

AMENDED IN ASSEMBLY AUGUST 22, 2011

AMENDED IN ASSEMBLY JULY 13, 2011

AMENDED IN ASSEMBLY JULY 1, 2011

AMENDED IN ASSEMBLY JUNE 23, 2011

AMENDED IN SENATE MARCH 25, 2011

SENATE BILL

No. 684

Introduced by Senator Corbett

February 18, 2011

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

LEGISLATIVE COUNSEL'S DIGEST

SB 684, as amended, Corbett. 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 a rating organization and 30 days have expired from the date the form or endorsement is received by the Insurance 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 an insurer that intends to use a dispute resolution or arbitration agreement to resolve disputes arising in California out of a workers' compensation insurance policy or endorsement issued to a California employer, as defined, to disclose to the employer, contemporaneously with any written quote that offers to provide insurance coverage, that choice of law and choice of venue or

forum may be a jurisdiction other than California and that these terms are negotiable between the insurer and the employer. The bill would require that the employer sign the disclosure, as evidence of receipt, when the employer accepts the offer of coverage. The bill would authorize the dispute resolution or arbitration agreement to be ~~freely and voluntarily~~ negotiated before any dispute arises. These provisions would apply to workers' compensation policies issued or renewed on or after July 1, 2012.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) All California employers subject to the Workers'
- 4 Compensation Law are required by law to obtain insurance for
- 5 their employees.
- 6 (b) Workers' compensation policies and endorsements are highly
- 7 regulated and designed primarily to protect the worker and ensure
- 8 prompt payment of claims.
- 9 (c) The Legislature has authorized the Insurance Commissioner
- 10 (commissioner) to oversee the form and substance of all workers'
- 11 compensation insurance policies and endorsements.
- 12 (d) Insurance companies providing workers' compensation
- 13 policies and endorsements are required by law to file the policies
- 14 and endorsements with the rating organization for transfer to the
- 15 commissioner.
- 16 (e) Disputes between employers and insurance companies
- 17 regarding workers' compensation plans can arise, and resolution
- 18 of these disputes through litigation can be expensive, uncertain,
- 19 and time consuming.
- 20 (f) In an effort to save time and costs, and because of the
- 21 uncertainty of litigation, workers' compensation carriers and
- 22 employers may freely and voluntarily use types of dispute
- 23 resolution, including arbitration, to resolve disputes.
- 24 (g) California has a compelling state interest in ensuring that
- 25 workers' compensation policies and endorsements are enforced
- 26 under California law and not subject to interpretation by other

1 jurisdictions, and that any dispute resolution proceedings are
2 conducted within its borders.

3 (h) Employers and workers' compensation carriers should be
4 freely able to negotiate and voluntarily agree to the terms of dispute
5 resolution, including arbitration, without undermining the
6 protections afforded to California employers under California law.

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

9 11658.5. (a) (1) An insurer that intends to use a dispute
10 resolution or arbitration agreement to resolve disputes arising in
11 California out of a workers' compensation insurance policy or
12 endorsement issued to a California employer shall disclose to the
13 employer, contemporaneously with any written quote that offers
14 to provide insurance coverage, that choice of law and choice of
15 venue or forum may be a jurisdiction other than California and
16 that these terms are negotiable between the insurer and the
17 employer. The disclosure shall be signed by the employer as
18 evidence of receipt where the employer accepts the offer of
19 coverage from that insurer.

20 (2) After compliance with paragraph (1), a dispute resolution
21 or arbitration agreement may be ~~freely and voluntarily~~ negotiated
22 by the insurer and the employer before any dispute arises.

23 (b) Nothing in this section is intended to interfere with any
24 authority granted to the Insurance Commissioner under current
25 law.

26 (c) Failure by the insurer to observe the requirements of
27 subdivision (a) shall result in a default to California as the choice
28 of law and forum for resolution of disputes arising in California.

29 (d) For purposes of this section, a "California employer" means
30 an employer whose principal place of business is in California and
31 whose California payroll constitutes the majority of the employer's
32 payroll for purposes of determining premium under the policy.

33 (e) This section shall apply to workers' compensation policies
34 issued or renewed on or after July 1, 2012.