

2019 Regular Session

HOUSE BILL NO. 288

BY REPRESENTATIVE HOLLIS

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

INSURANCE/POLICIES: Provides relative to the administration of large deductible policies and collateral

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

1 to reimburse the insurer for deductible claim payments. Collateral may also secure  
2 an insured's obligation to reimburse or pay to the insurer as may be required for other  
3 secured obligations.

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

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

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

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

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

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

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

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

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

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

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

1           (ii) Policies that provide for retrospectively rated premium payments by the  
2           insured or reinsurance arrangements or agreements, except to the extent the  
3           arrangements or agreements assume, secure, or pay the policyholder's large  
4           deductible obligations.

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

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

20           D.(1) To the extent a guaranty association pays any deductible claim for  
21           which the insurer would have been entitled to reimbursement from the insured, a  
22           guaranty association shall be entitled to the full amount of the reimbursement, and  
23           available collateral as provided for in this Section to the extent necessary to  
24           reimburse the guaranty association. Reimbursements paid to the guaranty  
25           association pursuant to this Subsection shall not be treated as distributions pursuant  
26           to R.S. 22:2025 or as early access payments pursuant to R.S. 22:2008(C), 2034, and  
27           2037.

28           (2) To the extent that a guaranty association pays a deductible claim that is  
29           not reimbursed either from collateral or by insured payments, or incurs expenses in

1 connection with large deductible policies that are not reimbursed pursuant to this  
2 Section, the guaranty association shall be entitled to assert a claim for those amounts  
3 in the delinquency proceeding.

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

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

14 (a) Paid by the insurer prior to the commencement of delinquency  
15 proceedings.

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

18 (c) Paid or allowed by the receiver.

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

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

26 (4) Any contract, counter letter, or other agreement between the insurer and  
27 the insured that in any manner seeks to reduce or eliminate the insured's obligation  
28 to reimburse the insurer for the deductible shall be null and void as against public

1 policy and shall not be eligible to be used by the insured as a defense to the efforts  
2 by the receiver or guaranty association to collect any unpaid deductible.

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

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

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

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

21 (a) Perform its funding or payment obligations under any large deductible  
22 policy.

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

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

27 (d) Timely fund any other secured obligation.

28 (e) Timely pay expenses.

1           (4) Claims that are validly asserted against the collateral shall be satisfied in  
2           the order in which the claims are received by the receiver. However, if more than  
3           one creditor has a valid claim against the same collateral and the available collateral,  
4           along with billing collection efforts and to the extent that the collateral is subject to  
5           other known secured obligations, are together insufficient to pay each creditor in full,  
6           the receiver may prorate payments based on the ratio of the amount of claims each  
7           creditor has to the total claims paid by all the creditors.

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

11          G. The receiver may deduct from the collateral or from the deductible  
12          reimbursements reasonable and actual expenses incurred in connection with the  
13          collection of the collateral and deductible reimbursements.

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

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

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 288 Original

2019 Regular Session

Hollis

**Abstract:** Provides for the right of the receiver or a guaranty association to pursue collateral.

Proposed law defines "collateral", "commercially reasonable", "deductible claim", "large deductible policy", and "other secured obligations".

Proposed law requires, unless otherwise agreed by the responsible guaranty association, all large deductible claims, which are also covered claims as defined by the applicable guaranty association law, including those that may have been funded by an insured before liquidation, to be turned over to the guaranty association for handling.

Proposed law provides that, to the extent a guaranty association pays any deductible claim for which the insurer would have been entitled to reimbursement from the insured, a guaranty association shall be entitled to the full amount of the reimbursement and available collateral.

Proposed law requires the receiver to collect reimbursements owed for deductible claims, take all commercially reasonable actions to collect the reimbursements, and promptly bill insureds for reimbursement of deductible claims.

Proposed law requires the receiver to use collateral, when available, to secure the insured's obligation to fund or reimburse deductible claims or other secured obligations or other payment obligations. Proposed law further provides that a guaranty association is entitled to collateral to the extent needed to reimburse a guaranty association for the payment of a deductible claim.

Proposed law requires claims that are validly asserted against the collateral to be satisfied in the order in which the claims are received by the receiver and provides that excess collateral may be returned to the insured as determined by the receiver after a periodic review of claims paid, outstanding case reserves, and a factor for incurred but not reported claims.

Proposed law authorizes the receiver to deduct from the collateral or from the deductible reimbursements reasonable and actual expenses incurred in connection with the collection of the collateral and deductible reimbursements.

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

Effective Jan. 1, 2020.

(Adds R.S. 22:2013.1)