

# Enabling Statute

## Minnesota Statutes Sections 79.34 to 79.40

### 79.34. CREATION OF REINSURANCE ASSOCIATION

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

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

(2) all group self-insurers granted authority to self-insure pursuant to section 176.181 are considered single entities for purposes of the exercise of all the rights and duties of membership in the reinsurance association. As a condition of its authority to self-insure workers' compensation liability, and for losses incurred after December 31, 1983, the state is a member of the reinsurance association and is bound by its plan of operation. The commissioner of administration represents the state in the exercise of all the rights and duties of membership in the reinsurance association. The amounts necessary to pay the state's premiums required for coverage by the workers' compensation reinsurance association are appropriated from the general fund to the commissioner of administration. The University of Minnesota shall pay its portion of workers' compensation reinsurance premiums directly to the workers' compensation reinsurance association. For the purposes of this section, "state" means the administrative branch of state government, the legislative branch, the judicial branch, the University of Minnesota, and any other entity whose workers' compensation liability is paid from the state revolving fund. The commissioner of management and budget may calculate, prorate, and charge a department or agency the portion of premiums paid to the reinsurance association for employees who are paid wholly or in part by federal funds, dedicated funds, or special revenue funds. The reinsurance association is not a state agency. Actions of the reinsurance association and its board of directors and actions of the commissioner of labor and industry with respect to the reinsurance association are not subject to

chapters 13 and 15. All property owned by the association is exempt from taxation. The reinsurance association is not obligated to make any payments or pay any assessments to any funds or pools established pursuant to this chapter or chapter 176 or any other law.

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

Subd. 2. Losses; retention limits. The reinsurance association shall provide and each member shall accept indemnification for 100 percent of the amount of ultimate loss sustained in each loss occurrence relating to one or more claims arising out of a single compensable event, including aggregate losses related to a single event or occurrence which constitutes a single loss occurrence, under chapter 176 on and after October 1, 1979, in excess of a low, a high, or a super retention limit, at the option of the member. In case of occupational disease causing disablement on and after October 1, 1979, each person suffering disablement due to occupational disease is considered to be involved in a separate loss occurrence. On January 1, 1995, the lower retention limit is \$250,000, which shall also be known as the 1995 base retention limit. On each January 1 thereafter, the cumulative annual percentage changes in the statewide average weekly wage after October 1, 1994, as determined in accordance with section 176.011, subdivision 20, shall first be multiplied by the 1995 base retention limit, the result of which shall then be added to the 1995 base retention limit. The resulting figure shall be rounded to the nearest \$10,000, yielding the low retention limit for that year, provided that the low retention limit shall not be reduced in any year. The high retention limit shall be two times the low retention limit and shall be adjusted when the low retention limit is adjusted. The super retention limit shall be four times the low retention limit and shall be adjusted when the low retention limit is adjusted. Ultimate loss as used in this section means the actual loss amount which a member is obligated to pay and which is paid by the member for workers' compensation benefits payable under chapter 176 and shall not include claim expenses, assessments, damages or penalties. For losses incurred on or after January 1, 1979, any amounts paid by a member pursuant to sections 176.183, 176.221, 176.225, and 176.82 shall not be included in ultimate loss and shall not be indemnified by the reinsurance association. A loss is incurred by the reinsurance association on the date on which the accident or other compensable event giving rise to the loss occurs, and a member is liable for a loss up to its retention limit in effect at the time that the loss was incurred, except that members which are determined by the reinsurance association to be controlled by or under common control with another member, and which are liable for claims from one or more employees entitled to compensation for a single compensable event, including aggregate losses relating to a single loss occurrence, may aggregate their losses and obtain indemnification from the reinsurance association for the aggregate losses in excess of the highest retention limit selected by any of the members in effect at the time the loss was incurred. Each member is liable for payment of its ultimate loss and shall be entitled to indemnification from the reinsurance association for the ultimate loss in excess of the member's retention limit in effect at the time of the loss occurrence.

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

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

Subd. 2a. Deficiency. If the board determines that a distribution of excess surplus resulted in inadequate funds being available to pay claims that arose during the period upon which that distribution was calculated, the board shall determine the amount of the deficiency. The deficiency shall be made up by imposing an assessment rate against

self-insured members and policyholders of insurer members. The board shall notify the commissioner of commerce of the amount of the deficiency and recommend an assessment rate. The commissioner shall order an assessment at a rate and for the time period necessary to eliminate the deficiency. The assessment rate shall be applied to the exposure base of self-insured employers and insured employers. The assessment may not be retroactive and applies only prospectively. The assessment may be spread over a period of time that will cause the least financial hardship to employers. All assessments under this subdivision are payable to the association. The commissioner may issue orders necessary to administer this section.

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

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

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

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

Subd. 6. Identifying losses in report. The commissioner of labor and industry shall require each member to identify the portion of all losses which exceed its retention limit selected under this section in any report filed with the workers' compensation insurers rating association of Minnesota or filed with the department of labor and industry for use in reviewing the workers' compensation schedule of rates.

