

# HOUSE BILL No. 5400

November 1, 2001, Introduced by Reps. Julian, Richner, Scranton, Bisbee, Hager and Van Woerkom and referred to the Committee on Insurance and Financial Services.

A bill to amend 1956 PA 218, entitled "The insurance code of 1956," by amending section 5208 (MCL 500.5208), as amended by 1984 PA 267, and by adding section 407a.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1 SEC. 407A. (1) AN INSURER AUTHORIZED UNDER SECTION 602 OR  
2 606 MAY OFFER AND WRITE SPECIFIC OR AGGREGATE EXCESS LOSS INSUR-  
3 ANCE TO A NONINSURED BENEFIT PLAN. EXCESS LOSS INSURANCE IS  
4 SUBJECT TO ALL CASUALTY INSURANCE REQUIREMENTS UNDER THIS ACT,  
5 INCLUDING, BUT NOT LIMITED TO, POLICY RATE AND FORM REQUIREMENTS  
6 UNDER CHAPTERS 24 AND 30.

7 (2) AS USED IN THIS SECTION, "NONINSURED BENEFIT PLAN" MEANS  
8 THAT TERM AS DEFINED IN SECTION 5208.

1 (3) THIS SECTION DOES NOT LIMIT THE AUTHORITY OF AN INSURER  
2 AUTHORIZED UNDER SECTION 624 TO OFFER AND WRITE SPECIFIC OR  
3 AGGREGATE EXCESS LOSS INSURANCE TO A NONINSURED BENEFIT PLAN.

4 Sec. 5208. (1) The corporate powers of ~~each~~ AN insurer  
5 incorporated in this state ~~shall be~~ IS limited to the issuance  
6 of policies insuring persons or property or other hazards in the  
7 state of domicile and in other states from which it has received  
8 authority to transact insurance business from the insurance  
9 department of ~~such~~ THAT state, and to the provision of services  
10 of the kind it performs in the normal conduct of its insurance  
11 business whether or not ~~such~~ THOSE services are performed in  
12 connection with an insurance contract. ~~The prohibition of this~~  
13 ~~section shall~~ THIS SECTION DOES not apply to insurers organized  
14 in compliance with the insurance laws of this state, which cannot  
15 be properly authorized in other states, because the laws of  
16 ~~such~~ THOSE states do not permit the writing of the class or  
17 kind of insurance written by ~~such~~ THOSE insurers.

18 (2) For services provided under subsection (1) ~~which~~ THAT  
19 are performed in connection with a noninsured benefit plan, ALL  
20 OF the following ~~standards shall be met~~ APPLY:

21 (a) An insurer's fees for services rendered shall be on a  
22 basis ~~which~~ THAT precludes cost transfers between individuals  
23 receiving ~~such~~ THOSE services and policyholders of the  
24 insurer.

25 (b) Any insurer providing services described in subsection  
26 (1) ~~may write, and~~ in connection with a noninsured benefit plan

1 shall offer a program of ~~—~~ specific or aggregate excess loss  
2 insurance.

3 (c) Except as provided in subdivision (d), ~~any~~ AN insurer  
4 providing the services described in subsection (1) in connection  
5 with a noninsured benefit plan shall not enter into the service  
6 contract for a plan covering a group of less than 500  
7 individuals. However, an insurer may continue a service contract  
8 for a plan covering a group of less than 500 individuals if the  
9 contract was in existence on December 29, 1981.

10 (d) An insurer may enter into a service contract for a plan  
11 covering a group of less than 500 individuals if either the  
12 insurer makes arrangements for excess loss insurance or the spon-  
13 sor of the plan ~~which~~ THAT covers the individuals is liable for  
14 the plan's liabilities and is a sponsor of 1 or more plans cover-  
15 ing 500 or more individuals in the aggregate. The commissioner,  
16 upon obtaining the advice of insurers, shall establish the stan-  
17 dards for the manner and amount of the excess loss insurance  
18 required by this subdivision. It is the intent of the legisla-  
19 ture that the excess loss insurance requirements be uniform as  
20 between insurers and other persons authorized to provide similar  
21 services.

22 (e) ~~Any~~ AN insurer providing the services described in  
23 subsection (1) in connection with a noninsured benefit plan shall  
24 ~~conform to the requirements under~~ COMPLY WITH section 5208a.

25 (f) A service contract containing an administrative services  
26 only arrangement between an insurer and a governmental entity not  
27 subject to ERISA, whose plan provides coverage under a collective

1 bargaining agreement utilizing a policy or certificate issued by  
2 an insurer, health care corporation, ~~medical care corporation,~~  
3 ~~hospital service corporation,~~ dental care corporation, or health  
4 maintenance organization before the signing of the service con-  
5 tract, is void unless the governmental entity has provided the  
6 notice described IN section 5208a(8) to the collective bargaining  
7 agent and to the members of the collective bargaining unit not  
8 less than 30 days before signing the service contract. The void-  
9 ing of a service contract under this subdivision ~~shall~~ DOES not  
10 relieve the governmental entity of any obligations to the insurer  
11 under the service contract.

12 (3) Nothing in this section shall be construed to permit an  
13 actionable interference by an insurer with the rights and obliga-  
14 tions of the parties under a collective bargaining agreement.

15 (4) Services provided under subsection (1) ~~which~~ THAT are  
16 performed in connection with a noninsured benefit plan shall be  
17 considered a business activity ~~which~~ THAT is not an insurance  
18 carrier service and ~~shall be~~ ARE subject to tax as authorized  
19 by the single business tax act, ~~Act No. 228 of the Public Acts~~  
20 ~~of 1975, as amended, being sections 208.1 to 208.145 of the~~  
21 ~~Michigan Compiled Laws~~ 1975 PA 228, MCL 208.1 TO 208.145.

22 (5) An insurer shall report with its annual statement the  
23 amount of business it has conducted as services provided under  
24 subsection (1) ~~which~~ THAT are performed in connection with a  
25 noninsured benefit plan, and the commissioner shall annually  
26 transmit this information to the state commissioner of revenue.  
27 ~~The commissioner shall submit to the legislature on April 1,~~

1 1985, a report detailing the impact of the act on employers, and  
2 covered individuals, and similar activities under other provi-  
3 sions of law, and in consultation with the revenue commissioner  
4 the total financial impact on the state of Michigan for the pre-  
5 ceding legislative biennium.

6 (6) An employee covered under a noninsured benefit plan for  
7 which services are provided under a service contract authorized  
8 under subsection (1) ~~shall~~ IS not ~~be~~ liable for that portion  
9 of claims incurred and subject to payment under the plan if the  
10 service contract is entered into between an employer and insurer,  
11 unless that portion of the claim has been paid directly to the  
12 employee.

13 (7) As used in this section, "noninsured benefit plan" or  
14 "plan" means a benefit plan without insurance or the noninsured  
15 portion of a benefit plan ~~which~~ THAT has specific or aggregate  
16 excess loss insurance.