

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 385
92ND GENERAL ASSEMBLY

Reported from the Committee on Financial Services, May 8, 2003, with recommendation that the House Committee Substitute for Senate Committee Substitute for Senate Bill No. 385 Do Pass.

STEPHEN S. DAVIS, Chief Clerk

1261L.06C

AN ACT

To repeal section 287.310, RSMo, and to enact in lieu thereof three new sections relating to workers' compensation policies.

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

Section A. Section 287.310, RSMo, is repealed and three new sections enacted in lieu thereof, to be known as sections 287.310, 287.716, and 287.717, to read as follows: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.

EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law. Matter in boldface type in the above law is proposed language.

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 would have been paid in the absence of the deductible option.] **In calculating the administrative surcharge owed pursuant to the provisions of this chapter for workers' compensation policies with deductible options, the administrative surcharge owed will be based upon the total premiums, which would have been paid for the deductible credit portion of the policy. The second injury fund surcharge owed by the employer who purchases a deductible**

policy will be assessed upon the total premiums which would have been paid in the absence of the deductible option. The premium taxes owed pursuant to this chapter for workers' compensation policies with deductible options shall be assessed upon those total premiums paid upon the insurance policy excluding the deductible credit portion of the policy. The portion of the workers' compensation policy with a deductible option that is subject to an administrative surcharge shall not be subject to premium taxes, nor with respect to foreign insurance companies, the retaliatory tax imposed pursuant to section 375.916, RSMo.

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

287.716. 1. For the purpose of providing funds for the administration of the workers' compensation division, the division director shall impose an annual administrative surcharge upon every workers' compensation deductible plan policyholder insured pursuant to the provisions of this chapter. An annual administrative surcharge imposed pursuant to this section shall apply to all workers' compensation policies with a deductible option that are written or renewed on or after January 1, 2004.

2. In calculating the administrative surcharge owed pursuant to the provisions of this chapter for workers' compensation policies with deductible options, the administrative surcharge owed will be based upon the total premiums, which would have been paid for the deductible credit portion of the policy. The annual administrative surcharge assessed shall be set at the same rate as the premium tax imposed by section 287.690 for each calendar year.

3. All workers' compensation insurers shall be notified by the division of workers' compensation within ten days of the determination of the administrative surcharge percentage to be imposed for, and paid in, the following calendar year.

287.717. 1. Beginning January 1, 2004, the administrative surcharge established pursuant to section 287.716, shall be collected from deductible plan policyholders by each insurer at the same time and in the same manner that the premium is collected, but no insurer or its agent shall be entitled to any portion of the administrative surcharge as a fee or commission for its collection. The administrative surcharge is not subject to any taxes, licenses, or fees.

2. All administrative surcharges imposed pursuant to section 287.716 shall be paid to the Missouri director of revenue and shall be deposited to the workers' compensation administrative fund.

3. The amount of the administrative surcharge due for the current calendar year shall be paid in four approximately equal estimated quarterly installments, and a fifth reconciling installment. The first four installments shall be based upon the amount of administrative surcharge payable in the calendar year for which the surcharge is imposed. The quarterly installments shall be made on the first day of March, the first day of June, the first day of

September, and the first day of December. On or before the first day of March of each year, every such insurer shall submit a report, verified by the affidavit of its president and secretary or other chief officers or agents, to the director of the department of insurance, stating the amount of all such total premiums which would have been paid for the deductible portion.

4. If after the end of any calendar year, the amount of the actual administrative surcharge due is less than the total amount of the installments actually paid, the amount by which the amount paid exceeds the amount due shall only be credited against the administrative surcharge for the following year and deducted from the quarterly installment due on June first and any other payments required by this section until the credit is exhausted. In the event no such payments are due and upon application of the insurer, the director of revenue may refund the amount of credit if no other obligation is owed to the state.

5. If a deductible plan policyholder fails to make payment of the administrative surcharge, or an insurer fails to make timely transfer to the director of revenue of administrative surcharges actually collected from deductible plan policyholders, as required by this section, a late charge of one-half of one percent of the administrative surcharge unpaid, or transferred, shall be assessed against the liable deductible plan policyholder or insurer. Late charges assessed pursuant to this subsection shall be collected in a civil action by a summary proceeding brought by the director of the division of workers' compensation.

6. If the administrative surcharges imposed by this section are not paid when due, the deductible plan policyholder or insurer shall be required to pay, as part of such administrative surcharge, interest thereon at the rate of one and one-half percent per month for each month or fraction thereof delinquent. In the event the state prevails in any dispute concerning an assessment of the administrative surcharge, which has not been paid by the policyholder or insurer, interest shall be paid upon the amount found due to the state at the rate of one and one-half percent per month for each month or fraction thereof delinquent.

7. The division may authorize electronic transfer of all forms, reports, payments, and other information deemed appropriate by the division as required pursuant to this section and sections 287.690, 287.710, 287.715, and 287.716. Information filed pursuant to this section and sections 287.690, 287.710, 287.715, and 287.716 and under any rules promulgated by the division pursuant to this section and sections 287.690, 287.710, 287.715, and 287.716 shall be confidential and not subject to chapter 610, RSMo.

8. This section shall not apply to any employer or group of employers authorized by the division to self-insure their liability pursuant to this chapter.