

**Introduced by Senator Hernandez**February 1, 2013

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An act to add Article 5 (commencing with Section 10752) to Chapter 8 of Part 2 of Division 2 of the Insurance Code, relating to insurance.

## LEGISLATIVE COUNSEL'S DIGEST

SB 161, as introduced, Hernandez. Stop-loss insurance coverage.

Existing law prohibits a person from transacting any class of insurance business, including health insurance, in this state without first being an admitted insurer. Under existing law, admission is secured by procuring a certificate of authority from the Insurance Commissioner. Existing law prohibits a health insurance policy from being issued or delivered to any person in this state unless specified requirements have been met, including that a copy of the form and premium rates are filed with the commissioner. Under existing law, if the commissioner notifies the health insurer that the filed form does not comply with specified requirements, it is unlawful for that health insurer to issue any health insurance policy in that form.

Existing law, with respect to small employer health insurance, requires a carrier providing aggregate or specific stop-loss coverage or any other assumption of risk with reference to a health benefit plan, as defined, to provide that the plan meets specified requirements concerning preexisting condition provisions, waiting or affiliation periods, and late enrollees.

Existing law, the federal Patient Protection and Affordable Care Act (PPACA), commencing January 1, 2014, prohibits a group health plan and a health insurance issuer offering group or individual health insurance coverage from imposing any preexisting condition exclusion with respect to the plan or coverage.

This bill would require a stop-loss carrier, as defined, to offer coverage to all employees and dependents of a small employer to which it issues a stop-loss insurance policy and would prohibit the carrier from excluding any employee or dependent on the basis of actual or expected health status-related factors, as specified. Except as specified, the bill would require a stop-loss carrier to renew, at the option of the small employer, all stop-loss insurance policies. The bill would prohibit a stop-loss insurance policy issued on or after January 1, 2014, to a small employer from containing certain individual or aggregate attachment points for a policy year or providing direct coverage, as defined, of an employee’s health claims. The bill would make a stop-loss carrier in violation of these provisions subject to administrative penalties and would require those fine and penalty moneys to be deposited in the General Fund and be available upon appropriation by the Legislature.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
 State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Article 5 (commencing with Section 10752) is  
 2 added to Chapter 8 of Part 2 of Division 2 of the Insurance Code,  
 3 to read:

4  
 5 Article 5. Stop-Loss Insurance

6  
 7 10752. As used in this article, the following definitions shall  
 8 apply:

9 (a) “Attachment point” means the amount of health claims  
 10 incurred by a small employer in a policy year for its employees  
 11 and their dependents above which the stop-loss carrier incurs a  
 12 liability for payment.

13 (1) “Individual attachment point” means the amount of health  
 14 claims incurred by a small employer in a policy year for an  
 15 individual employee or dependent of an employee above which  
 16 the stop-loss carrier incurs a liability for payment. For purposes  
 17 of this article, “specific attachment point” has the same meaning  
 18 as “individual attachment point.”

19 (2) “Aggregate attachment point” means the amount of health  
 20 claims incurred by a small employer in a policy year for all covered

1 employees and their dependents above which the stop-loss carrier  
2 incurs a liability for payment.

3 (b) “Dependent” means the spouse, registered domestic partner  
4 as described in Section 297 of the Family Code, or child of an  
5 employee.

6 (c) “Direct coverage” means that an insurance company assumes  
7 a direct obligation to an employee under an insurance policy to  
8 pay or indemnify the employee for health claims incurred by the  
9 employee or the employee’s dependents.

10 (d) “Expected claims” means the total amount of health claims  
11 that, in the absence of a stop-loss insurance policy or other  
12 insurance, are projected to be incurred by a small employer for its  
13 employees and their dependents.

14 (e) “Policy year” means the 12-month period that is designated  
15 as the policy year for the stop-loss insurance policy. If the stop-loss  
16 insurance policy does not designate a policy year, the policy year  
17 is the year in which the total amount of health claims incurred by  
18 a small employer for an individual employee or dependent of an  
19 employee, or the aggregate amount for all covered employees and  
20 their dependents, are added together for the purposes of  
21 determining whether the amount of claims has exceeded the  
22 attachment point.

23 (f) “Small employer” has the same meaning as defined in  
24 subdivision (w) of Section 10700.

25 (g) “Stop-loss carrier” means an insurance company or other  
26 entity providing individual or aggregate stop-loss insurance  
27 coverage, or any other assumption of risk, to a small employer for  
28 the health claims of its employees and their dependents, regardless  
29 of the situs of the contract or master policyholder.

