

AMENDED IN SENATE APRIL 25, 2013

**SENATE BILL**

**No. 161**

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**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 amended, 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~~ *an insurer* 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 prohibit a stop-loss carrier, insurer, 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 insurer 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 employee or his or her dependent. The bill would make a stop-loss carrier insurer 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 prohibit the act from affecting the ongoing operations of multiple employer welfare arrangements that provide health care benefits to their members on a self-funded or partially self-funded basis and that comply with small group health reforms.~~

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, *and covered by a stop-loss insurance policy,*  
 12 ~~above which the stop-loss carrier insurer incurs a liability for~~  
 13 ~~payment.~~

1 (1) “Individual attachment point” means the amount of health  
2 claims incurred by a small employer in a policy year for an  
3 individual employee or dependent of an employee, *and covered*  
4 *by a stop-loss insurance policy*, above which the stop-loss ~~carrier~~  
5 *insurer* incurs a liability for payment, *under individual stop-loss*  
6 *coverage*. For purposes of this article, “specific attachment point”  
7 has the same meaning as “individual attachment point.”

8 (2) “Aggregate attachment point” means the *total* amount of  
9 health claims incurred by a small employer in a policy year for all  
10 covered employees and their dependents, *and covered by a*  
11 *stop-loss insurance policy*, above which the stop-loss ~~carrier~~  
12 *insurer* incurs a liability for payment *under aggregate stop-loss*  
13 *coverage*.

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

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

21 (d) “Expected claims” means, *for the purposes of aggregate*  
22 *stop-loss coverage*, the total amount of health claims that, ~~in the~~  
23 ~~absence of a stop-loss insurance policy or other insurance, are~~  
24 ~~projected to be incurred by a small employer for its employees~~  
25 ~~and their dependents. is projected to be incurred by a small~~  
26 *employer for its employees and their dependents in a policy year.*

27 (e) “Policy year” means the 12-month period that is designated  
28 as the policy year *or policy period* for the stop-loss insurance  
29 policy. If the stop-loss insurance policy does not designate a policy  
30 year, the policy year is the year in which the total amount of health  
31 claims incurred by a small employer for an individual employee  
32 or dependent of an employee, or the aggregate amount for all  
33 covered employees and their dependents, are added together for  
34 the purposes of determining whether the ~~amount of claims has~~  
35 *have exceeded the attachment point.*

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

38 (g) “~~Stop-loss carrier~~<sup>2</sup> *insurer*” means an insurance company  
39 ~~or other entity~~ providing individual or aggregate stop-loss insurance  
40 coverage, *or both*, or any other assumption of risk, to a small

1 employer for the health claims ~~of it incurs for~~ its employees and  
2 their dependents, ~~regardless of the situs of the contract or master~~  
3 ~~policyholder.~~

4 (h) “Stop-loss insurance policy” means a policy, contract,  
5 certificate, or statement of coverage between a stop-loss ~~carrier~~  
6 *insurer* and small employer providing individual or aggregate  
7 stop-loss insurance coverage, *or both*, or any other assumption of  
8 risk, to a small employer ~~for the health claims for the liability the~~  
9 *small employer incurs related to the covered health claims* of its  
10 employees and their dependents, ~~regardless of the situs of the~~  
11 ~~contract or master policyholder.~~

12 10752.1. A stop-loss ~~carrier~~ *insurer* shall ~~offer coverage to all~~  
13 ~~employees and dependents of employees of a small employer to~~  
14 ~~which it issues a stop-loss insurance policy and shall not exclude~~  
15 any employee or dependent on the basis of an actual or expected  
16 health status-related factor. Health status-related factors include,  
17 but are not limited to, any of the following: health status; medical  
18 condition, including both physical and mental illnesses; claims  
19 experience; medical history; receipt of health care; genetic  
20 information; disability; evidence of insurability, including  
21 conditions arising out of acts of domestic violence of the employee  
22 or dependent; or any other health status-related factor as determined  
23 by the department.

