part is necessary and reasonable for the same reasons discussed in connection with the 15% factor under § 1.9142 A.2. Individual insurers are also authorized to use the trend factors based on the analysis provided by the Rating Association or trend factors based on their own interpretation of the Rating Association's underlying data, and they may make adjustments to reflect their own expected expense requirements.

Under § 1.9142 B.3.c., neither the Rating Association nor any data service organization can publish recommended expected expense allowances. The Insurance Division should consider changing the language of this rule to read as follows:

> Adjustments to reflect the insurer's expected expense requirements. Neither the Rating Association nor any data service organization shall publish, collect or recommend expected expense allowances.

Such an amendment would make the prohibition broader and more consistent with the language and intent of Minn. Stat. § 79.61, subd. 1(a)(iv). If such a change is adopted, it would not constitute a substantial change for purposes of 9 MCAR § 2.111. The same recommendation is applicable to similar language in § 1.9143 C.2.c. However, the Commissioner may want to consider deletion of § 1.9143 C.2.c. since its prohibition is duplicated in § 1.9141 A.2.c.

44. Section 1.9142 B.6. This part requires an insurer to file its rates and rating plans along with "clearly documented justification" 30 days prior to use. As was previously mentioned in connection with § 1.9142 A.5., the filing requirement in this part is unauthorized and constitutes a substantive violation of law for purposes of Minn. Stat. § 14.14, subd. 2. To correct this defect, the filing data must be changed and made consistent with the filing requirements contained in Minn. Stat. § 79.56. (See Finding 39).

45. Section 1.9142 C. During the transition period, the Rating Association or any other data service organization may make other rate filings. Consistent with Minn. Stat. § 79.51, subd. 2, all hearings held on such petitions must be held under Minn. Stat. § 79.071. This part, however, is ambiguous to the extent that it does not specifically require the petitions to comply with the provisions of § 1.9142 B. nor prohibit petitions proposing a schedule of manual premium rates like those currently in effect. In order to clarify this section, it is recommended that the second sentence of part C. be amended to read as follows:

> All petitions proposing rates, pure premium rates, or pure premium relativities for an effective period prior to January 1, 1986, shall be conducted pursuant to 4 MCAR § 1.9142 B.

This would prohibit a data service organization from filing a petition for the establishment of a schedule of manual rates and would clarify the effect of a petition to establish a schedule of pure premium rates by a DSO other than the Rating Association by making the effect the same as that under part B. This does not constitute a substantial change for purposes of 9 MCAR § 2.111 and clarifies the scope and effect of the rule.

Ratemaking Reports.

46. Section 1.9143 A. This part requires DSOs to submit annual ratemaking reports to the Commissioner. It implements Minn. Stat. § 79.61, subd. 1(c), requiring a periodic report to the Commissioner in a form prescribed by him. Parts A.1. and 2. are ambiguous because it is not clear if a ratemaking report must be filed in 1984 or prior years. This ambiguity constitutes a failure to make the laws enforced and administered specific contrary to Minn. Stat. § 14.02, subd. 4, and constitutes a substantive violation of law for purposes of Minn. Stat. § 14.14, subd. 2. To correct this defect, part A. must be rewritten to make it clear what reports, if any, are required to be filed in 1983 and 1984. If the 1985 ratemaking report required in Part A.2. is the first report a DSO must file, the rule should be amended to say so.

to rewritten but see info. date change

47. Section 1.9143 A.2. This part contains a typographical error. The first sentence erroneously requires licensed DSOs to submit a ratemaking report in 1986. The Department proposes to change the date to 1985. This correction is necessary and reasonable and does not constitute a substantial change for purposes of 9 MCAR § 2.111.

p. 7, 8, 10

Part A.2. also requires that the 1985 ratemaking report be "in a form prescribed by the Commissioner." This duplicates the language of Minn. Stat. § 79.61, subd. 1(c), which states that the report be "in a form prescribed by the commissioner." Since the contents of the report are set out in great detail in this section, and since the language quoted adds no clarification to the identical statutory language, its duplication is not crucial to the ability of a person affected by it to comprehend its meaning or effect. For that reason, it is not authorized under Minn. Stat. § 14.07, subd. 5, and constitutes a substantive violation of law for purposes of Minn. Stat. § 14.14, subd. 2. To correct this defect, the quoted language must be deleted.

deleted p.8

Duplication of the statutory language is more than a mere technical defect. The quoted language implies that the Commissioner may prescribe any form he chooses thereby subjecting licensees to his unfettered discretion contrary to Minn. Stat. § 14.02, subd. 4. Although the exact forms an agency may use are not subject to adoption as rules, the substance of those forms must be authorized in an agency's rules or the governing law.

48. Section 1.9143 A.3. This part specifies the time limits for the submission of ratemaking reports that must be submitted after 1985. It is necessary and reasonable as proposed, but does raise a question that the SONR does not address. That is, whether the Commissioner has authority to adopt rules which do not expire on January 1, 1986.

Under new legislation this discussion appears irrelevant

Minn. Stat. § 79.51, subd. 1, authorizes the Commissioner to adopt rules to implement the provisions of Chapter 79. Under subdivision 2, insurance rates from July 1, 1983 to December 31, 1985, are to be determined in accordance with rules adopted by the Commissioner. Subdivision 3 requires the Commissioner to consider certain factors in proposing rules and requires the rules to contain certain requirements. Under subdivision 3(c), the rules shall expire on January 1, 1986. The question that arises is whether or not the rules that must expire on January 1, 1986 are the rules adopted pursuant to subdivision 2 only, or the rules adopted pursuant to both subdivisions 1 and 2. Under Minn. Stat. § 79.50 et seq., the Commissioner of Insurance has various administrative responsibilities after January 1, 1986, and, in exercising his discretion after that date, rules are required under Minn. Stat. § 14.06. It appears that the delegation of rulemaking authority in Minn. Stat. § 79.51, subd. 1, is separate from the rulemaking authority granted in subdi- vision 2 during the transition period, and subdivision 3 could be reasonably construed by the agency to apply only to the transitional rules adopted pursuant to subdivision 2. That reading of the statute would make only the transitional rules subject to expiration on January 1, 1986. As a general rule, unless otherwise limited by the language of the enabling act and legislative intent, rules should be held to be within an agency's power when a rational agency can conclude that the rule is within the scope of its delegated authority. Hiserote Homes, Inc. v. Riedemann, 277 N.W.2d 911, 913 (Iowa 1979). With respect to Minn. Stat. § 79.51, the Commissioner could reasonably conclude that subdivision 1 gives him authority to adopt rules which do not expire on January 1, 1986. The Commissioner has so concluded. The provisions of § 1.9143 A.3. are effective after January 1, 1986, and only § 1.9142 is repealed effective January 1, 1986. Since § 1.9142 governs ratemaking during the transition period

only, and since the Commissioner could reasonably conclude that he has authority to adopt rules governing licensing and ratemaking reports subsequent to January 1, 1986, the rules are authorized and the limited repealer in the proposed rules is necessary and reasonable.

49. Section 1.9143 B. This part pertains to the contents of the ratemaking report DSOs must submit to the Commissioner. Part B.1. provides that the ratemaking report shall meet all requirements of Minnesota law. The Minnesota law referred to in this part should be clarified by references to the statutes and rules involved. The specific contents of the ratemaking report set forth in Part B. were not objected to by the public, and the need and reasonableness of those factors was affirmatively established by facts in the record. Therefore, except as is specifically discussed below, it is concluded that the components are necessary and reasonable as proposed.

so clarified p.8

50. Section 1.9143 B.1. Under this part, the ratemaking report must contain the following calculations:

* * *

> c. a calculation of factors to adjust reported loss data to a common development level. The development level is subject to approval by the commissioner. . . .

