

# HOUSE BILL No. 5570

January 24, 2006, Introduced by Rep. Hildenbrand and referred to the Committee on Insurance.

A bill to amend 1956 PA 218, entitled "The insurance code of 1956," by amending section 3701 (MCL 500.3701), as added by 2003 PA 88, and by adding section 3705a.

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

1       Sec. 3701. As used in this chapter:

2       (a) "Actuarial certification" means a written statement by a  
3 member of the American academy of actuaries or another individual  
4 acceptable to the commissioner that a small employer carrier is in  
5 compliance with the provisions of section 3705, based upon the  
6 person's examination, including a review of the appropriate records  
7 and the actuarial assumptions and methods used by the carrier in  
8 establishing premiums for applicable health benefit plans.

9       (b) "Affiliation period" means a period of time required by a

1 small employer carrier that must expire before health coverage  
2 becomes effective.

3 (c) "Base premium" means the lowest premium charged for a  
4 rating period under a rating system by a small employer carrier to  
5 small employers for a health benefit plan in a geographic area.

6 (d) "Carrier" means a person that provides health benefits,  
7 coverage, or insurance in this state. For the purposes of this  
8 chapter, carrier includes a health insurance company authorized to  
9 do business in this state, a nonprofit health care corporation, a  
10 health maintenance organization, a multiple employer welfare  
11 arrangement, or any other person providing a plan of health  
12 benefits, coverage, or insurance subject to state insurance  
13 regulation.

14 (e) "COBRA" means the consolidated omnibus budget  
15 reconciliation act of 1985, Public Law 99-272, 100 Stat. 82.

16 (f) "Commercial carrier" means a small employer carrier other  
17 than a nonprofit health care corporation or health maintenance  
18 organization.

19 (g) "Creditable coverage" means, with respect to an  
20 individual, health benefits, coverage, or insurance provided under  
21 any of the following:

22 (i) A group health plan.

23 (ii) A health benefit plan.

24 (iii) Part A or part B of title XVIII of the social security  
25 act, ~~chapter 531, 49 Stat. 620, 42 U.S.C. USC 1395c to 1395i~~  
26 ~~and 1395i-2 to 1395i-5, and 42 U.S.C. 1395j to 1395t, 1395u to~~  
27 ~~1395w, and 1395w-2 to 1395w-4.~~

1 (iv) Title XIX of the social security act, ~~chapter 531, 49~~  
2 ~~Stat. 620, 42 U.S.C. USC~~ 1396 to ~~1396r-6 and 1396r-8 to~~ 1396v,  
3 other than coverage consisting solely of benefits under section  
4 1929 of title XIX of the social security act, 42 ~~U.S.C. USC~~  
5 1396t.

6 (v) Chapter 55 of title 10 of the United States Code, 10  
7 ~~U.S.C. USC~~ 1071 to 1110. For purposes of chapter 55 of title 10 of  
8 the United States Code, 10 ~~U.S.C. USC~~ 1071 to 1110, "uniformed  
9 services" means the armed forces and the commissioned corps of the  
10 national oceanic and atmospheric administration and of the public  
11 health service.

12 (vi) A medical care program of the Indian health service or of  
13 a tribal organization.

14 (vii) A state health benefits risk pool.

15 (viii) A health plan offered under the employees health benefits  
16 program, chapter 89 of title 5 of the United States Code, 5 ~~U.S.C.~~  
17 ~~USC~~ 8901 to 8914.

18 (ix) A public health plan, which for purposes of this chapter  
19 means a plan established or maintained by a state, county, or other  
20 political subdivision of a state that provides health insurance  
21 coverage to individuals enrolled in the plan.

22 (x) A health benefit plan under section 5(e) of title I of the  
23 peace corps act, ~~Public Law 87-293, 22 U.S.C. USC~~ 2504.

24 (h) "Eligible employee" means an employee who works on a full-  
25 time basis with a normal workweek of 30 or more hours. Eligible  
26 employee includes an employee who works on a full-time basis with a  
27 normal workweek of 17.5 to 30 hours, if an employer so chooses and

1 if this eligibility criterion is applied uniformly among all of the  
2 employer's employees and without regard to health status-related  
3 factors.

4 (i) "Geographic area" means an area in this state that  
5 includes not less than 1 entire county, established by a carrier  
6 pursuant to section 3705 and used for adjusting premiums for a  
7 health benefit plan subject to this chapter. In addition, if the  
8 geographic area includes 1 entire county and additional counties or  
9 portions of counties, the counties or portions of counties must be  
10 contiguous with at least 1 other county or portion of another  
11 county in that geographic area.

