

AMENDED IN SENATE JUNE 28, 2016

AMENDED IN SENATE JUNE 13, 2016

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~~ *amend, repeal, and add Sections 11658 and 11658.5* of the Insurance Code, relating to workers' compensation insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 1922, as amended, Daly. Workers' compensation policies: ancillary agreements.

Existing law prohibits a workers' compensation insurance policy or endorsement from being 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 prohibit, except as provided, an ancillary agreement, as defined, to a workers' compensation insurance policy from being issued or renewed by an insurer to a California employer, as defined, 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 provide that the terms and conditions of a workers’ compensation policy and any endorsements take precedence over the provisions contained in an ancillary agreement in the case of an inconsistency or conflict between the policy or endorsement and the ancillary agreement. *The bill would make additional changes relating to collateral and security agreements, as defined.* The changes made by the bill would apply to ancillary agreements issued or renewed on or after January 1, 2017. The bill would also make conforming changes.

The changes made by the bill would apply only until January 1, 2022.

Vote: majority. Appropriation: no. Fiscal committee: 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.~~
25 ~~(3) (A) This~~

1 (2) (A) *This section shall not apply to an ancillary agreement*
 2 *between an insurer and a California employer issued in conjunction*
 3 *with a workers' compensation policy or endorsement that contains*
 4 *a deductible obligation or ~~retention obligation~~ retrospectively rated*
 5 *loss limitation equal to or greater than two hundred fifty thousand*
 6 *dollars ~~(\$250,000)~~ (\$250,000), provided that, for an endorsement*
 7 *containing a deductible obligation, the endorsement complies with*
 8 *the requirements of subdivision (e) of Section 11735, or, for a*
 9 *retrospectively rated policy, is contained in an endorsement filed*
 10 *by a rating organization pursuant to Sections 11750.3 and 11753*
 11 *and approved by the commissioner, and the California employer*
 12 *meets at least three ~~or more~~ of the following criteria:*~~(i) has~~

13 *(i) Is represented by a broker for negotiations regarding the*
 14 *ancillary agreement and either has a full-time risk manager*
 15 *involved in the evaluation of an ancillary agreement;*~~(ii) agreement~~
 16 *or is represented by counsel during negotiations regarding an*
 17 *ancillary agreement;*~~(iii) has agreement.~~

18 *(ii) Has 500 or more employees;*~~(iv) has employees.~~

19 *(iii) Has an annual ~~gross revenues~~ nationwide payroll in excess*
 20 *of twenty million dollars ~~(\$20,000,000); or (v) has (\$20,000,000).~~*

21 *(iv) Has a workers' compensation manual standard premium*
 22 *on a countrywide basis in excess of ~~seven hundred fifty thousand~~*
 23 *dollars ~~(\$750,000); one million dollars (\$1,000,000).~~*

24 (B) Paragraph (1) shall control, and ~~paragraph (3) shall not~~
 25 ~~apply, to this paragraph shall not apply to,~~ an ancillary agreement
 26 between an insurer and a California employer that is either of the
 27 following:

28 (i) Issued to a coemployment arrangement, as defined in
 29 ~~subparagraph (C):~~ *subdivision (g).*

30 (ii) Negotiated, managed, or administered, in whole or in part,
 31 by a managing general agent (MGA), as defined in subdivision
 32 (c) of Section 769.81.

33 ~~(C) "Coemployment arrangement" means any arrangement,~~
 34 ~~under contract or otherwise, whereby an entity utilizes the services~~
 35 ~~of a third party to provide workers for a fee or other compensation,~~
 36 ~~including, but not limited to:~~

37 ~~(i) A professional employer organization.~~

38 ~~(ii) A leasing employer, as defined in Section 606.5 of the~~
 39 ~~Unemployment Insurance Code.~~