24 10752.2. A stop-loss ~~carrier~~ *insurer* shall renew, at the option  
25 of the small employer, all stop-loss insurance policies written,  
26 issued, administered, or renewed on or after January 1, 2014, and  
27 all *small employer* stop-loss insurance policies in force on or after  
28 ~~the~~ January 1, 2014, except as follows:

29 (a) (1) For nonpayment of the required premiums by the small  
30 employer, if the small employer has been duly notified and billed  
31 for the charge and at least a 30-day grace period has elapsed since  
32 the date of notification ~~or, if longer, the period of time required~~  
33 ~~for notice and any other requirements pursuant to Section 2703,~~  
34 ~~2712, or 2742 of the federal Public Health Service Act (42 U.S.C.~~  
35 ~~Sec. 300gg-2, 300gg-12, or 300gg-42) and any subsequent rules~~  
36 ~~or regulations has elapsed.~~

37 (2) A stop-loss ~~carrier~~ *insurer* shall continue to provide coverage  
38 as required by the small employer’s policy during the grace period  
39 described in paragraph (1). ~~This section does not affect or impair~~  
40 ~~the small employer’s or carrier’s other rights and responsibilities~~

1 ~~pursuant to the policy.~~ *Nothing in this section shall be construed*  
2 *to affect or impair the small employer's or the stop-loss insurer's*  
3 *other rights and responsibilities pursuant to the policy.*

4 (b) ~~If-Where~~ the stop-loss ~~carrier~~ *insurer* demonstrates fraud or  
5 an intentional misrepresentation of material fact by the small  
6 employer under the terms of the stop-loss insurance policy.

7 (c) ~~If-Where~~ the stop-loss ~~carrier~~ *insurer* has been determined  
8 by the commissioner to be financially impaired.

9 (d) ~~If-Where~~ the stop-loss ~~carrier~~ *insurer* ceases to write, issue,  
10 or administer new stop-loss insurance policies in this state;  
11 provided, however, that the following conditions are satisfied:

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

16 (2) Stop-loss insurance policies subject to this article shall not  
17 be canceled until 180 days after the date of the notice required  
18 under paragraph (1). During that time, the stop-loss ~~carrier~~ *insurer*  
19 shall continue to comply with this article.

20 10752.3. No stop-loss insurance policy issued on or after  
21 January 1, 2014, to a small employer shall contain any of the  
22 following provisions:

23 (a) An individual attachment point for a policy year that is less  
24 than ~~ninety-five thousand dollars (\$95,000)~~ *sixty-five thousand*  
25 *dollars (\$65,000)*.

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

28 (1) ~~Nineteen thousand dollars (\$19,000)~~ *Thirteen thousand*  
29 *dollars (\$13,000)* times the total number of covered employees  
30 and dependents.

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

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

33 ~~(3) Sixty-five thousand dollars (\$65,000).~~

34 (c) A provision for direct coverage of an ~~employee's health~~  
35 ~~claims.~~ *employee or dependent of an employee.*

36 10752.4. The commissioner may adopt regulations as may be  
37 necessary to carry out the purposes of this article. In adopting  
38 regulations, the commissioner shall comply with Chapter 3.5  
39 (commencing with Section 11340) of Part 1 of Division 3 of Title  
40 2 of the Government Code.

1 10752.5. A stop-loss ~~carrier~~ *insurer* that violates the provisions  
2 of this article is subject to the remedies and administrative penalties  
3 applicable to ~~carriers~~ *insurers* in Sections 10718 and 10718.5. ~~All~~  
4 ~~fine and penalty moneys received pursuant to this section shall be~~  
5 ~~deposited in the General Fund and shall be available for~~  
6 ~~expenditure by the commissioner upon appropriation by the~~  
7 ~~Legislature.~~

8 10752.6. *Nothing in this article shall affect the ongoing*  
9 *operations of multiple employer welfare arrangements regulated*  
10 *pursuant to Article 4.7 (commencing with Section 742.20) of*  
11 *Chapter 1 of Part 2 of Division 1 that provide health care benefits*  
12 *to their members on a self-funded or partially self-funded basis*  
13 *and that comply with small group health reforms.*

14 ~~10752.6.~~

15 10752.7. The provisions of this article are severable. If any  
16 provision of this article or its application is held invalid, that  
17 invalidity shall not affect other provisions or applications that can  
18 be given effect without the invalid provision or application.