This part does not make the amount of permitted development specific. The same lack of specificity is contained in the definition of the "pure premium base rate schedule" in 4 MCAR § 1.9140 K. The explanation for this ambiguity is contained in the SONR (p. 8):

> Numerous questions remain to be answered regarding the development and appropriateness of the actuarial factors used in establishing the schedule of rates. Insurance companies must have enough data to make decisions, but the data must also allow for individual analysis. It is not possible to address all the technical questions posed by these rules in advance of the actual experience which results from the rates established under this interim ratemaking process. The issue of the rules' use of partial development of losses is one such area where judgment must be made. Loss development occurs because the insurer's loss liability is not completely known when a policy expires. Cases which are not yet settled may cost more or less than the initial estimate. The insurer must make some estimates regarding the final cost of his current policies, in order to adjust the price for future policies. The accuracy of these estimates is clearly related to the amount of data available to the decision maker. Thus, combined historical information on loss development must be available to all insurers. On the other hand, legitimate differences of opinion can exist on the extent to which the historical data is a good predictor of the future. The allowance of a partial development factor in the ratemaking report will serve to isolate the judgmental aspects of loss development and leave those decisions with individual insurers. While this has not been done before, this balancing of interests by the ratemaking report will be necessary if small insurance companies are to have guaranteed access to meaningful and reliable data.

Generally speaking, rules adopted by an agency must make specific the laws enforced and administered by them, and an agency's failure to do so constitutes a substantive violation of law for purposes of Minn. Stat. § 14.14, subd. 2. The Attorney General has consistently held that discretionary language is not specific for purposes of the law and gives the administrator unfettered discretion to adopt standards which may not be applied uniformly to all individuals. However, where flexibility is needed, as where knowledge

and evaluation tools are likely to change in the future, and where it is difficult to take into account all the problems that might arise, especially when an agency is embarking on a new course of action and has little familiarity with the nature and extent of the particular types of problems that might be confronted, the rules may be less specific. See, e.g., Can Manufacturers Institute, Inc. v. State, 289 N.W.2d 416 423 (Minn. 1979); Thompson v. City of Minneapolis, 300 N.W.2d 763, 768 (Minn. 1980); 1 Cooper, State Administrative Law, pp. 181-183 (1965). In this case, the Insurance Division is proceeding into a deregulated workers' compensation insurance rating system. Only one other state is known to have embarked upon a similar course of action: it was done only recently in the state of Oregon. The Insurance Division does not have experience in proceeding from a highly regulated system to the competitive system required by Chapter 79, and all of the problems and issues that may arise cannot reasonably be anticipated by it. For that reason, it is concluded that the discretionary language contained in Part B.1. is appropriate and does not violate the provisions of Minn. Stat. § 14.02, subd. 4. It is not practical or feasible for the Agency to formulate more specific guidelines at this time.

51. Section 1.9143 C.5. This part requires that an insurer's rates and rating plans, along with clearly documented justification, be filed with the Commissioner 30 days prior to use. This provision is inconsistent with the requirements in Minn. Stat. § 79.56, subd. 1, which provides that insurers shall file their rates and rating plans within 15 days after their effective dates unless the Commissioner has ordered that they be filed before their effective date. The findings and order required before an insurer may be required to file its rates 30 days before their effective date have not been made, and the Commissioner has not determined that a non-competitive market exists pursuant to a hearing under Minn. Stat. § 79.54. Consequently, the prefiling of rates and rating plans is not authorized at this time. The rule proposed is, therefore, inconsistent with the plain language of Minn. Stat. § 79.56, subd. 1. This constitutes a substantive violation of law for purposes of Minn. Stat. § 14.14, subd. 2. To correct this defect, the Commissioner must amend this provision to be consistent with statutory language.

C.5. deleted P. 10

In addition, with respect to part C.5., the nature of the clearly documented justification should be clarified in the rule. In §§ 1.9142 A.5., and B.6., the Commissioner has proposed to replace the words "clearly documented justification" with language that the rates and rating plans shall be supported by "actuarily sound analysis." It is suggested that the same language be used with respect to part C.5.

Miscellaneous Problems.

52. Jerome A. Scheibel, Vice President, Wausau Insurance Companies, John P. Hildebrandt, President of the Rating Association, and James N. Denn, President of the Minnesota Motor Transportation Association, all commented on the need for the maintenance of a reliable data base which insurers, especially those with small volumes, can use in their pricing decisions. Their concerns are consistent with Minn. Stat. § 79.51, subd. 3(b)(6), which requires that these rules provide for the preservation of a framework for risk classification and data collection which will not impede competition.

The Commissioner intends to maintain a common classification structure consisting of the more than 600 classification codes that now exist under the Basic Manual for Workers' Compensation and Employers Liability Insurance, and a common statistical plan. As was made clear, however, under questioning by Mr. Rosenthal, the rules do not clarify or specifically require continuation of the current classification structure. The failure, in these rules, to clearly specify what provisions of the Basic Manual and other related manuals insurers must abide by does not make the law specific for purposes of Minn. Stat. § 14.02, subd. 4. This constitutes a substantive violation of law for purposes of Minn. Stat. § 14.14, subd. 2. To correct this defect, the rule must be amended to clarify what provisions of the current manuals must be complied with. This is particularly important in the areas of basis of premium, classifications and statistical plans, where the Commissioner apparently intends to require uniformity.

53. Minn. Stat. § 79.62 requires the Commissioner to license any DSO found qualified. Minn. Stat. § 14.02, subd. 4, requires agency rules to make this requirement specific and prohibits unfettered discretion in selecting the criteria used to evaluate applications for licensure. The rules fail to specify when licenses will be issued or what criteria will be used to determine which applicants are "qualified" contrary to § 14.02, subd. 4. This constitutes a substantive violation of law for purposes of Minn. Stat. § 14.14, subd. 2. To correct this defect, some meaningful criteria must be adopted. The criteria should relate to the information required in the application under 4 MCAR § 1.9141A. Such criteria will be subject to a substantial change review under Minn. Stat. § 14.15, subd. 3.

54. Minn. Stat. § 79.51, subd. 3(b)(6), requires that these rules provide assurances that employers will not be unfairly relegated to the assigned risk pool. The rules contain no such assurances and no criteria for making the determination when an unfair relegation occurs. Premiums written for employers in the assigned risk pool shrank from $55.9 million in 1979 to $21 million in 1972, and the Insurance Division does not expect unfair relegations to be a problem. See, Testimony of Judith Hale, p. 5. Regardless of these expectations, rules in this area are required. The failure to adopt such rules is a substantive violation of law for purposes of Minn. Stat. § 14.14, subd. 2. To correct this defect, assurances must be implemented.

55. The rules do not list criteria for determining when a competitive market will no longer exist, establish procedures for assessing penalties under Minn. Stat. § 79.56, subd. 3, or establish procedures whereby employers may contest the rates or rating plans filed by insurers or DSOs. The Commissioner should consider adopting additional rules covering these areas in the future.

56. MTSA argued that the status of the Rating Association, as an association or as a DSO, is not clear under the rules, and that nothing prohibits monopolistic activities by the Rating Association or the National Council on Compensation Insurance. The Hearing Examiner is not persuaded that there are any defects in the rules in that regard. The Rating Association's current status and authority under Minn. Stat. §§ 79.14 to 79.21 is repealed effective July 1, 1983, and after that date, the Rating Association will be functioning exclusively as a DSO. Furthermore, monopolistic behavior or the restraint of trade

by any insurer, DSO, or other person, is prohibited under Minn. Stat. § 79.59. Thus, the concerns expressed by MTSA in that respect do not render the rules proposed here unnecessary or unreasonable.

