

SECOND REGULAR SESSION

# SENATE BILL NO. 960

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR WIELAND.

Read 1st time January 21, 2016, and ordered printed.

ADRIANE D. CROUSE, Secretary.

6114S.011

## AN ACT

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

*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  
2 section, to be known as section 375.1605, to read as follows:

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

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

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

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

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

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

23 (4) "Delinquency proceeding", shall have the same meaning  
24 ascribed to it in section 375.1152;

25 (5) "Guaranty association", the Missouri property and casualty  
26 insurance guaranty association created by sections 375.771 to 375.779,  
27 as amended, and any other similar entities created by the laws of any  
28 other state for the payment of claims of insolvent insurers;

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

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

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

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

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

59 deductible policy;

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

62 3. Unless otherwise agreed by the responsible guaranty  
63 association, all large deductible claims which are also "covered claims",  
64 as defined by the applicable guaranty association law, including those  
65 that may have been funded by an insured before liquidation, shall be  
66 turned over to the guaranty association for handling. To the extent the  
67 insured funds or pays the deductible claim pursuant to an agreement  
68 by the guaranty fund or otherwise, the insured's funding or payment of  
69 a deductible claim will extinguish the obligations, if any, of the  
70 receiver or any guaranty association to pay such claim. No charge of  
71 any kind shall be made against the receiver or a guaranty association  
72 on the basis of an insured's funding or payment of a deductible claim.

73 4. To the extent a guaranty association pays any deductible claim  
74 for which the insurer would have been entitled to reimbursement from  
75 the insured, a guaranty association shall be entitled to the full amount  
76 of the reimbursement and available collateral as provided for under  
77 this section to the extent necessary to reimburse the guaranty  
78 association. Such reimbursements and collateral shall be subject to any  
79 reasonable and actual expenses recovered by the receiver as provided  
80 for under subsection 7 of this section. Reimbursements paid to the  
81 guaranty association under this subsection shall not be treated as  
82 distributions under section 375.1218 or as early access payments under  
83 section 375.1205. To the extent that a guaranty association pays a  
84 deductible claim that is not reimbursed either from collateral or by  
85 insured payments, or incurred expenses in connection with large  
86 deductible policies that are not reimbursed under this section, the  
87 guaranty association shall be entitled to assert a claim for those  
88 amounts in the delinquency proceeding. Nothing in this subsection  
89 limits any rights of the receiver or a guaranty association that may  
90 otherwise exist under applicable law to obtain reimbursement from  
91 insureds for claims payments made by the guaranty association under  
92 policies of the insurer or for the guaranty association's related  
93 expenses such as those affording the guaranty association the right to  
94 recover for claims payments made to or on behalf of high net worth  
95 insureds or claimants.

96           5. (1) The receiver shall have the obligation to collect  
97 reimbursements owed for deductible claims as provided for herein and  
98 shall take all commercially reasonable actions to collect such  
99 reimbursements. The receiver shall promptly bill insureds for  
100 reimbursement of deductible claims:

101           (a) Paid by the insurer prior to the commencement of  
102 delinquency proceedings;

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

105           (c) Paid or allowed by the receiver.

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

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

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

118           6. (1) Subject to the provisions of this subsection, the receiver  
119 shall utilize collateral if available to secure the insured's obligation to  
120 fund or reimburse deductible claims or other secured obligations or  
121 other payment obligations. A guaranty association shall be entitled to  
122 collateral as provided for in this subsection to the extent needed to  
123 reimburse a guaranty association for the payments of a deductible  
124 claim. Any distributions made to a guaranty association under this  
125 subsection shall not be treated as distributions under section 375.1218  
126 or as early access payments under section 375.1205.

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

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

133           (a) Perform its funding or payment obligations under any large  
134 deductible policy;

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

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

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

140           (e) Timely pay expenses.

141           (4) Claims that are validly asserted against the collateral shall  
142 be satisfied in the order in which such claims are received by the  
143 receiver; except that, if more than one creditor has a valid claim  
144 against the same collateral and the available collateral, along with  
145 billing collection efforts and to the extent that the collateral is subject  
146 to other known secured obligations, are together insufficient to pay  
147 each creditor in full, then the director as rehabilitator or liquidator  
148 shall prorate payments to each creditor based upon the relationship the  
149 amount of claims each creditor has paid bears to the total of all claims  
150 paid by all such creditors.

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

155           7. The receiver shall be entitled to deduct from the collateral or  
156 from the deductible reimbursements reasonable and actual expenses  
157 incurred in connection with the collection of the collateral and  
158 deductible reimbursements under the provisions of this section, subject  
159 to the review and approval by the court.

160           8. The court having jurisdiction over the delinquency  
161 proceedings under section 375.1154 shall have jurisdiction to resolve  
162 disputes arising under the provisions of this section.

163           9. The provisions of this section shall apply to all delinquency  
164 proceedings that either commence on or after the effective date of this  
165 section or are open and pending on the effective date of this section,  
166 provided that, the provisions of this section shall not affect any  
167 delinquency proceeding for which a final order of liquidation with a  
168 finding of insolvency has been entered by a court of competent  
169 jurisdiction prior to the effective date of this section.

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

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

✓

Bill

Copy