

ACT No. 109

2019 Regular Session

HOUSE BILL NO. 288

BY REPRESENTATIVE HOLLIS

1 AN ACT

2 To enact R.S. 22:2013.1, relative to the administration of large deductible policies and
3 collateral; to provide for applicability; to provide for definitions; to provide for the
4 right of the receiver or a guaranty association to pursue collateral; to limit the
5 defenses of the insured; to provide for the treatment of the collateral; to provide for
6 an effective date; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 22:2013.1 is hereby enacted to read as follows:

9 §2013.1. Administration of large deductible policies and insured collateral

10 A. This Section shall apply to workers' compensation large deductible
11 policies issued by an insurer subject to delinquency proceedings pursuant to this
12 Chapter; however, this Section shall not apply to first-party claims or to claims
13 funded by a guaranty association net of the deductible unless Subsection C of this
14 Section applies. Large deductible policies shall be administered in accordance with
15 their terms, except to the extent the terms conflict with this Section.

16 B. For purposes of this Section, the following terms have the following
17 meanings:

18 (1) "Collateral" means any cash, letters of credit, surety bond, or any other
19 form of security posted by the insured, or by a captive insurer or reinsurer, to secure
20 the insured's obligation under a large deductible policy to pay deductible claims or
21 to reimburse the insurer for deductible claim payments. Collateral may also secure

1 an insured's obligation to reimburse or pay to the insurer as may be required for other
2 secured obligations.

3 (2) "Commercially reasonable" means to act in good faith using prevailing
4 industry practices and making all reasonable efforts considering the facts and
5 circumstances of the matter.

6 (3) "Deductible claim" means any claim, including a claim for loss and
7 defense and cost containment expense, unless the expenses are excluded, under a
8 large deductible policy that is within the deductible.

9 (4)(a) "Large deductible policy" means any of the following:

10 (i) Any combination of one or more workers' compensation policies and
11 endorsements issued to an insured, and contracts or security agreements entered into
12 between an insured and the insurer in which the insured has agreed with the insurer
13 to do either of the following:

14 (aa) Pay directly the initial portion of any claim under the policy up to a
15 specified dollar amount, or the expenses related to any claim.

16 (bb) Reimburse the insurer for its payment of any claim or related expenses
17 under the policy up to the specified dollar amount of the deductible.

18 (ii) Any policy that contains an aggregate limit on the insured's liability for
19 all deductible claims in addition to a per claim deductible limit.

20 (iii) Any policy that shifts a portion of the ultimate financial responsibility
21 to pay claims from the insurer to the insured, even though the obligation to initially
22 pay claims may remain with the insurer.

23 (iv) Any policy with a deductible of one hundred thousand dollars or greater.

24 (b) "Large deductible policy" shall not include any of the following:

25 (i) Policies, endorsements, or agreements that provide for the initial portion
26 of any covered claim to be self-insured and further that the insurer shall have no
27 payment obligation within the self-insured retention.

28 (ii) Policies that provide for retrospectively rated premium payments by the
29 insured or reinsurance arrangements or agreements, except to the extent the

1 arrangements or agreements assume, secure, or pay the policyholder's large
2 deductible obligations.

3 (5) "Other secured obligations" means obligations of an insured to an insurer
4 other than those under a large deductible policy, including but not limited to those
5 under a reinsurance agreement or other agreement involving retrospective premium
6 obligations, the performance of which is secured by collateral that also secures an
7 insured's obligations under a large deductible policy.

8 C. Unless otherwise agreed by the responsible guaranty association, all large
9 deductible claims, which are also covered claims as defined by the applicable
10 guaranty association law, including those that may have been funded by an insured
11 before liquidation, shall be turned over to the guaranty association for handling. To
12 the extent the insured funds or pays the deductible claim, pursuant to an agreement
13 by the guaranty fund or otherwise, the insured's funding or payment of a deductible
14 claim will extinguish the obligations, if any, of the receiver or any guaranty
15 association to pay the claim. No charge of any kind shall be made against the
16 receiver or a guaranty association on the basis of an insured's funding or payment of
17 a deductible claim.