MTSA also argued that the rules permit a 15% rate increae in each of the next two years and that the rules permit only the Rating Association to file for a rate increase in 1984, thereby putting all other DSOs out of business. These arguments have no factual support and do not tend to establish that the rules are unreasonable. The rules permit insurers to exceed the rates established in 1983 and 1984 by as much as 15%. However, the 15% adjustment is not cumulative as MTSA argued. Rather, it is applied to two separate rating schedules -- manual rates and pure premium rates. Thus, the 15% factor is merely continued when the pure premium rates are introduced in 1984. It does not logically follow that premiums or rates may increase by 30% during the two-year period from 1983 to 1984. Likewise, the Rating Association is not the only DSO authorized to file a rate petition in 1984. Under 4 MCAR § 1.9142 C. any DSO may do so.

Based upon the foregoing Findings of Fact, the Hearing Examiner makes the following:

CONCLUSIONS

1. That the Insurance Division gave proper notice of the hearing in this matter.

2. That the Insurance Division has not fulfilled the procedural requirements of Minn. Stat. § 14.14, subds. 1 and 2 (1982) and all other procedural requirements of law or rule. However, the Agency has substantially complied with the procedural requirements and no one was prejudiced by the deviations that occurred as is discussed at Findings 6 through 9.

3. That the Insurance Division has demonstrated its statutory authority to adopt the proposed rules and has fulfilled all other substantive requirements of law or rule within the meaning of Minn. Stat. §§ 14.05, subd. 1, 14.15, subd. 3 and 14.50 (i) and (ii) (1982), except as noted at Findings 14, 16, 22, 23, 26, 27, 30, 33, 39, 44, 46, 47, 51, 52, 53 and 54 .

4. That the Insurance Division has documented the need for and reasonableness of its proposed rules with an affirmative presentation of facts in the record within the meaning of Minn. Stat. §§ 14.14, subd. 2 and 14.50 (iii) (1982).

5. That the amendments and additions to the proposed rules which were suggested by the Insurance Division after publication of the proposed rules in the State Register do not result in rules which are substantially different from the proposed rules as published in the State Register within the meaning of Minn. Stat. § 14.15, subd. 3 (1982) and 9 MCAR §§ 2.110 A. and 2.111 (1980 Ed.).

6. That the Hearing Examiner has suggested action to correct the defects cited in Conclusion 3 as noted at Findings listed therein.

7. That due to Conclusion 3 , this Report has been submitted to the Chief Hearing Examiner for his approval pursuant to Minn. Stat. § 14.15, subd. 3 (1982).

8. That any Findings which might properly be termed Conclusions and any Conclusions which might properly be termed Findings are hereby adopted as such.

9. That a finding or conclusion of need and reasonableness in regard to any particular rule subsection does not preclude and should not discourage the Insurance Division from further modification of the proposed rules based upon an examination of the public comments, provided that no substantial change is made from the proposed rules as originally published, and provided that the rule finally adopted is based upon facts appearing in this rule hearing record.

Based upon the foregoing Conclusions, the Hearing Examiner makes the following:

RECOMMENDATION

It is hereby recommended that the proposed rules be adopted except where specifically otherwise noted above.

Dated this 11th day of February, 1983.

JON L. LUNDE
Hearing Examiner

STATE OF MINNESOTA
DEPARTMENT OF COMERCE
COMMISSIONER OF INSURANCE

In the Matter of Proposed Rules Governing Deregulation of Workers' Compensation Insurance Rates During Transition to Competitive Rating Effective January 1, 1986 (4 MCAR §§ 1.9140-1.9143).

FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULES

The above-entitled matter came on for hearing before Hearing Examiner Jon L. Lunde on December 21, 1982, and January 14, 1983, at 9:00 a.m. in the Large Hearing Room at 500 Metro Square Building, St. Paul, Minnesota, after proper notice required by Minn. Stat. § 14.13 was served upon all persons, associations, and other interested groups registered with the Insurance Division for that purpose.

All appearances were properly noted in the Report of the Hearing Examiner (attached hereto and incorporated as specified herein).

After affording interested persons an opportunity to present written and oral data, statements and documents, having heard all of the testimony, having considered all of the evidence adduced upon the record, files, and proceedings herein and applicable statutory standards or criteria, and confirming the need for and reasonableness of the above-captioned rules, I find the following:

FINDINGS OF FACT

1. The Findings of Fact in the Report of the Hearing Examiner (hereinafter "Findings") numbered 1 through 56 are adopted.

2. Findings 13-16, 22-23, 26-27, 29-30, 33, 37-39, 43-47, and 51-55 provide explanations and reasons for the changes between the rules as proposed for adoption and the rules as adopted, as discussed more specifically hereafter.

3. Finding 13 provides the reason for the change in 4 MCAR § 1.9140B.

4. Findings 14-17 provide the reasons for changes in 4 MCAR § 1.9141A.

5. Finding 22 provides the reason for the change in 4 MCAR § 1.9141A.1.a.

6. Finding 23 provides the reason for the deletion of 4 MCAR § 1.9141A.1.c. as proposed.

7. Finding 55 provides the reason for the new section adopted as 4 MCAR § 1.9141A.1.d. The new section further specifies the plan of operation that is required as part of the application to be a data service organization.

8. Finding 25 provides the reason for the change in 4 MCAR § 1.9141A.2.a. Additionally, the word "statistical" was added to clarify that the plan is the uniform statistical plan referenced in 4 MCAR § 1.9141B.1.

9. Finding 26 provides the reason for the change in 4 MCAR § 1.914A.2.b.

10. Finding 52 provides the reason for the new section regarding manual rules adopted as 4 MCAR § 1.9141A.2.c.

11. Findings 27-29 provide the reasons for the changes in 4 MCAR § 1.9141A.2.c. as proposed, which is 4 MCAR § 1.9141A.2.d. as adopted.

12. Finding 52 provides the reason for the new sections regarding manual rules in 4 MCAR §§ 1.9141A.2.j. and 1.9141B. as adopted.

13. Finding 53 provides the reason for the new section adopted as 1.9141C.

14. Finding 30 provides the reason for the change in 4 MCAR § 1.9141B as proposed, which is 4 MCAR § 1.9141D as adopted.

15. The heading for 4 MCAR § 1.9142 was changed to reflect changes made within that section.

16. Finding 33 provides the reason for the change in 4 MCAR § 1.9142A.1.

17. Finding 37 provides the reason for the change in 4 MCAR § 1.9142A.2.

18. The reason for the change in 4 MCAR § 1.9142A.3. was to add clarifying language, consistent with Finding 52.

19. Findings 38-39 provide the reasons for the change in 4 MCAR § 1.9142A.5.

20. 4 MCAR § 1.9142B. was changed so the date therein would be consistent with 4 MCAR § 1.9142A.1.

21. Finding 43 provides the reason for the change in 4 MCAR § 1.9142B.3.c.

22. Finding 44 provides the reason for the change in 4 MCAR § 1.9142B.6.

23. Finding 54 provides the reason for the new sections relating to an insurer's refusal to write, which are 4 MCAR §§ 1.9142C. and 1.9143C.4 as adopted.

