

House \_\_\_\_\_ Amendment NO. \_\_\_\_\_

Offered By

1 AMEND House Committee Substitute for Senate Bill No. 205, Page 1, Section A, Line 6, by  
2 inserting after all of said line the following:

3  
4 "375.1605. 1. The provisions of this section shall apply to workers' compensation large  
5 deductible policies issued by an insurer subject to delinquency proceedings under this chapter. This  
6 section shall not apply to first party claims or to claims funded by a guaranty association net of the  
7 deductible unless subsection 3 of this section applies. Large deductible policies shall be  
8 administered in accordance with their terms except to the extent such terms conflict with this section.  
9

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

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

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

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

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

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

26 (b) Reimburse the insurer for its payment of any claim or related expenses under the policy  
27 up to the specified dollar amount of the deductible.  
28

29 The term "large deductible policy" also includes policies which contain an aggregate limit on the  
30 insured's liability for all deductible claims in addition to a per-claim deductible limit. The primary  
31 purpose and distinguishing characteristic of a large deductible policy is the shifting of a portion of  
32 the ultimate financial responsibility under the large deductible policy to pay claims from the insurer  
33 to the insured, even though the obligation to initially pay claims may remain with the insurer. A  
34 large deductible shall include any policy with a deductible of fifty thousand dollars or more. Large  
35 deductible policies do not include policies, endorsements, or agreements which provide that the  
36 initial portion of any covered claim shall be self-insured and further that the insured shall have no

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1 payment obligation within the self-insured retention. Large deductible policies also do not include  
2 policies that provide for retrospectively rated premium payments by the insured or reinsurance  
3 arrangements or agreements, except to the extent such arrangements or agreements assume, secure,  
4 or pay the policyholder's large deductible obligations;

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

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

17 4. To the extent a guaranty association pays any deductible claim for which the insurer  
18 would have been entitled to reimbursement from the insured, a guaranty association shall be entitled  
19 to the full amount of the reimbursement and available collateral as provided for under this section to  
20 the extent necessary to reimburse the guaranty association. Reimbursements paid to the guaranty  
21 association under this subsection shall not be treated as distributions under section 375.1218 or as  
22 early access payments under section 375.1205. To the extent that a guaranty association pays a  
23 deductible claim that is not reimbursed either from collateral or by insured payments, or incurred  
24 expenses in connection with large deductible policies that are not reimbursed under this section, the  
25 guaranty association shall be entitled to assert a claim for those amounts in the delinquency  
26 proceeding. Nothing in this subsection limits any rights of the receiver or a guaranty association that  
27 may otherwise exist under applicable law to obtain reimbursement from insureds for claims  
28 payments made by the guaranty association under policies of the insurer or for the guaranty  
29 association's related expenses such as those affording the guaranty association the right to recover  
30 for claims payments made to or on behalf of high net worth insureds or claimants.

31 5. (1) The receiver shall have the obligation to collect reimbursements owed for deductible  
32 claims as provided for herein, and shall take all commercially reasonable actions to collect such  
33 reimbursements. The receiver shall promptly bill insureds for reimbursement of deductible claims:

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

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

37 (c) Paid or allowed by the receiver.

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

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

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

47 6. (1) Subject to the provisions of this subsection, the receiver shall utilize collateral when  
48 available to secure the insured's obligation to fund or reimburse deductible claims or other secured

1 obligations or other payment obligations. A guaranty association shall be entitled to collateral as  
2 provided for in this subsection to the extent needed to reimburse a guaranty association for the  
3 payments of a deductible claim. Any distributions made to a guaranty association under this  
4 subsection shall not be treated as distributions under section 375.1218 or as early access payments  
5 under section 375.1205.

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

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

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

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

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

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

16 (e) Timely pay expenses.

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

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

22  
23 Further amend said bill by amending the title, enacting clause, and intersectional references  
24 accordingly.