

SECOND REGULAR SESSION

[PERFECTED]

# HOUSE BILL NO. 1763

98TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE GOSEN.

5199H.01P

D. ADAM CRUMBLISS, Chief Clerk

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## AN ACT

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

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*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 the provisions of this section.**

7 **2. For purposes of this section, the following terms 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) **"Delinquency proceeding"**, shall have the same meaning ascribed to it in section  
20 375.1152;

21           (5) **"Guaranty association"**, the Missouri property and casualty insurance guaranty  
22 association created by sections 375.771 to 375.779, as amended, and any other similar  
23 entities created by the laws of any other state for the payment of claims of insolvent  
24 insurers;

25           (6) **"Large deductible policy"**, any combination of one or more workers'  
26 compensation policies and endorsements issued to an insured and contracts or security  
27 agreements entered into between an insured and the insurer in which the insured has  
28 agreed with the insurer to:

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

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

33

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

46           (7) **"Other secured obligations"**, obligations of an insured to an insurer other than  
47 those under a large deductible policy, such as those under a reinsurance agreement or  
48 other agreement involving retrospective premium obligations, the performance of which  
49 is secured by collateral that also secures an insured's obligations under a large deductible  
50 policy;

51           (8) **"Receiver"**, shall have the same meaning ascribed to it in section 375.1152.

52           **3. Unless otherwise agreed by the responsible guaranty association, all large**  
53 **deductible claims which are also "covered claims", as defined by the applicable guaranty**  
54 **association law, including those that may have been funded by an insured before**  
55 **liquidation, shall be turned over to the guaranty association for handling. To the extent**  
56 **the insured funds or pays the deductible claim pursuant to an agreement by the guaranty**  
57 **fund or otherwise, the insured's funding or payment of a deductible claim will extinguish**  
58 **the obligations, if any, of the receiver or any guaranty association to pay such claim. No**  
59 **charge of any kind shall be made against the receiver or a guaranty association on the basis**  
60 **of an insured's funding or payment of a deductible claim.**

61           **4. To the extent a guaranty association pays any deductible claim for which the**  
62 **insurer would have been entitled to reimbursement from the insured, a guaranty**  
63 **association shall be entitled to the full amount of the reimbursement and available**  
64 **collateral as provided for under this section to the extent necessary to reimburse the**  
65 **guaranty association. Such reimbursements and collateral shall be subject to any**  
66 **reasonable and actual expenses recovered by the receiver as provided for under subsection**  
67 **7 of this section. Reimbursements paid to the guaranty association under this subsection**  
68 **shall not be treated as distributions under section 375.1218 or as early access payments**  
69 **under section 375.1205. To the extent that a guaranty association pays a deductible claim**  
70 **that is not reimbursed either from collateral or by insured payments, or incurred expenses**  
71 **in connection with large deductible policies that are not reimbursed under this section, the**  
72 **guaranty association shall be entitled to assert a claim for those amounts in the delinquency**  
73 **proceeding. Nothing in this subsection limits any rights of the receiver or a guaranty**  
74 **association that may otherwise exist under applicable law to obtain reimbursement from**  
75 **insureds for claims payments made by the guaranty association under policies of the**  
76 **insurer or for the guaranty association's related expenses such as those affording the**  
77 **guaranty association the right to recover for claims payments made to or on behalf of high**  
78 **net worth insureds or claimants.**

79           **5. (1) The receiver shall have the obligation to collect reimbursements owed for**  
80 **deductible claims as provided for herein and shall take all commercially reasonable actions**  
81 **to collect such reimbursements. The receiver shall promptly bill insureds for**  
82 **reimbursement of deductible claims:**

- 83           **(a) Paid by the insurer prior to the commencement of delinquency proceedings;**  
84           **(b) Paid by a guaranty association upon receipt by the receiver of notice from a**  
85 **guaranty association of reimbursable payments; or**  
86           **(c) Paid or allowed by the receiver.**

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

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

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

96           **6. (1) Subject to the provisions of this subsection, the receiver shall utilize collateral**  
97 **if available to secure the insured's obligation to fund or reimburse deductible claims or**  
98 **other secured obligations or other payment obligations. A guaranty association shall be**  
99 **entitled to collateral as provided for in this subsection to the extent needed to reimburse**  
100 **a guaranty association for the payments of a deductible claim. Any distributions made to**  
101 **a guaranty association under this subsection shall not be treated as distributions under**  
102 **section 375.1218 or as early access payments under section 375.1205.**

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

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

108           **(a) Perform its funding or payment obligations under any large deductible policy;**

109           **(b) Pay deductible claim reimbursements within the time specified in the large**  
110 **deductible policy or within sixty days after the date of the billing if no time is specified;**

111           **(c) Pay amounts due the estate for preliquidation obligations;**

112           **(d) Timely fund any other secured obligation; or**

113           **(e) Timely pay expenses.**

114           **(4) Claims that are validly asserted against the collateral shall be satisfied in the**  
115 **order in which such claims are received by the receiver; except that, if more than one**  
116 **creditor has a valid claim against the same collateral and the available collateral, along**  
117 **with billing collection efforts and to the extent that the collateral is subject to other known**  
118 **secured obligations, are together insufficient to pay each creditor in full, then the director**  
119 **as rehabilitator or liquidator shall prorate payments to each creditor based upon the**  
120 **relationship the amount of claims each creditor has paid bears to the total of all claims paid**  
121 **by all such creditors.**

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

125           **7. The receiver shall be entitled to deduct from the collateral or from the deductible**  
126 **reimbursements reasonable and actual expenses incurred in connection with the collection**  
127 **of the collateral and deductible reimbursements under the provisions of this section,**  
128 **subject to the review and approval by the court.**

129           **8. The court having jurisdiction over the delinquency proceedings under section**  
130 **375.1154 shall have jurisdiction to resolve disputes arising under the provisions of this**  
131 **section.**

132           **9. The provisions of this section shall apply to all delinquency proceedings that**  
133 **either commence on or after the effective date of this section or are open and pending on**  
134 **the effective date of this section, provided that, the provisions of this section shall not affect**  
135 **any delinquency proceeding for which a final order of liquidation with a finding of**  
136 **insolvency has been entered by a court of competent jurisdiction prior to the effective date**  
137 **of this section.**

138           **10. Nothing in this section is intended to limit or adversely affect any rights or**  
139 **powers a guaranty association may have under applicable state law to obtain**  
140 **reimbursement from certain classes of policyholders for claims payments made by the**  
141 **guaranty association under policies of the insolvent insurer, or for related expenses the**  
142 **guaranty association incurs.**

Section B. Because of the immediate need for the state to ensure that insurance guaranty  
2 associations have adequate resources to pay the covered claims of insolvent insurance carriers,  
3 the enactment of section 375.1605 of this act is deemed necessary for the immediate preservation  
4 of the public health, welfare, peace, and safety, and the enactment of section 375.1605 of this act  
5 is hereby declared to be an emergency act within the meaning of the constitution, and the  
6 enactment of section 375.1605 of this act shall be in full force and effect upon its passage and  
7 approval.

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