30 (h) “Stop-loss insurance policy” means a policy, contract,  
31 certificate, or statement of coverage between a stop-loss carrier  
32 and small employer providing individual or aggregate stop-loss  
33 insurance coverage, or any other assumption of risk, to a small  
34 employer for the health claims of its employees and their  
35 dependents, regardless of the situs of the contract or master  
36 policyholder.

37 10752.1. A stop-loss carrier shall offer coverage to all  
38 employees and dependents of employees of a small employer to  
39 which it issues a stop-loss insurance policy and shall not exclude  
40 any employee or dependent on the basis of an actual or expected

1 health status-related factor. Health status-related factors include,  
2 but are not limited to, any of the following: health status; medical  
3 condition, including both physical and mental illnesses; claims  
4 experience; medical history; receipt of health care; genetic  
5 information; disability; evidence of insurability, including  
6 conditions arising out of acts of domestic violence of the employee  
7 or dependent; or any other health status-related factor as determined  
8 by the department.

9 10752.2. A stop-loss carrier shall renew, at the option of the  
10 small employer, all stop-loss insurance policies written, issued,  
11 administered, or renewed on or after January 1, 2014, and all  
12 stop-loss insurance policies in force on or after the January 1, 2014,  
13 except as follows:

14 (a) (1) For nonpayment of the required premiums by the small  
15 employer, if the small employer has been duly notified and billed  
16 for the charge and at least a 30-day grace period has elapsed since  
17 the date of notification or, if longer, the period of time required  
18 for notice and any other requirements pursuant to Section 2703,  
19 2712, or 2742 of the federal Public Health Service Act (42 U.S.C.  
20 Sec. 300gg-2, 300gg-12, or 300gg-42) and any subsequent rules  
21 or regulations has elapsed.

22 (2) A stop-loss carrier shall continue to provide coverage as  
23 required by the small employer's policy during the grace period  
24 described in paragraph (1). This section does not affect or impair  
25 the small employer's or carrier's other rights and responsibilities  
26 pursuant to the policy.

27 (b) If the stop-loss carrier demonstrates fraud or an intentional  
28 misrepresentation of material fact by the small employer under  
29 the terms of the stop-loss insurance policy.

30 (c) If the stop-loss carrier has been determined by the  
31 commissioner to be financially impaired.

32 (d) If the stop-loss carrier ceases to write, issue, or administer  
33 new stop-loss insurance policies in this state; provided, however,  
34 that the following conditions are satisfied:

35 (1) Notice of the decision to cease writing, issuing, or  
36 administering new or existing stop-loss insurance policies in this  
37 state is provided to the commissioner, and to the small employer,  
38 at least 180 days prior to the discontinuation of the coverage.

39 (2) Stop-loss insurance policies subject to this article shall not  
40 be canceled until 180 days after the date of the notice required

1 under paragraph (1). During that time, the stop-loss carrier shall  
2 continue to comply with this article.

3 10752.3. No stop-loss insurance policy issued on or after  
4 January 1, 2014, to a small employer shall contain any of the  
5 following provisions:

6 (a) An individual attachment point for a policy year that is less  
7 than ninety-five thousand dollars (\$95,000).

8 (b) An aggregate attachment point for a policy year that is less  
9 than the greater of one of the following:

10 (1) Nineteen thousand dollars (\$19,000) times the total number  
11 of covered employees and dependents.

12 (2) One hundred twenty percent of expected claims.

13 (3) Ninety-five thousand dollars (\$95,000).

14 (c) A provision for direct coverage of an employee's health  
15 claims.

16 10752.4. The commissioner may adopt regulations as may be  
17 necessary to carry out the purposes of this article. In adopting  
18 regulations, the commissioner shall comply with Chapter 3.5  
19 (commencing with Section 11340) of Part 1 of Division 3 of Title  
20 2 of the Government Code.

21 10752.5. A stop-loss carrier that violates the provisions of this  
22 article is subject to the remedies and administrative penalties  
23 applicable to carriers in Sections 10718 and 10718.5. All fine and  
24 penalty moneys received pursuant to this section shall be deposited  
25 in the General Fund and shall be available for expenditure by the  
26 commissioner upon appropriation by the Legislature.

27 10752.6. The provisions of this article are severable. If any  
28 provision of this article or its application is held invalid, that  
29 invalidity shall not affect other provisions or applications that can  
30 be given effect without the invalid provision or application.