

AMENDED IN ASSEMBLY APRIL 28, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1922

Introduced by Assembly Member Daly

February 11, 2016

An act to amend Section 11658 of the Insurance Code, relating to workers' compensation insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 1922, as amended, Daly. Workers' compensation policies.

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 exempt policies or endorsements offering deductibles to policyholders for all or part of benefits payable under the policy if the estimated nationwide standard premium is \$250,000 or more, and documents that do not alter, amend, or otherwise provide for the payment of compensation or benefits, coverage, or rating under the policy, from filing under the above provisions.~~

This bill would prohibit, except as provided, an ancillary agreement to a workers' compensation insurance policy from being issued or renewed by an insurer to a California employer, as defined, on or after January 1, 2017, unless the insurer files a copy of the ancillary agreement with a rating organization and 30 days have expired from the date the ancillary agreement is received by the commissioner from

the rating organization without notice from the commissioner unless the commissioner gives written approval of the ancillary agreement prior to that time. The bill would define “ancillary agreement” to mean an agreement that is a supplementary writing or contract relating to a policy or endorsement form that adds to, subtracts from, or revises the obligations of either the insured or the insurer regarding any terms of an insurance policy, including, but not limited to, dispute resolution agreements, policy premium amounts or rates, expense or tax reimbursement or allocation, deductible amounts, policy duration, cancellation, or claims administration. The bill would also make conforming changes.

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

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

1 SECTION 1. Section 11658 of the Insurance Code is amended
 2 to read:
 3 11658. (a) A workers’ compensation insurance policy or
 4 endorsement shall not be issued by an insurer to any person in this
 5 state unless the insurer files a copy of the form or endorsement
 6 with the rating organization pursuant to subdivision (e) of Section
 7 11750.3 and 30 days have expired from the date the form or
 8 endorsement is received by the commissioner from the rating
 9 organization without notice from the commissioner, unless the
 10 commissioner gives written approval of the form or endorsement
 11 prior to that time.
 12 (b) (1) An ancillary agreement shall not be issued by an insurer
 13 to a California employer unless the insurer files a copy of the
 14 ancillary agreement with the rating organization pursuant to
 15 subdivision (e) of Section 11750.3 and 30 days have expired from
 16 the date the ancillary agreement is received by the commissioner
 17 from the rating organization without notice from the commissioner
 18 unless the commissioner gives written approval of the ancillary
 19 agreement prior to that time.
 20 (2) For the purposes of this section, a “California employer”
 21 means an employer whose principal place of business is in
 22 California and whose California payroll constitutes the majority
 23 of the employer’s payroll for purposes of determining premium
 24 under the policy.

1 (3) *This section shall not apply to an ancillary agreement*
2 *between an insurer and a California employer issued in*
3 *conjunction with a workers' compensation policy or endorsement*
4 *that contains a deductible obligation or retention obligation equal*
5 *to or greater than two hundred fifty thousand dollars (\$250,000)*
6 *and the California employer meets three or more of the following*
7 *criteria: (A) has a full-time risk manager; (B) is represented by*
8 *counsel during negotiations; (C) has 500 or more employees; (D)*
9 *has annual gross revenue in excess of twenty million dollars*
10 *(\$20,000,000); or (E) has a workers' compensation manual*
11 *standard premium on a countrywide basis in excess of seven*
12 *hundred fifty thousand dollars (\$750,000).*

13 (4) *Under no circumstances, however, may an ancillary*
14 *agreement amend or revise the coverage provided, or the benefits*
15 *payable, under a workers' compensation policy unless it is filed*
16 *and approved in accordance with this section.*

17 (5) *This subdivision shall apply to ancillary agreements issued*
18 *or renewed on or after January 1, 2017.*

19 ~~(b)~~

20 (c) *If the commissioner notifies the insurer that the filed-form*
21 *or endorsement policy form, endorsement, or ancillary agreement*
22 *does not comply with the requirements of law, specifying the*
23 *reasons for his or her opinion, it is unlawful for the insurer to issue*
24 *any policy—~~or endorsement~~ form, endorsement, or ancillary*
25 *agreement in that form.*

26 ~~(e)~~

27 (d) *The withdrawal of a policy—~~form or endorsement~~ form,*
28 *endorsement, or ancillary agreement by the commissioner pursuant*
29 *to this section shall not affect the status of the policyholder as*
30 *having secured payment for compensation or affect the substitution*
31 *of the insurer for the policyholder in workers' compensation*
32 *proceedings as set forth in the provisions of Chapter 4*
33 *(commencing with Section 3700) of Part 1 of Division 4 of the*
34 *Labor Code during the period of time in which the policy—~~form or~~*
35 *endorsement form, endorsement, or ancillary agreement was in*
36 *effect.*

