

Assembly Bill No. 2490

Passed the Assembly August 31, 2010

Chief Clerk of the Assembly

Passed the Senate August 30, 2010

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2010, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add Section 11658.5 to the Insurance Code, relating to workers' compensation insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 2490, Jones. Workers' compensation insurance: dispute resolution: arbitration clauses.

Existing law requires that a workers' compensation insurance policy or endorsement not be issued by an insurer unless the insurer files a copy of the form or endorsement with the rating organization and 30 days have expired from the date the form or endorsement is received by the commissioner from the rating organization without notice from the commissioner, unless the commissioner gives written approval of the form or the endorsement prior to that time.

This bill would require that any agreement, other than a settlement agreement resolving a particular dispute, between an employer, whose principal place of business is in California, and a workers' compensation insurer concerning resolution of disputes, including, but not limited to, an arbitration clause arising out of a workers' compensation policy or endorsement, shall be part of the form or endorsement filed with the rating organization, shall be provided to the employer contemporaneously with any written quote that offers to provide insurance coverage, and shall contain provisions to resolve disputes that arise in this state in the California courts and under California law. The bill would provide, however, that prior to the inception of the policy, employers and workers' compensation insurance companies may, after freely negotiating, expressly agree to a choice of law or a choice of forum other than California. Failure to observe those requirements would render any dispute resolution provision void and unenforceable.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) All California employers subject to the Workers' Compensation Law are required by law to obtain insurance for their employees.

(b) Workers' compensation policies and endorsements are highly regulated and designed primarily to protect the worker and ensure prompt payment of claims.

(c) The Legislature has authorized the Insurance Commissioner (commissioner) to oversee the form and substance of all workers' compensation insurance policies and endorsements.

(d) Insurance companies providing workers' compensation policies and endorsements are required by law to file the policies and endorsements with the rating organization for transfer to the commissioner.

(e) Disputes between employers and insurance companies regarding workers' compensation plans can arise, and resolution of these disputes through litigation can be expensive, uncertain, and time consuming.

(f) In an effort to save time and costs, and because of the uncertainty of litigation, workers' compensation carriers and employers use arbitration to resolve disputes.

(g) California has a compelling state interest in ensuring that workers' compensation policies and endorsements are enforced under California law and not subject to interpretation by other jurisdictions, and that any dispute resolution proceedings are conducted within its borders.

(h) Employers and workers' compensation carriers should be freely able to negotiate and agree to the terms of arbitration without undermining the protections afforded to California employers under California law.

SEC. 2. Section 11658.5 is added to the Insurance Code, to read:

11658.5. (a) Any agreement, other than a settlement agreement resolving a particular dispute, between an employer, whose principal place of business is in California, and a workers' compensation insurer concerning resolution of disputes, including, but not limited to, an arbitration clause arising out of a workers' compensation policy or endorsement shall conform to all of the following:

(1) It shall be part of the form or endorsement filed with the rating organization pursuant to Section 11658, and shall be

provided to the employer contemporaneously with any written quote that offers to provide insurance coverage.

(2) It shall contain a choice of law provision that identifies California law as the law to be used to resolve any dispute that arises in California.

(3) It shall contain a forum selection provision that identifies California as the proper venue for any proceeding regarding a dispute that arises in California.

(4) Notwithstanding paragraphs (2) and (3), prior to the inception of the policy, employers and workers' compensation insurance companies may, after freely negotiating, expressly agree to a choice of law or a choice of forum other than California.

(b) Failure to observe the requirements of this section shall render any dispute resolution provision void and unenforceable.

Approved _____, 2010

Governor