1 ~~(iii) A temporary services employer, as defined in Section 606.5~~
2 ~~of the Unemployment Insurance Code.~~
3 ~~(iv) Any employer, regardless of name or form of organization,~~
4 ~~that is in the business of providing workers to other employers.~~
5 ~~(4)~~
6 (3) Under no circumstances, however, may an ancillary
7 agreement ~~amend~~ *do either of the following:*
8 (A) *Amend* or revise the coverage provided, or the benefits
9 payable, under a workers' compensation policy unless it is filed
10 and approved in accordance with this section. ~~The~~
11 (B) *Include charges or costs as allocated loss adjustment*
12 *expenses that are not defined as allocated loss adjustment expenses*
13 *in the California Workers' Compensation Uniform Statistical*
14 *Reporting Plan - 1995, as identified in Section 2318.6 of Title 10*
15 *of the California Code of Regulations and any subsequent*
16 *revisions, unless the ancillary agreement is filed and approved in*
17 *accordance with this section.*
18 (4) *The terms and conditions of a workers' compensation policy*
19 *and any endorsements shall take precedence over the provisions*
20 *contained in an ancillary agreement if there is an inconsistency or*
21 *a conflict between the policy or endorsement and the ancillary*
22 *agreement.*
23 (5) *Contemporaneously with any written quote to provide*
24 *workers' compensation coverage to a California employer, the*
25 *insurer shall provide to the insurance agent or broker for the*
26 *employer a draft of any ancillary agreement that the insurer*
27 *reasonably expects to require the employer to sign, together with*
28 *a notice that the terms of the ancillary agreement are negotiable*
29 *between the insurer and the employer.*
30 (6) *Within 30 days after execution of an ancillary agreement*
31 *subject to paragraph (2), the insurer shall notify the insurance*
32 *commissioner of the agreement. The ancillary agreement shall not*
33 *be subject to filing with the commissioner or rating organization*
34 *or approval by the commissioner.*
35 (7) *An ancillary agreement that is subject to paragraph (2) shall*
36 *include language stating that the ancillary agreement has not been*
37 *filed with the rating organization or filed with, or approved by,*
38 *the commissioner.*
39 ~~(5)~~

1 (8) This subdivision shall apply to ancillary agreements issued
2 or renewed on or after January 1, 2017.

3 (c) If the commissioner notifies the insurer that the filed policy
4 form, endorsement, or ancillary agreement does not comply with
5 the requirements of law, specifying the reasons for his or her
6 opinion, it is unlawful for the insurer to issue any policy form,
7 endorsement, or ancillary agreement in that form.

8 (d) The withdrawal of a policy form, endorsement, or ancillary
9 agreement by the commissioner pursuant to this section shall not
10 affect the status of the policyholder as having secured payment
11 for compensation or affect the substitution of the insurer for the
12 policyholder in workers' compensation proceedings as set forth
13 in the provisions of Chapter 4 (commencing with Section 3700)
14 of Part 1 of Division 4 of the Labor Code during the period of time
15 in which the policy form, endorsement, or ancillary agreement
16 was in effect.

17 ~~(e) "Ancillary agreement" means an agreement that is a~~
18 ~~supplementary writing or contract relating to a policy or~~
19 ~~endorsement form that adds to, subtracts from, or revises the~~
20 ~~obligations of either the insured or the insurer regarding any terms~~
21 ~~of an insurance policy, including, but not limited to, dispute~~
22 ~~resolution agreements, policy premium amounts or rates, expense~~
23 ~~or tax reimbursement or allocation, deductible amounts, policy~~
24 ~~duration, cancellation, or claims administration. "Ancillary~~
25 ~~agreements" do not include: (1) limiting and restricting~~
26 ~~endorsements as defined in subdivision (g) of this section; (2)~~
27 ~~customized limiting and restricting endorsements as defined in~~
28 ~~subdivision (h) of this section; or (3) agreements specifying only~~
29 ~~terms described in subparagraphs (A) to (F), inclusive, following,~~
30 ~~but only if those terms are disclosed and negotiated~~
31 ~~contemporaneously with the inception or renewal of the underlying~~
32 ~~policy and any revisions or additions to those terms subsequent to~~
33 ~~the inception or renewal of the policy are mutually agreed upon~~
34 ~~by the parties: (A) the method for making payments; (B) the~~
35 ~~method for funding deductible amounts or other policy-related~~
36 ~~charges due under a policy; (C) the amounts of collateral or security~~
37 ~~the insured is required to maintain for claims that do not exceed~~
38 ~~the deductible; (D) payment due dates; (E) payment transmittal~~
39 ~~information; or (F) the method of selecting a claims administrator;~~

1 provided that the claims administrator may only administer claims
 2 that do not exceed the deductible.