24. Finding 45 provides the reason for the change in 4 MCAR § 1.9142C as proposed, which is 4 MCAR § 1.9142D as adopted.

25. Finding 46 provides the reason for the change in 4 MCAR § 1.9143A.

26. Finding 47 provides the reason for the change in 4 MCAR § 1.9143A.2.

27. Finding 49 provides the reason for the change in 4 MCAR § 1.9143B.

28. Finding 43 provides the reason for the change in 4 MCAR § 1.9143C.2.c.

29. Findings 39 and 44 provide the reasons for the deletion of 4 MCAR § 1.9143C.5 as proposed.

30. In the repealer section, 4 MCAR § 1.9141D as adopted is repealed effective January 1, 1986, because the progress reports required by that section need not be submitted after January 1, 1986.

Based upon the foregoing Findings of Fact, I make the following:

CONCLUSIONS

1. The Conclusions in the Report of the Hearing Examiner numbered 1, 2 and 4 are adopted.

2. The Insurance Division demonstrated its statutory authority to adopt the proposed rules and fulfilled all other substantive requirements of law or rule within the meaning of Minn. Stat. §§ 14.05, subd. 1, 14.15, subd. 3, and 14.50(i) and (ii) (1982).

3. Pursuant to 9 MCAR § 2.111 and the Order of the Chief Hearing Examiner dated April 7, 1983 (attached hereto and incorporated herein), the amendments to the rules that have been made after publication of the proposed rules in the State Register do not result in rules that are substantially different from the proposed rules published in the State Register.

4. The Report of the Hearing Examiner found that there were some defects in the proposed rules; however, pursuant to the Order of the Chief Hearing Examiner dated April 7, 1983, those defects have now been cured.

5. Any Findings which might properly be termed Conclusions and any Conclusions which might properly be termed Findings are hereby adopted as such.

NOW, THEREFORE, IT IS HEREBY ORDERED that these rules identified as 4 MCAR §§ 1.9140-1.9143 are adopted this 13th day of May, 1983, pursuant to authority vested in me by Minn. Stat. § 79.51 (1982).

Reynaud L. Harp

REYNAUD L. HARP
Commissioner of Insurance
Department of Commerce

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STATE OF MINNESOTA
DEPARTMENT OF COMMERCE
INSURANCE DIVISION

RECEIVED
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ADMINISTRATIVE
HEARINGS

4.

In the Matter of the Adoption of the Proposed Rules Governing Deregulation of Workers' Compensation Insurance Rates During Transition to Competitive Rating Effective January 1, 1986 (4 MCAR §§ 1.9140 - 1.9143)

STATEMENT OF NEED AND REASONABLENESS

Agency Exh. No. 17
File No. INS-83-004-JL
Date 12-21-82

STATEMENT OF AUTHORITY

Minnesota Statutes, Section 79.61 requires the commissioner of insurance to adopt rules to govern workers' compensation insurance ratemaking during the transition from regulated rates, based upon industry average costs, to a competitive market, based upon individual costs of the respective companies. Insurance rates will be determined in accordance with these rules from July 1, 1983 to December 31, 1985. The rules are needed to ensure that the transition is accomplished with minimal disruption or hardship for both employers and insurers and with protection against excessive, inadequate or unfairly discriminatory rates.

Under the current system of administered pricing of workers' compensation rates, a single rate schedule is established by the insurance commissioner. The commissioner must set this schedule of rates for the entire market, and the schedule must be used by all insurance companies providing workers' compensation insurance. Insurers may deviate downward from this schedule, pursuant to Section 79.21, but no upward deviations are currently allowed. Petitions for changes in this schedule of rates are filed with the Insurance Division by the Workers' Compensation Insurers' Rating Association or any other interested party. Rates are approved only after a contested case proceeding, which may easily take a year or longer to complete. To derive premiums from the manual schedule of rates, insurers must use a single, uniform classification system which includes over 600 occupational classifications. Insurers may not combine categories or otherwise modify this system. Premiums charged to individual employers will vary based on applicable dividend plans, premium discounts, or on the employer's loss experience. Currently, all rating plans are filed by the Rating Association, and approved by the commissioner after a contested case proceeding. All insurers are currently required to use the rating plans filed by the Rating Association.

When Minnesota's competitive rating law becomes fully operational in 1986, there will be several changes in the system. Pricing decisions will be placed with individual insurers rather than with the Rating Association and the insurance commissioner. Rates will reflect an insurer's individual experience and actuarial analysis rather than being based solely on aggregate industry wide average costs. Each company will be required to develop its own opinion on the required rate level. Crucial decisions must be made in estimating the final cost of losses and the effect of inflation. Typical questions would be "Will the number of pensions awarded in Minnesota continue to increase?" and "Will medical costs rise faster than the average wage?". Individual insurers will also be required to develop independent estimates of expenses, a relatively simple problem when compared to the difficulty of evaluating losses. In addition, insurers may develop their own merit rating plans, discount schedules, and dividend programs. Insurers will be free to combine categories or modify the classification system, although data will continue to be reported in accordance with the approved unit statistical plan.

The underwriting experience of individual companies has varied greatly in Minnesota over the past 5 years. Among the 15 companies with the largest premium volume the loss ratios have ranged from 39.0% to 225.0%. (See Exhibit I). During the transitional period, insurers will begin to evaluate their experience and the credibility of their data. The diversity of individual companies underwriting results will begin to be reflected in the rates. The results for any one company may also vary significantly from year to year. Open competition will provide the flexibility needed to respond to these changing market conditions.

The responsibilities of the statistical organization will also change significantly by 1986. The Rating Association will be replaced by one or more data service organizations which will be responsible for the collection and analysis of loss data. Individual insurer's access to ratemaking information is essential if open competition is to be viable in Minnesota. No individual insurer has enough data to produce, on its own, an actuarially sound set of classification rates. There are over 100 companies writing workers' compensation insurance in Minnesota. No company writes more than 10% of the market and two-thirds write less than .5%. If the smaller companies, in particular, are to continue to be part of the system, they must have confidence that the rates they charge are appropriate, and based upon statistically sound (credible) data.

Maintaining the validity of the data base will be one of the major functions of the data service organizations. Each such organization will also develop a yearly ratemaking report,

containing basic loss data and an actuarial analysis of various options for adjusting this data to a final rate level. In the past, companies have depended exclusively on the Rating Association to set the overall rate level. As a result, many insurers currently lack the capability to carry out rating activities on their own. As indicated above, insurers will have to evaluate different options and make individual decisions in order to obtain adequate individualized rates. The ratemaking report will facilitate this decision making and is an essential part of the open competition system in Minnesota.

Under the competitive market there will be few regulatory restrictions on prices for workers' compensation insurance, and the responsibilities of insurers and data service organizations will undergo significant change. Unlike the present statute, data service organizations may not recommend final rates. They may continue to develop merit rating plans, although no insurer is bound by them. The rules during this transition are needed so that the required changes in responsibility for pricing decisions can be introduced gradually over a period of three years while appropriate limits are placed on changes in rates and rating procedures. These rules are designed to address the interim period of limited rate regulatory review prior to the effective date of full statutory deregulation.

