

FIRST REGULAR SESSION

SENATE BILL NO. 71

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR BROWN.

Pre-filed December 1, 2018, and ordered printed.

ADRIANE D. CROUSE, Secretary.

0515S.01I

AN ACT

To repeal section 287.310, RSMo, and to enact in lieu thereof one new section relating to workers' compensation premiums.

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Section A. Section 287.310, RSMo, is repealed and one new section
2 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
2 shall be in accordance with the provisions of this chapter and shall be in a form
3 approved by the director of the department of insurance, financial institutions
4 and professional registration. Such policy shall contain an agreement that the
5 insurer accepts all of the provisions of this chapter, that the same may be
6 enforced by any person entitled to any rights under this chapter as well as by the
7 employer, that the insurer shall be a party to all agreements or proceedings
8 under this chapter, and his appearance may be entered therein and jurisdiction
9 over his person may be obtained as in this chapter provided, and such covenants
10 shall be enforceable notwithstanding any default of the employer.

11 2. Any insurer issuing a workers' compensation policy may offer, as a part
12 of the policy or as an optional endorsement to the policy, a deductible plan or
13 plans to allow the insured employer to self-insure for the deductible amount,
14 subject to the approval of the director of the department of insurance, financial
15 institutions and professional registration. No deductible plan shall be approved
16 which permits, directly or indirectly, any part of the deductible to be charged to
17 or passed on to an employee of the insured employer.

18 3. Any deductible plan authorized under this section may provide for the
19 agreement between the insurer and the insured employer regarding the
20 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 the department of insurance, financial institutions and professional registration, 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 the department of insurance, financial institutions

57 and professional registration.

58 9. In calculating the administrative surcharge owed pursuant to the
59 provisions of this chapter for workers' compensation policies with deductible
60 options, the administrative surcharge owed will be based upon the total
61 premiums, which would have been paid for the deductible credit portion of the
62 policy. The second injury fund surcharge owed by the employer who purchases
63 a deductible policy will be assessed upon the total premiums which would have
64 been paid in the absence of the deductible option. The premium taxes owed
65 pursuant to this chapter for workers' compensation policies with deductible
66 options shall be assessed upon those total premiums paid upon the insurance
67 policy excluding the deductible credit portion of the policy. The portion of the
68 workers' compensation policy with a deductible option that is subject to an
69 administrative surcharge shall not be subject to premium taxes, nor with respect
70 to foreign insurance companies, the retaliatory tax imposed pursuant to section
71 375.916.

72 10. The director of the department of insurance, financial institutions and
73 professional registration shall, by rule, specify any data reporting requirements
74 applicable to workers' compensation policies with deductible options.

75 **11. No policy of insurance against liability under this chapter**
76 **shall be approved by the director of the department of insurance,**
77 **financial institutions and professional registration if, when**
78 **determining the premium to be paid by an employer, a workers'**
79 **compensation insurer includes as part of an employer's payroll any of**
80 **the following:**

81 **(1) Monetary bonuses, paid by an employer to an employee, of up**
82 **to three percent of the employee's yearly compensation from such**
83 **employer; or**

84 **(2) Contributions made by an employer to an employee's**
85 **individual retirement account, if such account is authorized under**
86 **state or federal law.**

✓