

FIRST REGULAR SESSION

# SENATE BILL NO. 385

92ND GENERAL ASSEMBLY

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INTRODUCED BY SENATOR SCOTT.

Read 1st time January 30, 2003, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

1261S.011

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## AN ACT

To repeal section 287.310, RSMo, and to enact in lieu thereof one new section relating to approval of workers' compensation policies and deductible plans.

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*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Section 287.310, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 287.310, to read as follows:

287.310. 1. Every policy of insurance against liability under this chapter shall be in accordance with the provisions of this chapter and shall be in a form approved by the director of the department of insurance. Such policy shall contain an agreement that the insurer accepts all of the provisions of this chapter, that the same may be enforced by any person entitled to any rights under this chapter as well as by the employer, that the insurer shall be a party to all agreements or proceedings under this chapter, and his appearance may be entered therein and jurisdiction over his person may be obtained as in this chapter provided, and such covenants shall be enforceable notwithstanding any default of the employer.

2. Any insurer issuing a workers' compensation policy may offer, as a part of the policy or as an optional endorsement to the policy, a deductible plan or plans to allow the insured employer to self-insure for the deductible amount, subject to the approval of the director of insurance. No deductible plan shall be approved which permits, directly or indirectly, any part of the deductible to be charged to or passed on to an employee of the insured employer.

3. Any deductible plan authorized under this section may provide for the agreement between the insurer and the insured employer regarding the conditions under which the employer shall be responsible for the payment of any deductible amount to the person or health care provider entitled to such payment pursuant to this chapter, except that no deductible plan

shall be approved unless the insurer shall retain the ultimate responsibility for the payment of compensable claims. Where the agreement provides for the payment of the deductible amount by the insurer, the insurer shall pay all the deductible amount applicable to a compensable claim directly to the person or health care provider entitled to the benefit pursuant to this chapter, and shall then be reimbursed by the insured employer for such payments. The insured employer shall be liable to the insurer up to the limit of the deductible, and any failure on the part of the insured employer to provide such reimbursements shall be treated under the workers' compensation policy in the same manner as a nonpayment of premium. An employer's failure to reimburse deductible amounts to the insurer shall not cause the unpaid amount to be paid from the second injury fund under section 287.220. The insurer shall have the right to offset unpaid deductible amounts against unearned premiums, if any, in the event of a cancellation of the policy.

4. Deductible plans shall provide appropriate premium reductions, as approved by the director of insurance, to reflect the type and level of the deductible amount selected. Losses paid by the employer under the deductible shall be credited against the employer's experience modification while the deductible option is used, unless the employer exercises the right to purchase a gross reportable deductible plan.

5. An insurer shall not be required to offer a deductible if, as a result of a credit investigation, the insurer determines that the employer does not have the financial ability to be responsible for the payment of deductible amounts.

6. An insurer shall service and, if necessary, defend all claims that arise during the policy period, including those claims payable in whole or in part from the deductible amount.

7. No employer who self-insures for a deductible amount as provided in this section shall harass, discharge, or otherwise discriminate against any employee because the employee has taken any action or is considering taking action which might result in the insured employer being required to pay a deductible amount.

8. Any rating organization or advisory organization authorized by the provisions of section 287.330 may file on behalf of its members, deductible plans for approval by the director of insurance.

9. In calculating the taxes owed under the provisions of this chapter for workers' compensation policies with deductible options, the premiums upon which the taxes are assessed shall [be deemed to be those premiums which] **not include the portion of the premium that** would have been paid in the absence of the deductible option.

10. The director of insurance shall, by rule, specify any data reporting requirements applicable to workers' compensation policies with deductible options.

Unofficial

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