An advisory committee representing all segments of the insurance industry and insurance consumers was appointed by the insurance commissioner to offer recommendations regarding the rules, as required by Minnesota Statutes, Section 79.51, subdivision 4. Members of the committee included: Dan Gustafson, Paul Moe, Minnesota AFL-CIO; Abe Rosenthal, Minnesota Transport Services Assn.; John Lennes, Minnesota Association of Commerce and Industry; Patrick Newlin, St. Paul Companies; Robert Smith, Aetna Insurance Companies; Jerome Scheibl, Employers Insurance of Wausau; George Klouda, Western National Mutual Insurance Company; Robert Hilton, Excalibur Insurance Company; John Hildebrandt, Workers' Compensation Insurers Rating Association of Minnesota; Michael Camilleri, National Council on Compensation Insurance; Richard Lutenski, Workers' Compensation Reinsurance Association; Robert Johnson, Insurance Federation of Minnesota; and Robert Raab, St. Paul Aluminum Foundry. The advisory committee held meetings on June 22, August 12, and September 10, 1982. During each meeting the committee members reviewed draft rules prepared by Insurance Division staff. Suggested revisions were incorporated into the rules when there was committee consensus on the need for the change and agreement that the change was consistent with the intent of the authorizing statute. Some committee members also submitted written comments and proposed revisions to the Insurance

Division staff, and these comments were reviewed and considered for incorporation into the draft rules. Committee members present at the meeting on September 10 reached consensus that the rules as drafted were satisfactory.

4 MCAR § 1.9140 Definitions.

Rule 4 MCAR § 1.9140 defines terms used in the rules. Although "premium" and "rate" are often used interchangeably, the rules make a precise distinction between the two terms. The term "rate" refers to the cost per exposure unit, while "premium" refers to the total cost charged to an insured. For example, the rate in Minnesota for class 8810, clerical, is $.23 per $100 of payroll. The total premium for an employer paying $200,000 in clerical payroll would be $460. The rule also defines "pure premium base rate", a term which is used in a unique way in these rules and which is not generally used in workers' compensation insurance. The term is used here to meet the specific needs of the rules.

4 MCAR § 1.9141 Licensing of data service organizations.

Rule 4 MCAR § 1.9141 specifies the contents of the application which must be submitted to be licensed as a data service organization (DSO). The rule further specifies that the Workers' Compensation Insurers' Rating Association of Minnesota must apply to be licensed as a DSO by January 1, 1983. This requirement is necessary to ensure that a data service organization will exist and have the staff and capability to provide the expanded services necessary under competitive rating. An application date for the Rating Association is specified so that the organization has the appropriate structure and is properly licensed when the transition period begins in 1983.

License applications must demonstrate that the organization has the ability to perform the responsibilities prescribed under the competitive rating law. Subdivision 1 requires the organization to have the necessary facilities and staff to perform these responsibilities. Subdivision 2 requires the application to specify a plan for data collection and analysis and for dissemination of the data, including assurance that a uniform classification system will be used for the reporting and analysis of data. In accordance with Minnesota Statutes, Section 79.61, the rules prohibit any DSO from collecting expense data, but do allow the collection of premium data which is necessary to check the quality of exposure and loss data.

Beginning in 1986, data service organizations may require members to report premium data consistent with the pure premium base rate schedule. Under open competition, this schedule may or may not be related to the actual rates used

by a company. The adjustment of actual premiums to the required level could prove burdensome to smaller insurance companies, which might lack the staff and/or computer capabilities required to effect the conversion. The additional expense could, in turn, reduce their ability to compete with larger companies who have specialized staff and more sophisticated computer capability. Thus, the DSO is authorized by this rule to exempt smaller companies from this internal premium reporting requirement. Various definitions of "small" were discussed by the committee, e.g., a company with a market share less than .5%, or the set of those companies with the smallest premium volume and a cumulative market share of less than 10%. The specific delineation of this member reporting requirement has been placed with the DSO in the belief that flexibility must be preserved to reflect the composition of the DSO membership. Under open competition, maintenance of an adequate data base will be an internal affair of the insurance industry. However, the commissioner retains the authority for prior review of any reporting requirement which could impede the introduction of competition to the overall system.

As required by Minnesota Statutes, Section 79.61, this rule forbids the reporting of expense data to a data service organization. However, expense data, in conjunction with loss data, will continue to be reported to the insurance commissioner as part of each insurer's Annual Statement, as required by existing law. Therefore, this rule does require the DSO to include a plan for compiling expense information from Annual Statement data to the extent necessary to develop advisory rates, rating plan values and discount factors.

Subdivision B requires data service organizations to submit progress reports every six months so that the Insurance Division can monitor development of the data service organization and ensure that the necessary structure is in place. These progress reports also allow the Insurance Division to ensure consistency with the law and with the rules.

4 MCAR § 1.9142 Rate petitions and hearings.

Rule 4 MCAR § 1.9142 requires two rate hearings prior to the advent of open competition in 1986. These hearings are intended to gradually introduce employers, insurers, and data service organizations to their responsibilities under a competitive market. Hearings will be conducted according to the existing ratemaking procedure in Minnesota Statutes, Section 79.071. This phase-in process must begin promptly; since the most recent rate schedule petition was filed in 1979. Therefore, the Workers' Compensation Insurers' Rating Association is required to file a rate petition by January 1, 1983. This first hearing is to result in a schedule of approved manual rates.

As a first step in the transitional process, insurers will be allowed to make limited adjustments to the approved rate schedule during the period in which the schedule is in effect. Under the current regulated structure, insurers are allowed to deviate downward, if their actuarial analysis supports such a move. This situation will be expanded by the rules to also allow upward deviations, although increases will be limited to 15% above the approved rate. Deviations may be made by class or applied uniformly to all classes. They must be supported by the insurer's individual experience and/or analysis and must be filed with the commissioner not less than 30 days prior to use. Insurers may also use their own discount and merit rating plans in lieu of those currently filed by the Rating Association.

Allowing limited upward deviations is consistent with the movement toward open competition. Freedom to move in both directions will encourage innovation and experimentation. Given the freedom to deviate upward, companies are more likely to risk a downward deviation when individual class experience indicates such is warranted. The ability to adjust rates quickly in response to market conditions or errors in judgment is a key feature of competitive rating. The current lengthy process required to change the schedule of rates guarantees that insurers will take a conservative approach when determining rates, and grant fewer deviations from the rates indicated by the use of aggregate industry data.

The freedom of limited deviation will also encourage companies to begin adjusting the rate making process. More current data may be used. A company's own experience for a particular class may be reflected. Different subsets of data can be examined; for example, the most recent 5 or 10 years of data might be analyzed. The current process determines the rate for an average risk in an average class using industry wide data. Deviations allow companies to reflect their own experience and analysis to the extent required to respond to market forces.

In the second year of the transition, insurers will be given even more responsibility for calculation of their own rates. Subdivision B requires a hearing, upon petition by the Rating Association or any other data service organization, which will result in a schedule of pure premium rates for use by its members. These rates will be fully developed but will not include trend factors or expenses, which will be the responsibility of individual insurers to determine, based upon their own data. Insurers will also be allowed to adjust the pure premium rates, either uniformly or by class. As in the prior year, unlimited downward deviations are allowed while upward adjustments are limited to 15%. All

deviations must be filed with the commissioner not less than 30 days prior to use. Insurers may use their own discount or merit rating plans, or those of a data service organization in which they maintain membership.

All data service organizations' rates during the transition are subject to hearings conducted in accordance with existing law. Insurers' allowable deviations from these rates must be filed with the insurance commissioner 30 days prior to use but are not otherwise subject to prior approval. The simpler procedure is part of the transition to open competition. All calculations used by insurers to determine rates must be documented and available to the commissioner for review. Such review is part of the commissioner's statutory responsibility to ensure that workers' compensation rates are not excessive, or inadequate, or unfairly discriminatory.

