

FIRST REGULAR SESSION

SENATE BILL NO. 402

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR WIELAND.

Read 1st time February 4, 2015, and ordered printed.

ADRIANE D. CROUSE, Secretary.

1983S.011

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 known as section 375.1605, to read as follows:

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

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

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

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

(3) "Deductible claim", any claim, including a claim for loss and defense and cost containment expense, unless such expenses are

22 excluded, under a large deductible policy that is within the deductible;

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

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

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

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

50 (5) "Other secured obligations", obligations of an insured to an
51 insurer other than those under a large deductible policy, such as those
52 under a reinsurance agreement or other agreement involving
53 retrospective premium obligations, the performance of which is secured
54 by collateral that also secures an insured's obligations under a large
55 deductible policy.

56 3. Unless otherwise agreed by the responsible guaranty
57 association, all large deductible claims which are also "covered claims"
58 as defined by the applicable guaranty association law including those

59 that may have been funded by an insured before liquidation shall be
60 turned over to the guaranty association for handling. To the extent the
61 insured funds or pays the deductible claim pursuant to an agreement
62 by the guaranty fund or otherwise, the insured's funding or payment of
63 a deductible claim will extinguish the obligations, if any, of the
64 receiver or any guaranty association to pay such claim. No charge of
65 any kind shall be made against the receiver or a guaranty association
66 on the basis of an insured's funding or payment of a deductible claim.

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

87 5. (1) The receiver shall have the obligation to collect
88 reimbursements owed for deductible claims as provided for herein, and
89 shall take all commercially reasonable actions to collect such
90 reimbursements. The receiver shall promptly bill insureds for
91 reimbursement of deductible claims:

92 (a) Paid by the insurer prior to the commencement of
93 delinquency proceedings;

94 (b) Paid by a guaranty association upon receipt by the receiver
95 of notice from a guaranty association of reimbursable payments; or

96 (c) Paid or allowed by the receiver.

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

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

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

109 6. (1) Subject to the provisions of this subsection, the receiver
110 shall utilize collateral when available to secure the insured's obligation
111 to fund or reimburse deductible claims or other secured obligations or
112 other payment obligations. A guaranty association shall be entitled to
113 collateral as provided for in this subsection to the extent needed to
114 reimburse a guaranty association for the payments of a deductible
115 claim. Any distributions made to a guaranty association under this
116 subsection shall not be treated as distributions under section 375.1218
117 or as early access payments under section 375.1205.

118 (2) All claims against the collateral shall be paid in the order
119 received and no claim of the receiver including those described in this
120 subsection shall supersede any other claim against the collateral as
121 described in subdivision (4) of this subsection.

122 (3) The receiver shall draw down collateral to the extent
123 necessary in the event that the insured fails to:

124 (a) Perform its funding or payment obligations under any large
125 deductible policy;

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

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

130 (d) Timely fund any other secured obligation; or

131 (e) Timely pay expenses.

132 (4) Claims that are validly asserted against the collateral shall

133 **be satisfied in the order in which such claims are received by the**
134 **receiver.**

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

✓

Unofficial

Bill

Copy