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

5 (g) ~~“Limiting and restricting endorsement” means an
 6 endorsement that excludes from coverage some portion of workers’
 7 compensation liability for which the employer is required to secure
 8 payment pursuant to the Labor Code that, after approval of the
 9 endorsement by the Insurance Commissioner, may be endorsed to
 10 a workers’ compensation policy.~~

11 (h) ~~“Customized limiting and restricting endorsement” means
 12 an endorsement unique to a specific policy used (1) when the
 13 employer’s business is conducted in such a manner that it is
 14 impossible or impracticable to determine the nature, scope, and
 15 extent of employment covered by the insurer; or (2) to prevent the
 16 performance of work in such an extremely hazardous manner or
 17 under such hazardous conditions as would reflect a reckless
 18 disregard by the employer for the welfare of its employees; or (3)
 19 to prevent the issuance of an unrestricted policy if it would
 20 encourage an operation that is contrary to law or to the rules of a
 21 regulatory agency.~~

22 (e) *The terms and provisions of collateral and security
 23 agreements shall be negotiated contemporaneously with the
 24 inception or renewal of the underlying policy, and any revisions
 25 or additions to those terms subsequent to the inception or renewal
 26 of the policy shall be mutually agreed upon by the parties.*

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

29 (g) *For purposes of this section, the following definitions apply:*

30 (1) (A) *“Ancillary agreement” means an agreement that is a
 31 supplementary writing or contract relating to a policy or
 32 endorsement form that adds to, subtracts from, or is inconsistent
 33 with the obligations of either the insured or the insurer under an
 34 insurance policy or endorsement.*

35 (B) *“Ancillary agreement” does not include any of the
 36 following:*

- 37 (i) *Limiting and restricting endorsements.*
- 38 (ii) *Customized limiting and restricting endorsements.*
- 39 (iii) *Collateral and security agreements.*

1 (2) “California employer” means an employer whose principal
2 place of business is in California and whose California payroll
3 constitutes the majority of the employer’s payroll for purposes of
4 determining premium under the policy.

5 (3) “Coemployment arrangement” means any arrangement,
6 under contract or otherwise, whereby an entity utilizes the services
7 of a third party to provide workers or human resources services
8 for a fee or other compensation, including, but not limited to:

9 (A) A professional employer organization.

10 (B) A leasing employer, as defined in Section 606.5 of the
11 Unemployment Insurance Code.

12 (C) A temporary services employer, as defined in Section 606.5
13 of the Unemployment Insurance Code.

14 (D) Any employer, regardless of name or form of organization,
15 that is in the business of providing workers to other employers.

16 (4) “Collateral and security agreement” means an agreement
17 between a California employer and an insurer under a large
18 deductible program, large risk-rating program, or retrospectively
19 rated program that relates to payments and reimbursements that
20 the insured is contractually obligated to make to the insurer and
21 that includes one or more of the following terms or provisions:

22 (A) The timing, method, and conditions for making payments
23 to the insurer for amounts imposed by any state or regulatory
24 taxing authority that are made on the insured’s behalf.

25 (B) The timing, method, and conditions for funding, paying, or
26 reimbursing deductible or retrospectively rated amounts or other
27 policy-related charges due under a policy.

28 (C) The type and amount of collateral the insured is required
29 to post as security for its obligations.

30 (D) Payment due dates and transmittal information.

31 (E) Terms or provisions related to claims administration,
32 including the method for selecting a claims administrator.

33 (F) Termination and dispute resolution provisions applicable
34 to the collateral and security agreement.

35 (G) Terms of default under the collateral and security
36 agreement.