4 MCAR § 1.9143 Ratemaking Report

Rule 4 MCAR § 1.9143 specifies in detail the contents and utilization of the ratemaking report which must be prepared by all data service organizations in a form prescribed by the rule. The proposed format for this report must be submitted to the commissioner in conjunction with the application for license as a data service organization. This rule also requires the commissioner to carefully monitor development of the first report to ensure compliance with statutory requirements and to ensure inclusion of all data and analysis necessary for insurers to calculate individual rates from the data. The ratemaking report is a major component in the transition to a competitive market, since it provides the basic data and analysis necessary for insurers to calculate rates and ultimate premiums. It is essential that this report be complete.

Subdivision A defines the process for preparation of the ratemaking report. During 1985, the development of this report will be monitored by the commissioner. An outline must be prepared by January 1, 1985; a draft of the report is to be submitted by July 1, 1985; the final report will be due no later than January 1, 1986. This schedule allows ample time for review and comment by the commissioner so that the final report will meet applicable requirements, and provide insurers with the information needed to compute rates. Subsequent reports are to be submitted on a shorter timetable - outlines by July 1, drafts by October 1 and final reports by January 1 of each year.

Subdivision B describes the contents of the ratemaking report. It requires the compilation of financial and loss data and the calculation of factors necessary to determine rates from the raw data. The statistical data which will be available in the report will be limited. A schedule of pure

premium base rates must be established according to an approved classification system. This schedule of pure premium base rates will incorporate partial loss development factors. It will not, however, include all expected development. Neither will the pure premium base rate schedule include adjustments for future inflation (trend). Expense data, of course, will be excluded.

Numerous questions remain to be answered regarding the development and appropriateness of the actuarial factors used in establishing the schedule of rates. Insurance companies must have enough data to make decisions, but the data must also allow for individual analysis. It is not possible to address all the technical questions posed by these rules in advance of the actual experience which results from the rates established under this interim ratemaking process. The issue of the rules' use of partial development of losses is one such area where judgment must be made. Loss development occurs because the insurer's loss liability is not completely known when a policy expires. Cases which are not yet settled may cost more or less than the initial estimate. The insurer must make some estimates regarding the final cost of his current policies, in order to adjust the price for future policies. The accuracy of these estimates is clearly related to the amount of data available to the decision maker. Thus, combined historical information on loss development must be available to all insurers. On the other hand, legitimate differences of opinion can exist on the extent to which the historical data is a good predictor of the future. The allowance of a partial development factor in the ratemaking report will serve to isolate the judgmental aspects of loss development and leave those decisions with individual insurers. While this has not been done before, this balancing of interests by the ratemaking report will be necessary if small insurance companies are to have guaranteed access to meaningful and reliable data.

Subdivision C describes the use of the ratemaking report. With the completion of the first report on January 1, 1986, the transition to a competitive market will be complete. Insurers may use the information in the report to develop workers' compensation rates, or, if they choose, develop rates based completely on their own analysis. If an insurer does use the pure premium base rates from the report, additional adjustments must be made for loss development, inflation, and expenses.

In this manner, the deregulation of rates will be accomplished which encourages maximum independent analysis by the individual companies, while guaranteeing continuation of an industry wide data base which is required for reliable projections of anticipated loss costs.

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Exhibit I - page 1

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BEST'S EXECUTIVE DATA SERVICE

FIVE YEAR BY LINE/BY STATE MARKETING HISTORY
MINNESOTA – WORKERS' COMPENSATION

A7-24-16

RANK	MARKET LEADERS	5 YR COMP GR RT	1981 CUM MKT SHR	MARKET SHARE 1981	1980	1979	1978	1977	DIRECT PREMIUMS WRITTEN 1981	1979	1977	ADJUSTED LOSS RATIO 1981	1980	1979	1978	1977	3 YR AVG 1979-81	5 YR AVG 1977-81
