

FIRST REGULAR SESSION

# HOUSE BILL NO. 490

## 92ND GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE LUETKEMEYER.

Read 1<sup>st</sup> time February 18, 2003, and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

1574L.011

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### AN ACT

To repeal section 287.310, RSMo, and to enact in lieu thereof two new sections relating to workers' compensation 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Section A. Section 287.310, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 287.310 and 287.717, to read as follows: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 **or her** appearance may be entered therein and jurisdiction over his **or her** 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

**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 new proposed language.**

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

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

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

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

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

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

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

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

**287.717. 1. For the purpose of providing funds for the administration of the**

2 division of workers' compensation, the director of the division may impose an annual  
3 surcharge upon every workers' compensation deductible plan policyholder insured  
4 pursuant to the provisions of this chapter. An annual surcharge imposed under this  
5 section shall apply to all workers' compensation policies with a deductible option that are  
6 written or renewed on or after the effective date of this section.

7       2. In calculating the surcharge owed under this section, the premium upon which  
8 the surcharges are assessed shall be deemed to be that portion of premium which would  
9 have been paid in the absence of the deductible option less the portion of premium paid  
10 under the deductible option. The annual surcharge assessed shall in no event exceed the  
11 lesser of two percent or the rate of tax imposed upon insurance carriers under section  
12 287.690.

13       3. All policyholders shall be notified by the division of workers' compensation prior  
14 to December thirty-first of each year as to the surcharge percentage to be imposed for and  
15 paid in the following calendar year.

16       4. The surcharge shall be collected from policyholders by each insurer at the same  
17 time and in the same manner that the premium is collected, but no insurer or its agent shall  
18 be entitled to any portion of the surcharge as a fee or commission for its collection. The  
19 surcharge is not subject to any taxes, licenses, or fees.

20       5. All surcharges imposed by this section shall be paid to the Missouri director of  
21 revenue and shall be deposited to the workers' compensation administrative fund.

22       6. Such surcharge amounts shall be paid annually by insurers, and insurers shall  
23 pay the amounts not later than the thirtieth day of the month following the end of the  
24 calendar year in which the amount is received from policyholders.

25       7. If a policyholder fails to make payment of the surcharge or an insurer fails to  
26 make timely transfer to the director of revenue of surcharges actually collected from  
27 policyholders as required by this section, a penalty of one-half of one percent of the  
28 surcharge unpaid or untransferred shall be assessed against the liable policyholder or  
29 insurer. Penalties assessed under this subsection shall be collected in a civil action by a  
30 summary proceeding brought by the director of the division of workers' compensation.