

AMENDED IN ASSEMBLY JUNE 23, 2011

AMENDED IN SENATE MARCH 25, 2011

**SENATE BILL**

**No. 684**

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**Introduced by Senator Corbett**

February 18, 2011

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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 ~~commissioner~~ *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 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 *regarding the policy, endorsements, or insuring contracts*, including, ~~but not limited to~~, an arbitration clause arising out of a workers' compensation policy or endorsement, ~~be part of a form or endorsement filed with the rating organization, be provided to the employer in writing contemporaneously with any written quote that offers to provide insurance coverage, and contain provisions to resolve disputes that arise in this state in the California courts and under California law involving an employer whose~~

*California payroll constitutes the majority of the employer's payroll for purposes of determining premium under the policy, be on a separate form and contain specified information, including, but not limited to, 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 by signature of the employer on the separate agreement to a choice of law or forum other than California. The bill would require that where a California state agency the commissioner has been granted the authority to resolve the dispute, it a dispute between the employer and the insurer regarding rates, classifications, experience rating, or other insurance issues, the dispute would not be subject to an alternative dispute resolution between an employer and workers' compensation carrier insurer. Failure to observe those requirements would render any dispute resolution provision void and unenforceable.*

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. 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.

(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 a form or endorsement filed with the rating organization pursuant to Section 11658, and disclosure of the agreement shall be provided to the employer in writing contemporaneously with any written quote that offers to provide insurance coverage.~~

*11658.5. (a) Any agreement, other than a settlement agreement resolving a particular dispute, between an employer and a workers' compensation insurer concerning resolution of disputes regarding the policy, endorsements, or insuring contracts, including an arbitration clause arising out of a workers' compensation policy or endorsement, involving an employer whose California payroll constitutes the majority of the employer's payroll for purposes of determining premium under the policy, shall be on a separate form and conform to all of the following:*

*(1) It shall be disclosed to the employer in writing contemporaneously with any written quote that offers to provide insurance coverage.*

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

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

7 (4) Notwithstanding ~~paragraph~~ *paragraphs (2) and (3)*, prior to  
8 the inception of the policy, employers and workers' compensation  
9 insurance companies may, after freely negotiating, expressly agree  
10 ~~to a choice of~~ *by signature of the employer on the separate*  
11 *agreement to a choice of law or forum other than California.*

12 (b) Notwithstanding this section, any dispute *between the*  
13 *employer and the workers' compensation insurer regarding rates,*  
14 *classifications, experience rating, or other insurance issues* for  
15 which authority to resolve the dispute has been granted to ~~a~~  
16 ~~California state agency~~ *the commissioner* shall not be subject to  
17 alternative dispute resolution between an employer and a workers'  
18 compensation insurer.

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