1	TRAVELERS INS GROUP	101	87	87	76	81	76	88	36,117	34,148	23534	844	1470	1100	1382	819	1121	1119
2	HOME INS GROUP	215	172	85	82	71	61	60	35219	30111	16192	1167	715	648	958	690	862	859
3	LIBERTY MUTUAL GROUP	N	239	67	84	85	77	68	27,607	35,904	18071	1246	660	717	1028	912	847	885
4	FIREMAN'S FUND GROUP	103	298	59	43	44	54	52	24,243	18,469	13929	709	965	714	822	649	790	776
5	NATIONAL INS COMPANIES	N	354	57	74	81	93	108	23445	34 100	28946	1001	1192	1203	1203	1072	1146	1145
6	AETNA LIFE & CAS GRP	N	397	42	54	55	52	41	17568	23361	10921	1112	852	739	792	775	884	854
7	AMER MUTUAL FAB GRP	204	437	41	41	37	35	28	16,769	15,737	7,626	781	721	739	537	816	747	714
8	ST PAUL GROUP	N	469	32	37	40	38	38	13,253	16,775	10 106	2250	1069	1219	964	792	1655	1407
9	ARMCO INS GROUP	296	498	29	24	21	20	14	11,955	8,845	3,750	604	948	597	704	666	718	711
10	HARTFORD INS GROUP	202	527	28	18	22	18	16	11,769	9 366	4,933	715	783	788	1126	1366	757	903
11	AMER FINANCIAL GROUP	N	552	25	28	30	31	28	10,207	12,875	7,496	804	911	681	760	530	793	750
12	CRUM AND FORSTER	151	575	24	17	23	18	19	9,808	9,588	4,979	2054	819	884	933	516	1171	1030
13	CONTINENTAL CORP	211	589	23	22	20	16	17	9,636	8,536	4,649	936	390	865	1888	771	742	863
14	CNA INS GROUP	N	621	22	25	23	31	28	9,289	9,816	7,381	1488	1196	888	1043	1130	1197	1153
15	FEDERATED MUTUAL GRP	N	643	22	25	28	33	31	9,152	11,631	8,369	892	908	771	883	899	854	867
16	INA CORP GROUP	99	665	22	21	17	18	24	8,951	7,300	6,323	1122	1028	502	1734	962	903	1056
17	AMER MOTORISTS GROUP	286	686	22	22	15	15	12	8,947	6,220	3,287	567	419	308	606	1150	458	540
18	UNITED STATES F&G GR	N	705	18	27	26	26	25	7,551	10 664	6,778	2510	765	1156	927	683	1341	1165
19	WESTERN NAT MUT GRP	N	721	17	17	17	19	15	6 840	7 303	4 134	746	1275	582	548	567	872	764
20	SENTRY INS GROUP	202	737	16	11	10	11	10	6,440	4,281	2,675	575	338	745	547	1216	548	627
21	WESTERN INS GROUP	131	751	15	16	17	16	13	6,074	7,093	3564	1915	564	606	887	697	1004	942
22	RURAL MUTUAL GROUP	772	766	15	06	05	04	02	6,029	1,921	441	593	274	455	958	881	484	545
23	BITCO CORP GROUP	52	779	13	10	11	12	15	5,239	4,506	4,027	928	744	1121	1440	828	924	1001
24	CONN GEN GROUP	181	790	12	08	06	08	08	4,799	2,698	2,235	548	724	467	841	911	578	677
25	LYNN INS GROUP	489	801	11	07	06	05	03	4,580	2,699	840	855	372	727	812	1084	654	708
26	KEMPER INS GROUP	271	811	09	06	09	05	05	3,926	3,595	1,285	651	1229	331	1004	860	629	722
27	COMM UNION ASSUR COS	87	820	09	07	07	07	10	3,859	3,098	2,729	608	719	1214	1276	882	823	917
28	TRANSAMER INS GROUP	127	830	09	09	10	10	08	3,856	4,024	2,141	419	766	926	1051	631	711	771
29	CHUBB GRP OF INS COS	141	839	09	09	08	07	09	3,748	3,190	2,284	958	188	831	753	518	651	648
30	STATE FARM GROUP	N	848	09	09	11	09	09	3,715	4,496	2,316	732	682	577	1276	542	660	758
31	DORSON INS GROUP	242	856	09	07	08	06	05	3,637	3,190	1,405	1008	704	694	494	461	810	725
32	AUTO OWNERS GROUP	N	865	08	10	10	11	12	3,443	4,409	3,081	719	461	380	499	654	509	528
33	AID INS SERVICES GRP	N	873	08	08	08	10	13	3,320	3,257	3,493	774	585	558	683	934	637	706
34	IOWA NATIONAL MUTUAL	-78	881	08	09	10	13	16	3,290	4,381	4,309	652	767	1005	819	1343	824	923
35	BALDWIN UNITED GROUP	N	888	07	08	08	08	08	3026	3378	2126	404	1301	525	413	802	767	701
36	RELIANCE INS GROUP	N	895	07	08	10	09	12	2,975	4,039	3,228	413	950	842	1205	682	765	834
37	ROYAL INS GROUP	120	902	07	05	06	07	06	2,756	2,363	1,447	229	598	438	1011	1512	429	701
38	ZURICH INS GROUP	106	908	06	05	05	06	06	2,503	2,276	1,562	822	481	793	959	639	693	734
39	AMER HARDWARE MUTUAL	N	914	06	07	07	07	07	2,456	2,931	1,960	1062	668	813	928	719	837	838
40	MILWAUKEE INS GROUP	289	919	05	05	05	04	03	2,208	2,116	698	960	809	394	444	545	742	683
41	FARMERS INS GROUP	N	924	05	08	07	07	07	2,095	3,036	1,957	807	727	1162	514	910	902	815
42	TEXFI INS GROUP	126	929	05	08	07	08	15	2,011	2,930	3,958	1138	1599	1023	664	1232	1253	1131
43	SECURITY CORP	401	934	05	06	03	02	02	1,928	1,198	602	724	456	750	872	129	626	611
44	AMER GENERAL GROUP	83	938	04	05	07	07	09	1,654	2,754	2,407	641	995	849	953	705	833	841
45	W R BERKLEY CORP	N	941	04	03	04	04	05	1525	1780	1237	541	537	352	265	561	469	442
46	EXCALIBUR INS MINN	N	945	03	07	04	04	02	1,441	1,847	624	1155	1005	675	559	541	939	851
47	WESTFIELD COS GROUP	177	948	03	03	04	03	02	1,269	1,509	614	654	849	704	373	1001	744	702
48	EMPLOYERS MUTUAL COS	-118	951	03	04	04	06	08	1,264	1,791	2,035	298	427	596	974	1118	456	722
49	MINNESOTA MUTUAL F&C	N	954	03	02	03	03	03	1,189	1,394	869	721	562	363	1362	722	539	727
50	NEWS ASSN OF MINN	228	956	03	03	02	02	02	1,067	1,000	430	1081	549	215	398	358	626	560
	TOTAL 50 COS ABOVE	105		956	957	956	953	949	395 685	404,130	254 040	1006	879	841	969	852	908	912
	TOTAL ALL OTHER COS	60		44	43	44	47	51	18 007	18658	13629	775	688	661	767	774	708	730
	TOTAL INDUSTRY	103		1000	1000	1000	1000	1000	413 692	422,788	267 668	996	870	833	959	848	900	904
	NAT AGENCY COS	129		619	589	582	566	560	256 038	246 201	149 907	1058	901	854	1018	790	940	934
	STAT AGENCY COS	N		119	115	119	131	142	49 087	50 345	38 081	726	827	644	725	886	733	755
	DIRECT WRITERS	N		262	296	299	303	298	108 567	126 241	79 681	975	826	870	952	943	886	907

