

AMENDED IN SENATE APRIL 9, 2012

**SENATE BILL**

**No. 1431**

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**Introduced by Senator De León**

February 24, 2012

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~~An act to amend Section 10705 of the Insurance Code, relating to health insurance. An act to add Chapter 8.1 (commencing with Section 10750) to Part 2 of Division 2 of the Insurance Code, relating to insurance.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 1431, as amended, De León. ~~Health insurance. 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 carrier from issuing a stop-loss insurance policy to a small employer that contains certain individual or aggregate attachment points for a policy year or provides 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 direct those fine and penalty moneys received to the General Fund to be available upon appropriation by the Legislature.*

~~Existing law provides for licensing and regulation of health insurers by the Insurance Commissioner. Existing law, with respect to health insurance for small employers, requires a health insurer to file a copy of the form of the health insurance policy, contract, certificate, or statement of coverage with the commissioner for approval prior to issuance or delivery to the purchaser.~~

~~This bill would require the filing to be done electronically.~~

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. Chapter 8.1 (commencing with Section 10750)  
2     is added to Part 2 of Division 2 of the Insurance Code, to read:

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*CHAPTER 8.1. STOP-LOSS INSURANCE*

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6     10750. As used in this chapter, the following definitions shall  
7     apply:

8     (a) “Association” has the same meaning as described in  
9     paragraph (4) of subdivision (a) of Section 10270.5.

1 (b) “Attachment point” means the total amount of health claims  
2 incurred by a small employer in a policy year for its employees  
3 and their dependents above which the stop-loss carrier incurs a  
4 liability for payment.

5 (1) “Individual attachment point” means the total amount of  
6 health claims incurred by a small employer in a policy year for  
7 an individual employee or dependent of an employee above which  
8 the stop-loss carrier incurs a liability for payment. For purposes  
9 of this chapter, “specific attachment point” shall have the same  
10 meaning as “individual attachment point.”

11 (2) “Aggregate attachment point” means the total amount of  
12 health claims incurred by a small employer in a policy year for  
13 all covered employees and their dependents above which the  
14 stop-loss carrier incurs a liability for payment.

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

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

22 (e) “Expected claims” means the total amount of health claims  
23 that, in the absence of a stop-loss insurance policy or other  
24 insurance, are projected to be incurred by a small employer for  
25 its employees and their dependents.

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

35 (g) “PPACA” means the federal Patient Protection and  
36 Affordable Care Act (Public Law 111-148), as amended by the  
37 federal Health Care and Education Reconciliation Act of 2010  
38 (Public Law 111-152), and any rules, regulations, or guidance  
39 issued pursuant to that law.

1 (h) “Small employer” has the same meaning as defined in  
2 subdivision (w) of Section 10700.

3 (i) “Stop-loss carrier” means an insurance company or other  
4 entity providing individual or aggregate stop-loss insurance  
5 coverage, or any other assumption of risk, to a small employer for  
6 the health claims of its employees and their dependents, regardless  
7 of the situs of the contract or master policyholder.

8 (j) “Stop-loss insurance policy” means a policy, contract,  
9 certificate, or statement of coverage between a stop-loss carrier  
10 and small employer providing individual or aggregate stop-loss  
11 insurance coverage, or any other assumption of risk, to a small  
12 employer for the health claims of its employees and their  
13 dependents, regardless of the situs of the contract or master  
14 policyholder.

15 10750.1. A stop-loss carrier shall offer coverage to all  
16 employees and dependents of employees of a small employer to  
17 which it issues a stop-loss insurance policy and shall not exclude  
18 any employee or dependent on the basis of an actual or expected  
19 health status-related factor. Health status-related factors include,  
20 but are not limited to, any of the following: health status; medical  
21 condition, including both physical and mental illnesses; claims  
22 experience; medical history; receipt of health care; genetic  
23 information; disability; evidence of insurability, including  
24 conditions arising out of acts of domestic violence of the employee  
25 or dependent; or any other health status-related factor as  
26 determined by the department.

27 10750.2. A stop-loss carrier shall renew, at the option of the  
28 small employer, all stop-loss insurance policies written, issued,  
29 administered, or renewed on or after the effective date of this  
30 chapter, and all stop-loss insurance policies in force on or after  
31 the effective date of this chapter, except as follows:

32 (a) (1) For nonpayment of the required premiums by the small  
33 employer, if the small employer has been duly notified and billed  
34 for the charge and at least a 30-day grace period has elapsed since  
35 the date of notification or, if longer, the period of time required  
36 for notice and any other requirements pursuant to Section 2703,  
37 2712, or 2742 of the federal Public Health Service Act (42 U.S.C.  
38 Sec. 300gg-2, 300gg-12, or 300gg-42) and any subsequent rules  
39 or regulations has elapsed.

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

6 (b) Where the stop-loss carrier demonstrates fraud or an  
7 intentional misrepresentation of material fact by the small employer  
8 under the terms of the stop-loss insurance policy.

9 (c) Where the stop-loss carrier has been determined by the  
10 commissioner to be financially impaired.

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

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

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

22 10750.3. (a) A stop-loss carrier shall not issue a stop-loss  
23 insurance policy to a small employer that does any of the following:

24 (1) Contains an individual attachment point for a policy year  
25 that is lower than ninety-five thousand dollars (\$95,000).

26 (2) Contains an aggregate attachment point for a policy year  
27 that is lower than the greater of one of the following:

28 (A) Nineteen thousand dollars (\$19,000) times the total number  
29 of covered employees and dependents.

30 (B) One hundred twenty percent of expected claims.

31 (C) Ninety-five thousand dollars (\$95,000).

32 (3) Provides direct coverage of an employee's health claims.

33 (b) For the purposes of determining the dollar amounts set forth  
34 in subdivision (a), and upon consideration of the medical  
35 components of the Consumer Price Index, the commissioner may  
36 amend, by regulation, the dollar amounts at least six months prior  
37 to their effective dates.

38 10750.4. The commissioner may adopt regulations as may be  
39 necessary to carry out the purposes of this chapter. In adopting  
40 regulations, the commissioner shall comply with Chapter 3.5

1 *(commencing with Section 11340) of Part 1 of Division 3 of Title*  
2 *2 of the Government Code.*

3 *10750.5. A stop-loss carrier that violates the provisions of this*  
4 *chapter shall be subject to the remedies and administrative*  
5 *penalties pertaining to carriers in Sections 10718 and 10718.5.*  
6 *All fine and penalty moneys received pursuant to this section shall*  
7 *be deposited in the General Fund and shall be available for*  
8 *expenditure by the commissioner upon appropriation by the*  
9 *Legislature.*

10 *10750.6. The provisions of this section are severable. If any*  
11 *provision of this section or its application is held invalid, that*  
12 *invalidity shall not affect other provisions or applications that can*  
13 *be given effect without the invalid provision or application.*

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**All matter omitted in this version of the bill  
appears in the bill as introduced in the  
Senate, February 24, 2012. (JR11)**