

**SUBSTITUTE FOR  
HOUSE BILL NO. 5400**

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 TO WRITE INSURANCE  
2 DESCRIBED IN SECTION 602 OR 606 MAY OFFER AND WRITE SPECIFIC OR  
3 AGGREGATE EXCESS LOSS INSURANCE TO A NONINSURED BENEFIT PLAN. AN  
4 INSURER THAT WRITES EXCESS LOSS INSURANCE SHALL COMPLY WITH THE  
5 APPLICABLE POLICY RATE AND FORM REQUIREMENTS UNDER CHAPTERS 22,  
6 24, AND 30.  
7        (2) AS USED IN THIS SECTION, "NONINSURED BENEFIT PLAN" MEANS  
8 THAT TERM AS DEFINED IN SECTION 5208.  
9        (3) THIS SECTION DOES NOT LIMIT THE AUTHORITY OF AN INSURER  
10 AUTHORIZED TO WRITE INSURANCE DESCRIBED IN SECTION 624 TO OFFER

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1 AND WRITE SPECIFIC OR AGGREGATE EXCESS LOSS INSURANCE TO A  
2 NONINSURED BENEFIT PLAN.

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

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

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

24       (b) Any insurer providing services described in subsection  
25 (1) ~~may write, and~~ in connection with a noninsured benefit plan  
26 shall offer a program of ~~—~~ specific or aggregate excess loss  
27 insurance.

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

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

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

23 (f) A service contract containing an administrative services  
24 only arrangement between an insurer and a governmental entity not  
25 subject to ERISA, whose plan provides coverage under a collective  
26 bargaining agreement utilizing a policy or certificate issued by  
27 an insurer, health care corporation, ~~medical care corporation,~~

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

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

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

20 (5) An insurer shall report with its annual statement the  
21 amount of business it has conducted as services provided under  
22 subsection (1) ~~which~~ THAT are performed in connection with a  
23 noninsured benefit plan, and the commissioner shall annually  
24 transmit this information to the state commissioner of revenue.  
25 ~~The commissioner shall submit to the legislature on April 1,~~  
26 ~~1985, a report detailing the impact of the act on employers, and~~  
27 ~~covered individuals, and similar activities under other~~

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1 ~~provisions of law, and in consultation with the revenue~~  
2 ~~commissioner the total financial impact on the state of Michigan~~  
3 ~~for the preceding legislative biennium.~~

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

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