

AMENDED IN SENATE MAY 28, 2013

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 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 prohibit a stop-loss insurer, as defined, 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 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 or his or her dependent. The bill would make a stop-loss insurer in violation of these provisions subject to administrative penalties and would 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 insurer incurs a 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, and covered  
 16 by a stop-loss insurance policy, above which the stop-loss insurer  
 17 incurs a liability for payment, under individual stop-loss coverage.

1 For purposes of this article, “specific attachment point” has the  
2 same meaning as “individual attachment point.”

3 (2) “Aggregate attachment point” means the total amount of  
4 health claims incurred by a small employer in a policy year for all  
5 covered employees and their dependents, and covered by a  
6 stop-loss insurance policy, above which the stop-loss insurer incurs  
7 a liability for payment under aggregate stop-loss coverage.

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

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

15 (d) “Expected claims” means, for the purposes of aggregate  
16 stop-loss coverage, the total amount of health claims that is  
17 projected to be incurred by a small employer for its employees  
18 and their dependents in a policy year.

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

28 (f) “Small employer” has the same meaning as defined in  
29 subdivision ~~(w)~~ of Section ~~10700~~ (q) of Section 10753.

30 (g) “Stop-loss insurer” means an insurance company providing  
31 individual or aggregate stop-loss insurance coverage, or both, or  
32 any other assumption of risk, to a small employer for the health  
33 claims it incurs for its employees and their dependents.

34 (h) “Stop-loss insurance policy” means a policy, contract,  
35 certificate, or statement of coverage between a stop-loss insurer  
36 and small employer providing individual or aggregate stop-loss  
37 insurance coverage, or both, or any other assumption of risk, to a  
38 small employer for the liability the small employer incurs related  
39 to the covered health claims of its employees and their dependents.

1 10752.1. A stop-loss insurer shall not exclude any employee  
2 or dependent on the basis of an actual or expected health  
3 status-related factor. Health status-related factors include, but are  
4 not limited to, any of the following: health status; medical  
5 condition, including both physical and mental illnesses; claims  
6 experience; medical history; receipt of health care; genetic  
7 information; disability; evidence of insurability, including  
8 conditions arising out of acts of domestic violence of the employee  
9 or dependent; or any other health status-related factor as determined  
10 by the department.

11 10752.2. A stop-loss insurer shall renew, at the option of the  
12 small employer, all stop-loss insurance policies written, issued,  
13 administered, or renewed on or after January 1, 2014, and all small  
14 employer stop-loss insurance policies in force on or after January  
15 1, 2014, except as follows:

16 (a) (1) For nonpayment of the required premiums by the small  
17 employer, if the small employer has been duly notified and billed  
18 for the charge and at least a 30-day grace period has elapsed since  
19 the date of notification.

20 (2) A stop-loss insurer shall continue to provide coverage as  
21 required by the small employer's policy during the grace period  
22 described in paragraph (1). Nothing in this section shall be  
23 construed to affect or impair the small employer's or the stop-loss  
24 insurer's other rights and responsibilities pursuant to the policy.

25 (b) Where the stop-loss insurer demonstrates fraud or an  
26 intentional misrepresentation of material fact by the small employer  
27 under the terms of the stop-loss insurance policy.

28 (c) Where the stop-loss insurer has been determined by the  
29 commissioner to be financially impaired.

30 (d) Where the stop-loss insurer ceases to write, issue, or  
31 administer new stop-loss insurance policies in this state; provided,  
32 however, that the following conditions are satisfied:

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

37 (2) Stop-loss insurance policies subject to this article shall not  
38 be canceled until 180 days after the date of the notice required  
39 under paragraph (1). During that time, the stop-loss insurer shall  
40 continue to comply with this article.

1 10752.3. ~~No~~A stop-loss insurance policy issued on or after  
2 January 1, 2014, *and prior to January 1, 2016*, to a small employer  
3 shall *not* contain any of the following provisions:

4 (a) An individual attachment point for a policy year that is less  
5 than ~~sixty-five thousand dollars (\$65,000)~~ *thirty-five thousand*  
6 *dollars (\$35,000)*.

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

9 (1) ~~Thirteen thousand dollars (\$13,000)~~ *Five thousand dollars*  
10 *(\$5,000)* times the total number of covered employees and  
11 dependents.

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

13 (3) ~~Sixty-five thousand dollars (\$65,000)~~ *Thirty-five thousand*  
14 *dollars (\$35,000)*.

15 (c) A provision for direct coverage of an employee or dependent  
16 of an employee.

17 10752.4. *A stop-loss insurance policy issued on or after*  
18 *January 1, 2016, to a small employer shall not contain any of the*  
19 *following provisions:*

20 (a) *An individual attachment point for a policy year that is less*  
21 *than forty thousand dollars (\$40,000)*.

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

24 (1) *Five thousand dollars (\$5,000) times the total number of*  
25 *covered employees and dependents.*

26 (2) *One hundred twenty percent of expected claims.*

27 (3) *Forty thousand dollars (\$40,000)*.

28 (c) *A provision for direct coverage of an employee or dependent*  
29 *of an employee.*

30 ~~10752.4.~~

31 10752.5. The commissioner may adopt regulations as may be  
32 necessary to carry out the purposes of this article. In adopting  
33 regulations, the commissioner shall comply with Chapter 3.5  
34 (commencing with Section 11340) of Part 1 of Division 3 of Title  
35 2 of the Government Code.

36 ~~10752.5.~~

37 10752.6. A stop-loss insurer that violates the provisions of this  
38 article is subject to the remedies and administrative penalties  
39 applicable to insurers in Sections 10718 and 10718.5.

1 ~~10752.6.~~

2 10752.7. Nothing in this article shall affect the ongoing  
3 operations of multiple employer welfare arrangements regulated  
4 pursuant to Article 4.7 (commencing with Section 742.20) of  
5 Chapter 1 of Part 2 of Division 1 that provide health care benefits  
6 to their members on a self-funded or partially self-funded basis  
7 and that comply with small group health reforms.

8 ~~10752.7.~~

9 10752.8. The provisions of this article are severable. If any  
10 provision of this article or its application is held invalid, that  
11 invalidity shall not affect other provisions or applications that can  
12 be given effect without the invalid provision or application.

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