

SECOND REGULAR SESSION

SENATE BILL NO. 672

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR BROWN.

Pre-filed December 1, 2019, and ordered printed.

ADRIANE D. CROUSE, Secretary.

3387S.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Section A. Section 287.310, RSMo, is repealed and one new section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 commerce and insurance. Such
4 policy shall contain an agreement that the insurer accepts all of the provisions
5 of this chapter, that the same may be enforced by any person entitled to any
6 rights under this chapter as well as by the employer, that the insurer shall be a
7 party to all agreements or proceedings under this chapter, and his appearance
8 may be entered therein and jurisdiction over his person may be obtained as in
9 this chapter provided, and such covenants shall be enforceable notwithstanding
10 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 commerce and
15 insurance. No deductible plan shall be approved which permits, directly or
16 indirectly, any part of the deductible to be charged to or passed on to an employee
17 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

21 deductible amount to the person or health care provider entitled to such payment
22 pursuant to this chapter, except that no deductible plan shall be approved unless
23 the insurer shall retain the ultimate responsibility for the payment of
24 compensable claims. Where the agreement provides for the payment of the
25 deductible amount by the insurer, the insurer shall pay all the deductible amount
26 applicable to a compensable claim directly to the person or health care provider
27 entitled to the benefit pursuant to this chapter, and shall then be reimbursed by
28 the insured employer for such payments. The insured employer shall be liable
29 to the insurer up to the limit of the deductible, and any failure on the part of the
30 insured employer to provide such reimbursements shall be treated under the
31 workers' compensation policy in the same manner as a nonpayment of premium.
32 An employer's failure to reimburse deductible amounts to the insurer shall not
33 cause the unpaid amount to be paid from the second injury fund under section
34 287.220. The insurer shall have the right to offset unpaid deductible amounts
35 against unearned premiums, if any, in the event of a cancellation of the policy.

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

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

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

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

53 8. Any rating organization or advisory organization authorized by the
54 provisions of section 287.330 may file on behalf of its members deductible plans
55 for approval by the director of the department of commerce and insurance.

56 9. In calculating the administrative surcharge owed pursuant to the

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

70 10. The director of the department of commerce and insurance shall, by
71 rule, specify any data reporting requirements applicable to workers' compensation
72 policies with deductible options.

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

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

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

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