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Exhibit I - page 2

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BEST'S EXECUTIVE DATA SERVICE

FIVE YEAR BY LINE/BY STATE MARKETING HISTORY
MINNESOTA – WORKERS' COMPENSATION

AB-24-16

RANK	MARKET LEADERS	5 YR COMP GR RT	1981 CUM MKT SHR	MARKET SHARE 1981	1980	1979	1978	1977	DIRECT PREMIUMS WRITTEN 1981	1979	1977	ADJUSTED LOSS RATIO 1981	1980	1979	1978	1977	3 YR AVG 1979-81	5 YR AVG 1977-81
51	BERKSHIRE HATHAWAY	N	02	02	03	04	04	03	1,021	1,756	742	607	662	765	546	623	693	659
52	ALLSTATE INS GROUP	187	05	02	02	01	02	02	995	504	465	431	933	715	288	1233	686	684
53	LINCOLN NAT CORP	N	07	02	03	03	03	02	905	1,194	510	908	513	672	1037	530	686	740
54	GENERAL ACC GROUP	N	09	02	02	01	02	02	891	439	536	1222	570	1094	589	588	943	798
55	FARM BUR MUT IOWA	N	11	02	02	02	02	02	808	1,022	665	751	1593	730	412	709	1036	869
56	NATIONWIDE GROUP	N	13	02	00	00	01	00	799	164	125	668	523	111	566	252	554	526
57	RANGER INS GROUP	803	15	02	01	01	00	00	795	468	85	554	289	1238	774	1291	571	611
58	WEST BEND MUTUAL INS	N	17	02	01	01	01	02	673	267	437	748	1329	752	1259	636	901	938
59	SAFECO INS GROUP	385	18	02	02	02	01	01	646	639	210	700	617	560	1186	830	632	708
60	IDEM GROUP	162	20	01	01	01	01	01	610	600	341	-104	331	866	1235	1405	351	629
61	FEDERATED RURAL ELEC	257	21	01	01	01	01	01	604	449	207	589	183	737	167	1955	487	571
62	CITIZENS SECUR MUT	190	23	01	01	01	01	01	601	537	282	510	298	525	341	466	445	429
63	AMER FAMILY GROUP	286	24	01	01	01	01	01	562	484	188	534	1741	358	330	156	887	753
64	NATIONAL GRP	198	25	01	01	01	01	01	511	442	231	721	378	162	201	184	445	377
65	CHURCH MUTUAL INS	96	26	01	01	01	01	01	511	503	340	453	628	1286	451	708	751	682
66	SHELBY MUTUAL GROUP	-90	28	01	02	02	02	03	508	815	727	991	513	641	699	715	687	694
67	ATLANTIC MUTUAL GRP	226	29	01	01	01	01	01	490	381	186	1562	242	1597	2467	2287	1146	1498
68	FARMLAND INS SERV GR	N	30	01	01	01	01	02	477	443	514	352	73	482	595	373	295	365
69	IOWA MUTUAL GROUP	-125	31	01	01	02	02	03	457	811	765	88	794	-120	673	1134	231	565
70	CNO CASUALTY GP	-86	32	01	01	01	02	02	403	627	573	491	601	801	697	886	653	708
71	CARRIERS INS GROUP	N	33	01	01	01	01	02	385	580	504	1215	398	831	634	1081	717	766
72	ELECTRIC MUT GROUP	332	34	01	01	01	00	01	355	373	134	1909	1899	496	1232	196	1379	1234
73	CHARTER MUTUAL NE	296	35	01	01	01	01	00	352	330	129	99	-334	814	928	863	169	333
74	AMER UNIVERSAL GROUP	N	36	01	00	00	00	00	347	34	46	1034	2203	1590	1069	1725	1260	1260
75	MISSION INS GROUP	2197	36	01	00	00	00	00	342	2	2	571	465	265	-999	00	567	545
76	MEBANK MUTUAL INS	N	37	01	01	01	01	01	342	497	253	510	363	915	762	479	592	609
77	IOWA KEMPER INS CO	N	38	01	01	02	02	01	297	637	359	711	908	871	442	1018	847	778
78	CIR OF AMER CORP GRP	N	38	01	00	00	00	01	237	29	142	517	1893	-707	1654	288	878	797
79	MIDLAND INS GROUP	N	39	01	01	00	01	01	230	141	212	264	263	1810	335	1107	333	433
80	STATESMAN INS GROUP	-377	40	01	01	02	03	04	223	940	1,194	845	1884	640	833	502	997	810
81	DRUGGISTS MUTUAL INS	N	40	00	00	00	00	01	195	157	146	140	-87	346	132	205	144	151
82	OLD REPUBLIC GROUP	N	40	00	00	00	00	00	156	133	10	2831	1631	00	-999	-288	1563	1589
83	INTEGRITY MUTUAL INS	N	41	00	00	00	00	01	141	78	184	1122	511	411	793	105	720	575
84	UNITED FIRE & CAS GR	N	41	00	00	00	00	00	127	141	67	440	346	01	-55	1088	254	302
85	FARMERS MUTUAL GRP	172	41	00	00	00	00	00	125	76	62	364	420	461	-40	-352	409	203
86	EVANSTON GROUP	-	42	00	00	-	-	-	124	-	-	574	561	-	-	-	-	-
87	WARNER GROUP	N	42	00	00	01	01	02	98	409	441	964	-101	-990	525	156	462	417
88	TRAV MAR & FIRE GRP	6286	42	00	00	00	00	00	87	15	2	383	11	199	264	00	281	271
89	PURITAN INS GROUP	-	42	00	00	00	-	-	85	20	-	13	189	374	-	-	54	-
90	MERRIEN INS GROUP	-	43	00	-	-	-	-	84	-	-	00	-	-	-	-	-	-
91	BADGER STATE MUT CAS	273	43	00	00	00	00	00	69	51	19	1395	512	195	783	196	724	700
92	PREFERRED RISK GROUP	215	43	00	00	00	00	00	63	41	32	315	135	449	75	297	290	258
93	PROTECTIVE INS CO	N	43	00	01	00	00	00	62	59	54	6547	361	-999	2030	3263	1261	1592
94	NAT AVIATION GROUP	N	43	00	00	00	00	00	59	59	64	323	48	-10	-10	98	135	94
95	MCI MUTUAL INS GRP	N	43	00	00	00	00	00	52	101	30	460	389	273	1427	795	586	772
96	GRAIN DEALERS MUT GR	N	43	00	00	00	00	00	45	57	25	633	23	201	545	696	261	349
97	ALLIANZ GROUP	-	43	00	00	00	00	-	41	27	-	1955	212	247	148	-	766	-
98	INDIANA LUMBERMANS GRP	-	44	00	00	00	-	-	34	51	-	76	332	175	-	-	77	-
99	EMC CORP	N	44	00	00	00	00	00	27	2	1	9999	497	9999	999	3576	9999	9999
100	HOWARD INS GROUP	N	44	00	00	00	00	00	22	15	15	552	36	999	804	1819	627	14
	TOTAL COS ABOVE	83		44	39	42	43	46	18,078	17,600	12,255	752	660	687	726	773	700	716
	TOTAL ALL OTHER COS	104		956	961	958	957	954	395,614	405,188	255,414	1007	879	839	970	851	908	912
	TOTAL INDUSTRY	103		1000	1000	1000	1000	1000	413,692	422,788	267,668	996	870	833	959	848	900	904
	NAT AGENCY COS	129		619	589	582	566	560	256,038	246,203	149,907	1058	901	854	1018	790	940	934
	STATE AGENCY COS	N		119	115	119	131	142	49,067	50,345	38,081	726	827	644	725	886	733	755
	DIRECT WRITERS	N		262	296	299	303	298	108,567	126,241	79,681	975	826	870	952	943	886	907

While the information was obtained from sources believed to be reliable, its accuracy is not guaranteed

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In the Matter of Proposed Rules Governing Deregulation of Workers' Compensation Insurance Rates during Transition to Competitive Rating Effective January 1, 1986 (MCAR §§ 1.9140-1.9143)

STATEMENT OF COMPLIANCE WITH RULEMAKING PROCEDURES

I, Special Assistant Attorney General John C. Bjork, do hereby declare that I have examined the rules and all related documents and that, based on my examination and my personal familiarity with the applicable procedures, the Administrative Procedure Act, the rules of the Office of Administrative Hearings, and the rules of the Attorney General have been followed. Any exceptions are noted below.

John C. Bjork

JOHN C. BJORK
Special Assistant
Attorney General

Dated: May 13, 1983

In the Matter of Proposed Rules Governing Deregulation of Workers' Compensation Insurance Rates During Transition to Competitive Rating Effective January 1, 1986 (4 MCAR §§ 1.9140 - 1.9143)

AFFIDAVIT OF MAILING NOTICE OF SUBMISSION TO THE ATTORNEY GENERAL

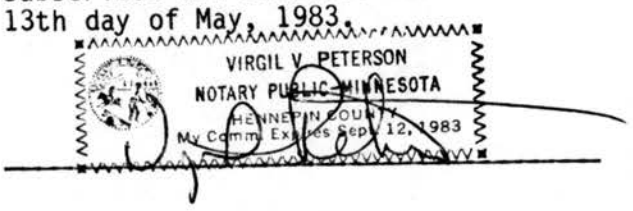
STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Debbi J. Lindlief, being first duly sworn, deposes and says:

That on the 13th day of May, 1983, in the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Submission to the Attorney General by depositing in the State of Minnesota Central Mail System for United States mailing at the City of St. Paul, a copy thereof, properly enveloped, with postage prepaid, to all persons and associations who requested notice that the rules in the above-entitled matter have been submitted to the Attorney General.

Debbi J. Lindlief

Subscribed and sworn to before me this 13th day of May, 1983.



STATE OF MINNESOTA
DEPARTMENT OF COMMERCE
INSURANCE DIVISION

In the Matter of Proposed Rules Governing Deregulation of Workers' Compensation Insurance Rates During Transition to Competitive Rating Effective January 1, 1986 (4 MCAR §§ 1.9140 - 1.9143)

NOTICE OF SUBMISSION TO THE ATTORNEY GENERAL

Pursuant to your request and in accordance with Minn. Stat. § 14.16 (1982):

PLEASE TAKE NOTICE that the above-captioned rules have been submitted to the Office of the Attorney General on this date, May 13, 1983, for review as to form and legality. Pursuant to 1 MCAR § 1.206 B., the Attorney General will not approve the rules for at least 10 calendar days after receipt to allow any person or association time to comment on the legality of the rules, after which that Office will complete its review. If you desire to comment on the legality of the above-captioned rules, you should direct your comments to the Office of the Attorney General, 204 State Administration Building, 50 Sherburne Avenue, St. Paul, Minnesota 55155, (612) 296-1288. Please note that the above-cited rule of the Attorney General also provides that a copy of any written comments submitted to the Attorney General must be submitted simultaneously to this agency.

If you are interested in determining what changes, if any, were made in the proposed rules after publication in the State Register and before submission to the Attorney General, you may contact Nancy Myers or Judith Hale, Insurance Division, 500 Metro Square Building, St. Paul, Minnesota 55101.

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