12 (j) "Group health plan" means an employee welfare benefit plan  
13 as defined in section 3(1) of subtitle A of title I of the employee  
14 retirement income security act of 1974, ~~Public Law 93-406,~~ 29  
15 ~~U.S.C.~~ **USC** 1002, to the extent that the plan provides medical  
16 care, including items and services paid for as medical care to  
17 employees or their dependents as defined under the terms of the  
18 plan directly or through insurance, reimbursement, or otherwise. As  
19 used in this chapter, all of the following apply to the term group  
20 health plan:

21 (i) Any plan, fund, or program that would not be, but for  
22 section 2721(e) of subpart 4 of part A of title XXVII of the public  
23 health service act, ~~chapter 373, 110 Stat. 1967,~~ 42 ~~U.S.C.~~ **USC**  
24 300gg-21, an employee welfare benefit plan and that is established  
25 or maintained by a partnership, to the extent that the plan, fund,  
26 or program provides medical care, including items and services paid  
27 for as medical care, to present or former partners in the

1 partnership, or to their dependents, as defined under the terms of  
2 the plan, fund, or program, directly or through insurance,  
3 reimbursement or otherwise, shall be treated, subject to  
4 subparagraph (ii), as an employee welfare benefit plan that is a  
5 group health plan.

6 (ii) The term "employer" also includes the partnership in  
7 relation to any partner.

8 (iii) The term "participant" also includes an individual who is,  
9 or may become, eligible to receive a benefit under the plan, or the  
10 individual's beneficiary who is, or may become, eligible to receive  
11 a benefit under the plan. For a group health plan maintained by a  
12 partnership, the individual is a partner in relation to the  
13 partnership and for a group health plan maintained by a self-  
14 employed individual, under which 1 or more employees are  
15 participants, the individual is the self-employed individual.

16 (k) "Health benefit plan" or "plan" means an expense-incurred  
17 hospital, medical, or surgical policy or certificate, nonprofit  
18 health care corporation certificate, or health maintenance  
19 organization contract. Health benefit plan does not include  
20 accident-only, credit, dental, or disability income insurance;  
21 long-term care insurance; coverage issued as a supplement to  
22 liability insurance; coverage only for a specified disease or  
23 illness; worker's compensation or similar insurance; or automobile  
24 medical-payment insurance.

25 (l) "Index rate" means the arithmetic average during a rating  
26 period of the base premium and the highest premium charged per  
27 employee for each health benefit plan offered by each small

1 employer carrier to small employers and sole proprietors in a  
2 geographic area.

3 (m) "Nonprofit health care corporation" means a nonprofit  
4 health care corporation operating pursuant to the nonprofit health  
5 care corporation reform act, 1980 PA 350, MCL 550.1101 to 550.1704.

6 (n) "Premium" means all money paid by a small employer, a sole  
7 proprietor, eligible employees, or eligible persons as a condition  
8 of receiving coverage from a small employer carrier, including any  
9 fees or other contributions associated with the health benefit  
10 plan.

11 (o) "Rating period" means the calendar period for which  
12 premiums established by a small employer carrier are assumed to be  
13 in effect, as determined by the small employer carrier.

14 (p) "Small employer" means any person, firm, corporation,  
15 partnership, limited liability company, or association actively  
16 engaged in business who, on at least 50% of its working days during  
17 the preceding and current calendar years, employed at least 2 but  
18 not more than 50 eligible employees. In determining the number of  
19 eligible employees, companies that are affiliated companies or that  
20 are eligible to file a combined tax return for state taxation  
21 purposes shall be considered 1 employer.

22 (q) "Small employer carrier" means either of the following:

23 (i) A carrier that offers health benefit plans covering the  
24 employees of a small employer.

25 (ii) A carrier under section 3703(3).

26 (r) "Sole proprietor" means an individual who is a sole  
27 proprietor or sole shareholder in a trade or business through which

1 he or she earns at least 50% of his or her taxable income as  
2 defined in section 30 of the income tax act of 1967, 1967 PA 281,  
3 MCL 206.30, excluding investment income, and for which he or she  
4 has filed the appropriate internal revenue service form 1040,  
5 schedule C or F, for the previous taxable year; who is a resident  
6 of this state; and who is actively employed in the operation of the  
7 business, working at least 30 hours per week in at least 40 weeks  
8 out of the calendar year.

