

FIRST REGULAR SESSION

HOUSE BILL NO. 609

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE GOSEN.

1544H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapter 375, RSMo, by adding thereto one new section relating to workers' compensation large deductible policies.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 375, RSMo, is amended by adding thereto one new section, to be
2 known as section 375.1605, to read as follows:

**375.1605. 1. The provisions of this section shall apply to workers' compensation
2 large deductible policies issued by an insurer subject to delinquency proceedings under this
3 chapter. This section shall not apply to first party claims or to claims funded by a
4 guaranty association net of the deductible unless subsection 3 of this section applies. Large
5 deductible policies shall be administered in accordance with their terms except to the
6 extent such terms conflict with this section.**

7 **2. For purposes of this section, the following terms shall mean:**

8 **(1) "Collateral", any cash, letters of credit, surety bond, or any other form of
9 security posted by the insured or by a captive insurer or reinsurer to secure the insured's
10 obligation under the large deductible policy to pay deductible claims or to reimburse the
11 insurer for deductible claim payments. Collateral may also secure an insured's obligation
12 to reimburse or pay the insurer as may be required for other secured obligations;**

13 **(2) "Commercially reasonable", to act in good faith using prevailing industry
14 practices and making all reasonable efforts considering the facts and circumstances of the
15 matter;**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

16 (3) “Deductible claim”, any claim, including a claim for loss and defense and cost
17 containment expense, unless such expenses are excluded, under a large deductible policy
18 that is within the deductible;

19 (4) “Large deductible policy”, any combination of one or more workers’
20 compensation policies and endorsements issued to an insured and contracts or security
21 agreements entered into between an insured and the insurer in which the insured has
22 agreed with the insurer to:

23 (a) Pay directly the initial portion of any claim under the policy up to a specified
24 dollar amount, or the expenses related to any claim; or

25 (b) Reimburse the insurer for its payment of any claim or related expenses under
26 the policy up to the specified dollar amount of the deductible.

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28 The term “large deductible policy” also includes policies which contain an aggregate limit
29 on the insured’s liability for all deductible claims in addition to a per-claim deductible
30 limit. The primary purpose and distinguishing characteristic of a large deductible policy
31 is the shifting of a portion of the ultimate financial responsibility under the large
32 deductible policy to pay claims from the insurer to the insured, even though the obligation
33 to initially pay claims may remain with the insurer. A large deductible shall include any
34 policy with a deductible of fifty thousand dollars or more. Large deductible policies do not
35 include policies, endorsements, or agreements which provide that the initial portion of any
36 covered claim shall be self-insured and further that the insured shall have no payment
37 obligation within the self-insured retention. Large deductible policies also do not include
38 policies that provide for retrospectively rated premium payments by the insured or
39 reinsurance arrangements or agreements, except to the extent such arrangements or
40 agreements assume, secure, or pay the policyholder’s large deductible obligations;

41 (5) “Other secured obligations”, obligations of an insured to an insurer other than
42 those under a large deductible policy, such as those under a reinsurance agreement or
43 other agreement involving retrospective premium obligations, the performance of which
44 is secured by collateral that also secures an insured’s obligations under a large deductible
45 policy.

46 3. Unless otherwise agreed by the responsible guaranty association, all large
47 deductible claims which are also “covered claims” as defined by the applicable guaranty
48 association law including those that may have been funded by an insured before
49 liquidation shall be turned over to the guaranty association for handling. To the extent the
50 insured funds or pays the deductible claim pursuant to an agreement by the guaranty fund
51 or otherwise, the insured’s funding or payment of a deductible claim will extinguish the

52 obligations, if any, of the receiver or any guaranty association to pay such claim. No
53 charge of any kind shall be made against the receiver or a guaranty association on the basis
54 of an insured's funding or payment of a deductible claim.

55 4. To the extent a guaranty association pays any deductible claim for which the
56 insurer would have been entitled to reimbursement from the insured, a guaranty
57 association shall be entitled to the full amount of the reimbursement and available
58 collateral as provided for under this section to the extent necessary to reimburse the
59 guaranty association. Reimbursements paid to the guaranty association under this
60 subsection shall not be treated as distributions under section 375.1218 or as early access
61 payments under section 375.1205. To the extent that a guaranty association pays a
62 deductible claim that is not reimbursed either from collateral or by insured payments, or
63 incurred expenses in connection with large deductible policies that are not reimbursed
64 under this section, the guaranty association shall be entitled to assert a claim for those
65 amounts in the delinquency proceeding. Nothing in this subsection limits any rights of the
66 receiver or a guaranty association that may otherwise exist under applicable law to obtain
67 reimbursement from insureds for claims payments made by the guaranty association under
68 policies of the insurer or for the guaranty association's related expenses such as those
69 affording the guaranty association the right to recover for claims payments made to or on
70 behalf of high net worth insureds or claimants.

71 5. (1) The receiver shall have the obligation to collect reimbursements owed for
72 deductible claims as provided for herein, and shall take all commercially reasonable
73 actions to collect such reimbursements. The receiver shall promptly bill insureds for
74 reimbursement of deductible claims:

- 75 (a) Paid by the insurer prior to the commencement of delinquency proceedings;
76 (b) Paid by a guaranty association upon receipt by the receiver of notice from a
77 guaranty association of reimbursable payments; or
78 (c) Paid or allowed by the receiver.

79 (2) If the insured does not make payment within the time specified in the large
80 deductible policy, or within sixty days after the date of billing if no time is specified, the
81 receiver shall take all commercially reasonable actions to collect any reimbursements owed.

82 (3) Neither the insolvency of the insurer, nor its inability to perform any of its
83 obligations under the large deductible policy, shall be a defense to the insured's
84 reimbursement obligation under the large deductible policy.

85 (4) Except for gross negligence, an allegation of improper handling or payment of
86 a deductible claim by the insurer, the receiver, or any guaranty association shall not be a
87 defense to the insured's reimbursement obligations under the large deductible policy.

88 **6. (1) Subject to the provisions of this subsection, the receiver shall utilize collateral**
89 **when available to secure the insured's obligation to fund or reimburse deductible claims**
90 **or other secured obligations or other payment obligations. A guaranty association shall**
91 **be entitled to collateral as provided for in this subsection to the extent needed to reimburse**
92 **a guaranty association for the payments of a deductible claim. Any distributions made to**
93 **a guaranty association under this subsection shall not be treated as distributions under**
94 **section 375.1218 or as early access payments under section 375.1205.**

95 **(2) All claims against the collateral shall be paid in the order received and no claim**
96 **of the receiver including those described in this subsection shall supersede any other claim**
97 **against the collateral as described in subdivision (4) of this subsection.**

98 **(3) The receiver shall draw down collateral to the extent necessary in the event that**
99 **the insured fails to:**

- 100 **(a) Perform its funding or payment obligations under any large deductible policy;**
101 **(b) Pay deductible claim reimbursements within the time specified in the large**
102 **deductible policy or within sixty days after the date of the billing if no time is specified;**
103 **(c) Pay amounts due the estate for preliquidation obligations;**
104 **(d) Timely fund any other secured obligation; or**
105 **(e) Timely pay expenses.**

106 **(4) Claims that are validly asserted against the collateral shall be satisfied in the**
107 **order in which such claims are received by the receiver.**

108 **(5) Excess collateral may be returned to the insured as determined by the receiver**
109 **after a periodic review of claims paid, outstanding case reserves, and a factor for incurred**
110 **but not reported claims.**

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