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

### **79.35. DUTIES; RESPONSIBILITIES; POWERS**

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

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

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

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

(d) Calculate and charge to members a total premium sufficient to cover the expected liability which the reinsurance association will incur, together with incurred or estimated to be incurred operating and administrative expenses for the period to which this premium applies and actual claim payments to be made by members, during the period to which this premium applies, for claims in excess of the prefunded limit in effect at the time the loss was incurred. Each member shall be charged a premium established by the board as sufficient to cover the reinsurance association's incurred liabilities and expenses between the member's selected retention limit and the prefunded limit. The prefunded limit shall be 20 times the lower retention limit established in section 79.34, subdivision 2. Each member shall be charged a proportion of the total premium calculated for its selected retention limit in an amount equal to its proportion of the exposure base of all members during the period to which the reinsurance association premium will apply. The exposure base shall be determined by the board and is subject to the approval of the commissioner of labor and industry. In determining the exposure base, the board shall consider, among other things, equity, administrative convenience, records maintained by members, amenability to audit, and degree of risk refinement. Each member shall also be charged a premium determined by the board to equitably

distribute excess or deficient premiums from previous periods including any excess or deficient premiums resulting from a retroactive change in the prefunded limit. The premiums charged to members shall not be unfairly discriminatory as defined in section 79.074. All premiums shall be approved by the commissioner of labor and industry;

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

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

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

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

### **79.36. ADDITIONAL POWERS**

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

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

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

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

(d) Contract for goods and services, including but not limited to independent claims

management, actuarial, investment, and legal services from others within or without this state to assure the efficient operation of the reinsurance association;

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

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

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

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

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

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

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

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

Subd. 3. Insured employers. A policyholder, other than a policyholder insured by the assigned risk plan or the state fund mutual insurance company, shall receive a refund of a share of the distribution equal to the policyholder's share of the annual total earned Minnesota workers' compensation insurance premium, as reported to the commissioner

of commerce in the most recent annual statements of insurers, including the assigned risk plan and the state fund mutual insurance company.

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

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

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

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

Subd. 8. Information required. Insurers and the workers' compensation insurers rating association of Minnesota must provide the workers' compensation reinsurance association with information necessary to administer and calculate the refunds to policyholders governed by this section within 60 days of a request by the association. For the purpose of this subdivision, "insurer" includes the assigned risk plan.

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

Subd. 10. Unclaimed refund. Any part of the refund not distributed within one year after the due date of a refund under this section due to the inability to identify or locate policyholders remains with the workers' compensation reinsurance association.

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

### **79.362. WORKERS' COMPENSATION REINSURANCE ASSOCIATION EXCESS SURPLUS DISTRIBUTION**

An order of the commissioner of the department of labor and industry relating to the distribution of excess surplus of the workers' compensation reinsurance association shall be reviewed by the commissioner of commerce. The commissioner of commerce may amend, approve, or reject an order or issue further orders to accomplish the purposes of section 79.361 and Laws 1993, chapter 361, section 2. The commissioner may not change the amount of the distribution ordered by the commissioner of labor and industry without agreement of the commissioner of labor and industry.

### **79.363. DISTRIBUTION OF EXCESS SURPLUS**

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

### **79.37. BOARD OF DIRECTORS**

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

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

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

## **79.371. FUNDS FOR THE STATE FUND MUTUAL INSURANCE COMPANY**

Subdivision 1. Association obligation. The reinsurance association shall, no later than July 1, 1993, make funds available to the state fund mutual insurance company in the amount of \$20,000,000 according to terms and conditions approved by the commissioner. The obligation to make these funds available supersedes any inconsistent requirements of this chapter, the bylaws or plan of operation of the association, or duty or obligation imposed upon the board.

Subd. 2. Personal liability; excluded. The members of the board and officers or employees of the association are not liable personally, either jointly or severally, for the obligation created by this section.

Subd. 3. State and special compensation fund obligation. The obligation of the state fund mutual to the state of Minnesota pursuant to section 176A.11 and any obligations to the special compensation fund for claims incurred prior to the effective date of the obligation created pursuant to section 79.371 shall be subordinate to that obligation. In the event of the insolvency of the state fund mutual the obligation to the workers' compensation reinsurance association created pursuant to section 79.371 shall be satisfied in full before any payments are made to satisfy the obligations to the state or the special compensation fund.

## **79.38. PLAN OF OPERATION**

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

- (a) The establishment of necessary facilities;
- (b) The management and operation of the reinsurance association;
- (c) A preliminary premium, payable by each member in proportion to its total premium in the year preceding the inauguration of the reinsurance association, for initial expenses necessary to commence operation of the reinsurance association;
- (d) Procedures to be utilized in charging premiums, including adjustments from excess or deficient premiums from prior periods;
- (e) Procedures governing the actual payment of premiums to the reinsurance association;
- (f) Reimbursement of each member of the board by the reinsurance association for actual and necessary expenses incurred on reinsurance association business;
- (g) The composition, terms, compensation and other necessary rules consistent with section 79.37 for boards of directors of the reinsurance association;

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

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

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

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

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

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

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

### **79.39. APPLICABILITY OF CHAPTER 79**

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

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

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

### **79.40. PREMIUM INCLUSION IN RATEMAKING**

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