18 D.(1) To the extent a guaranty association pays any deductible claim for
19 which the insurer would have been entitled to reimbursement from the insured, a
20 guaranty association shall be entitled to the full amount of the reimbursement, and
21 available collateral as provided for in this Section to the extent necessary to
22 reimburse the guaranty association. Reimbursements paid to the guaranty
23 association pursuant to this Subsection shall not be treated as distributions pursuant
24 to R.S. 22:2025 or as early access payments pursuant to R.S. 22:2008(C), 2034, and
25 2037.

26 (2) To the extent that a guaranty association pays a deductible claim that is
27 not reimbursed either from collateral or by insured payments, or incurs expenses in
28 connection with large deductible policies that are not reimbursed pursuant to this
29 Section, the guaranty association shall be entitled to assert a claim for those amounts
30 in the delinquency proceeding.

1 (3) Nothing in this Subsection shall limit any rights of the receiver or a
2 guaranty association that may otherwise exist pursuant to applicable law to obtain
3 reimbursement from insureds for claims payments made by the guaranty association
4 under policies of the insurer or for the guaranty association's related expenses,
5 including but not limited to those provided for in R.S. 22:2061.1, or existing under
6 similar laws of other states.

7 E.(1) The receiver shall collect reimbursements owed for deductible claims
8 as provided for in this Section, and shall take all commercially reasonable actions to
9 collect the reimbursements. The receiver shall promptly bill insureds for
10 reimbursement of deductible claims that are any of the following:

11 (a) Paid by the insurer prior to the commencement of delinquency
12 proceedings.

13 (b) Paid by a guaranty association upon receipt by the receiver of notice from
14 a guaranty association of reimbursable payments.

15 (c) Paid or allowed by the receiver.

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

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

23 (4) Any contract, counter letter, or other agreement between the insurer and
24 the insured that in any manner seeks to reduce or eliminate the insured's obligation
25 to reimburse the insurer for the deductible shall be null and void as against public
26 policy and shall not be eligible to be used by the insured as a defense to the efforts
27 by the receiver or guaranty association to collect any unpaid deductible.

28 (5) Except for gross negligence, an allegation of improper handling or
29 payment of a deductible claim by the insurer, the receiver, or any guaranty

1 association shall not be a defense to the insured's reimbursement obligations under
2 the large deductible policy.

3 F.(1) Subject to the provisions of this Subsection, the receiver shall use
4 collateral, when available, to secure the insured's obligation to fund or reimburse
5 deductible claims or other secured obligations or other payment obligations. A
6 guaranty association shall be entitled to collateral as provided for in this Subsection
7 to the extent needed to reimburse a guaranty association for the payment of a
8 deductible claim. Any distributions made to a guaranty association pursuant to this
9 Subsection shall not be treated as distributions pursuant to R.S. 22:2025 or as early
10 access payments pursuant to R.S. 22:2008(C), 2034, and 2037.

11 (2) All claims against the collateral shall be paid in the order received and
12 no claim of the receiver, including those described in this Subsection, shall supersede
13 any other claim against the collateral as provided for in Paragraph (4) of this
14 Subsection.

15 (3) The receiver shall draw down collateral to the extent necessary in the
16 event that the insured fails to do any of the following:

17 (a) Perform its funding or payment obligations under any large deductible
18 policy.

19 (b) Pay deductible claim reimbursements within the time specified in the
20 large deductible policy or within sixty days after the date of the billing if no time is
21 specified.

22 (c) Pay amounts due to the estate for preliquidation obligations.

23 (d) Timely fund any other secured obligation.

24 (e) Timely pay expenses.

25 (4) Claims that are validly asserted against the collateral shall be satisfied in
26 the order in which the claims are received by the receiver. However, if more than
27 one creditor has a valid claim against the same collateral and the available collateral,
28 along with billing collection efforts and to the extent that the collateral is subject to
29 other known secured obligations, are together insufficient to pay each creditor in full,

1 the receiver may prorate payments based on the ratio of the amount of claims each
2 creditor has to the total claims paid by all the creditors.

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

6 G. The receiver may deduct from the collateral or from the deductible
7 reimbursements reasonable and actual expenses incurred in connection with the
8 collection of the collateral and deductible reimbursements.

9 H. This Section shall not limit or adversely affect any rights or powers a
10 guaranty association may have pursuant to applicable state law to obtain
11 reimbursement from certain classes of policyholders for claims payments made by
12 the guaranty association under policies of the insolvent insurer, or for related
13 expenses the guaranty association incurs.

14 Section 2. This Act shall become effective on January 1, 2020.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____