37 (5) “Customized limiting and restricting endorsement” means
38 an endorsement unique to a specific policy used under the following
39 circumstances or for the following purposes:

1 (A) When the employer’s business is conducted in such a manner
 2 that it is impossible or impracticable to determine the nature,
 3 scope, and extent of employment covered by the insurer.
 4 (B) To prevent the performance of work in such an extremely
 5 hazardous manner or under such hazardous conditions as would
 6 reflect a reckless disregard by the employer for the welfare of its
 7 employees.
 8 (C) To prevent the issuance of an unrestricted policy if it would
 9 encourage an operation that is contrary to law or to the rules of
 10 a regulatory agency.
 11 (6) “Limiting and restricting endorsement” means an
 12 endorsement that excludes from coverage some portion of workers’
 13 compensation liability for which the employer is required to secure
 14 payment pursuant to the Labor Code that, after approval of the
 15 endorsement by the Insurance Commissioner, may be endorsed to
 16 a workers’ compensation policy.
 17 (h) This section shall remain in effect only until January 1, 2022,
 18 and as of that date is repealed, unless a later enacted statute, that
 19 is enacted before January 1, 2022, deletes or extends that date.
 20 SEC. 2. Section 11658 is added to the Insurance Code, to read:
 21 11658. (a) A workers’ compensation insurance policy or
 22 endorsement shall not be issued by an insurer to any person in
 23 this state unless the insurer files a copy of the form or endorsement
 24 with the rating organization pursuant to subdivision (e) of Section
 25 11750.3 and 30 days have expired from the date the form or
 26 endorsement is received by the commissioner from the rating
 27 organization without notice from the commissioner, unless the
 28 commissioner gives written approval of the form or endorsement
 29 prior to that time.
 30 (b) If the commissioner notifies the insurer that the filed form
 31 or endorsement does not comply with the requirements of law,
 32 specifying the reasons for his or her opinion, it is unlawful for the
 33 insurer to issue any policy or endorsement in that form.
 34 (c) The withdrawal of a policy form or endorsement by the
 35 commissioner pursuant to this section shall not affect the status
 36 of the policyholder as having secured payment for compensation
 37 or affect the substitution of the insurer for the policyholder in
 38 workers’ compensation proceedings as set forth in the provisions
 39 of Chapter 4 (commencing with Section 3700) of Part 1 of Division

1 *4 of the Labor Code during the period of time in which the policy*
2 *form or endorsement was in effect.*

3 *(d) This section shall not apply to limited policies submitted for*
4 *approval to the commissioner pursuant to Section 11657.*

5 *(e) This section shall become operative on January 1, 2022.*

6 *SEC. 3. Section 11658.5 of the Insurance Code is amended to*
7 *read:*

8 11658.5. (a) (1) An insurer that intends to use a dispute
9 resolution or arbitration agreement to resolve disputes arising in
10 California out of a workers' compensation insurance ~~policy or~~
11 ~~endorsement policy, endorsement, ancillary agreement, or~~
12 ~~collateral and security agreement, as defined in Section 11658,~~
13 issued to a California employer shall disclose to the employer,
14 contemporaneously with any written quote that offers to provide
15 insurance coverage, that choice of law and choice of venue or
16 forum may be a jurisdiction other than California and that these
17 terms are negotiable between the insurer and the employer. The
18 disclosure shall be signed by the employer as evidence of receipt
19 ~~where if~~ the employer accepts the offer of coverage from that
20 insurer.

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

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

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

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

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

36 *(e) This section shall remain in effect only until January 1, 2022,*
37 *and as of that date is repealed, unless a later enacted statute, that*
38 *is enacted before January 1, 2022, deletes or extends that date.*

39 *SEC. 4. Section 11658.5 is added to the Insurance Code, to*
40 *read:*

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

12 (2) After compliance with paragraph (1), a dispute resolution
13 or arbitration agreement may be negotiated by the insurer and the
14 employer before any dispute arises.

15 (b) Nothing in this section is intended to interfere with any
16 authority granted to the Insurance Commissioner under current
17 law.

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

21 (d) For purposes of this section, a "California employer" means
22 an employer whose principal place of business is in California
23 and whose California payroll constitutes the majority of the
24 employer's payroll for purposes of determining premium under
25 the policy.

26 (e) This section shall become operative on January 1, 2022.