

SECOND REGULAR SESSION

# SENATE BILL NO. 735

99TH GENERAL ASSEMBLY

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INTRODUCED BY SENATOR SCHATZ.

Pre-filed December 1, 2017, and ordered printed.

ADRIANE D. CROUSE, Secretary.

4670S.011

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## AN ACT

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

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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Section A. Section 287.310, RSMo, is repealed and one new section  
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

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 insurance, financial institutions  
38 and professional registration, to reflect the type and level of the deductible  
39 amount selected. Losses paid by the employer under the deductible shall be  
40 credited against the employer's experience modification while the deductible  
41 option is used, unless the employer exercises the right to purchase a gross  
42 reportable deductible plan.

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

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

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

54 8. Any rating organization or advisory organization authorized by the  
55 provisions of section 287.330 may file on behalf of its members deductible plans  
56 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) A monetary bonus, 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.**

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