37 (e) *“Ancillary agreement” means an agreement that is a*
38 *supplementary writing or contract relating to a policy or*
39 *endorsement form that adds to, subtracts from, or revises the*
40 *obligations of either the insured or the insurer regarding any terms*

1 of an insurance policy, including, but not limited to, dispute
 2 resolution agreements, policy premium amounts or rates, expense
 3 or tax reimbursement or allocation, deductible amounts, policy
 4 duration, cancellation, or claims administration. “Ancillary
 5 agreements” do not include: (1) limiting and restricting
 6 endorsements as defined in subdivision (g) of this section; (2)
 7 customized limiting and restricting endorsements as defined in
 8 subdivision (h) of this section; or (3) agreements specifying only
 9 terms described in subparagraphs (A) to (F), inclusive, following,
 10 but only if those terms are disclosed and negotiated
 11 contemporaneously with the inception or renewal of the underlying
 12 policy and any revisions or additions to those terms subsequent
 13 to the inception or renewal of the policy are mutually agreed upon
 14 by the parties: (A) the method for making payments; (B) the method
 15 for funding deductible amounts or other policy-related charges
 16 due under a policy; (C) the amounts of collateral or security the
 17 insured is required to maintain for claims that do not exceed the
 18 deductible; (D) payment due dates; (E) payment transmittal
 19 information; or (F) the method of selecting a claims administrator,
 20 provided that the claims administrator may only administer claims
 21 that do not exceed the deductible.

22 ~~(d)~~

23 (f) This section shall not apply to limited policies submitted for
 24 approval to the commissioner pursuant to Section 11657.

25 (g) “Limiting and restricting endorsement” means an
 26 endorsement that excludes from coverage some portion of workers’
 27 compensation liability for which the employer is required to secure
 28 payment pursuant to the Labor Code that, after approval of the
 29 endorsement by the Insurance Commissioner, may be endorsed to
 30 a workers’ compensation policy.

31 (h) “Customized limiting and restricting endorsement” means
 32 an endorsement unique to a specific policy used (1) when the
 33 employer’s business is conducted in such a manner that it is
 34 impossible or impracticable to determine the nature, scope, and
 35 extent of employment covered by the insurer; or (2) to prevent the
 36 performance of work in such an extremely hazardous manner or
 37 under such hazardous conditions as would reflect a reckless
 38 disregard by the employer for the welfare of its employees; or (3)
 39 to prevent the issuance of an unrestricted policy if it would

1 *encourage an operation that is contrary to law or to the rules of*
2 *a regulatory agency.*

3 SECTION 1. ~~Section 11658 of the Insurance Code is amended~~
4 ~~to read:~~

5 ~~11658. (a) A workers' compensation insurance policy or~~
6 ~~endorsement shall not be issued by an insurer to any person in this~~
7 ~~state unless the insurer files a copy of the form or endorsement~~
8 ~~with the rating organization pursuant to subdivision (c) of Section~~
9 ~~11750.3 and 30 days have expired from the date the form or~~
10 ~~endorsement is received by the commissioner from the rating~~
11 ~~organization without notice from the commissioner, unless the~~
12 ~~commissioner gives written approval of the form or endorsement~~
13 ~~prior to that time.~~

14 ~~(b) If the commissioner notifies the insurer that the filed form~~
15 ~~or endorsement does not comply with the requirements of law,~~
16 ~~specifying the reasons for his or her opinion, it is unlawful for the~~
17 ~~insurer to issue any policy or endorsement in that form.~~

18 ~~(c) The withdrawal of a policy form or endorsement by the~~
19 ~~commissioner pursuant to this section shall not affect the status of~~
20 ~~the policyholder as having secured payment for compensation or~~
21 ~~affect the substitution of the insurer for the policyholder in workers'~~
22 ~~compensation proceedings as set forth in the provisions of Chapter~~
23 ~~4 (commencing with Section 3700) of Part 1 of Division 4 of the~~
24 ~~Labor Code during the period of time in which the policy form or~~
25 ~~endorsement was in effect.~~

26 ~~(d) This section does not apply to limited policies submitted for~~
27 ~~approval to the commissioner pursuant to Section 11657.~~

28 ~~(e) This section does not apply to policies or endorsements~~
29 ~~offering deductibles to policyholders for all or part of benefits~~
30 ~~payable under the policy if the estimated nationwide standard~~
31 ~~premium is two hundred fifty thousand dollars (\$250,000) or more.~~

32 ~~(f) This section does not apply to documents that do not alter,~~
33 ~~amend, or otherwise provide for the payment of compensation or~~
34 ~~benefits, coverage, or rating under the policy.~~