9           **(S) "STATE MANDATED HEALTH BENEFITS" OR "MANDATED BENEFITS"**  
10 **MEANS COVERAGE FOR SPECIFIC HEALTH CARE SERVICES OR BENEFITS AS**  
11 **REQUIRED UNDER CHAPTER 34 OR 36 OR PART 4 OF THE NONPROFIT HEALTH**  
12 **CARE CORPORATION REFORM ACT, 1980 PA 350, MCL 550.1401 TO 550.1439.**

13           **(T) ~~(s)~~ "Waiting period"** means, with respect to a health  
14 benefit plan and an individual who is a potential enrollee in the  
15 plan, the period that must pass with respect to the individual  
16 before the individual is eligible to be covered for benefits under  
17 the terms of the plan. For purposes of calculating periods of  
18 creditable coverage under this chapter, a waiting period shall not  
19 be considered a gap in coverage.

20           **SEC. 3705A. (1) TO INCREASE HEALTH BENEFIT PLAN OPTIONS**  
21 **AVAILABLE TO SMALL EMPLOYERS, THE COMMISSIONER MAY APPROVE**  
22 **APPLICATIONS FROM CARRIERS TO OFFER HEALTH BENEFIT PLANS THAT DO**  
23 **NOT INCLUDE SPECIFIC STATE MANDATED HEALTH BENEFITS. A WAIVER FOR A**  
24 **HEALTH BENEFIT PLAN UNDER THIS CHAPTER SHALL NOT BE GRANTED BY THE**  
25 **COMMISSIONER UNLESS ALL OF THE FOLLOWING ARE MET:**

26           **(A) THE HEALTH BENEFIT PLAN TO BE PROVIDED THROUGH THE WAIVER**  
27 **AUTHORITY GRANTED IN THIS SECTION CLEARLY DELINEATES TO SMALL**

1 EMPLOYERS THE HEALTH SERVICES INCLUDED IN THE PLAN, THE MANDATED  
2 BENEFITS INCLUDED IN THE PLAN, AND THE MANDATED BENEFITS THAT ARE  
3 NOT INCLUDED IN THE PLAN AS A RESULT OF THE WAIVER.

4 (B) THE DURATION OF THE WAIVER DOES NOT EXCEED 5 YEARS.

5 (C) THE CARRIER RECEIVING THE WAIVER AGREES TO PROVIDE THE  
6 INFORMATION REQUESTED BY THE COMMISSIONER THAT IS NEEDED TO MEET  
7 THE REPORTING REQUIREMENTS UNDER SUBSECTION (5).

8 (2) THE COMMISSIONER SHALL APPROVE ANNUALLY ON OR BEFORE  
9 JANUARY 1 AT LEAST 2 WAIVER APPLICATIONS FROM CARRIERS TO THE  
10 EXTENT THAT A CARRIER OR CARRIERS HAVE SUBMITTED APPLICATIONS FOR  
11 WAIVERS THAT MEET THE REQUIREMENTS OF THIS SECTION.

12 (3) UPON APPROVAL OF A WAIVER UNDER THIS SECTION, THE CARRIER  
13 SHALL SUBMIT TO THE COMMISSIONER FOR HIS OR HER APPROVAL ALL RATES,  
14 FORMS, POLICIES, AND CONTRACTS FOR THE HEALTH BENEFIT PLAN GRANTED  
15 THE WAIVER. THE PREMIUMS OF A HEALTH BENEFIT PLAN GRANTED A WAIVER  
16 UNDER THIS SECTION ARE EXEMPT FROM SECTION 3705 AND SHALL BE  
17 REASONABLE IN RELATION TO THE BENEFITS PROVIDED.

18 (4) UPON APPROVAL OF A WAIVER UNDER THIS SECTION, A CARRIER  
19 SHALL ACTIVELY OFFER AND MARKET TO SMALL EMPLOYERS THE HEALTH  
20 BENEFIT PLAN GRANTED THE WAIVER.

21 (5) ON OR BEFORE NOVEMBER 1, 2008, THE COMMISSIONER SHALL  
22 PREPARE AND PROVIDE TO THE SENATE AND HOUSE OF REPRESENTATIVES  
23 STANDING COMMITTEES ON HEALTH AND INSURANCE ISSUES A REPORT THAT  
24 INCLUDES ALL OF THE FOLLOWING:

25 (A) A DESCRIPTION OF ALL HEALTH BENEFIT PLANS GRANTED WAIVERS  
26 UNDER THIS SECTION.

27 (B) THE NUMBER OF HEALTH BENEFIT PLANS GRANTED WAIVERS UNDER

1 THIS SECTION THAT HAVE BEEN PURCHASED BY SMALL EMPLOYERS.

2 (C) THE IMPACT, IF ANY, UPON THE SMALL GROUP HEALTH INSURANCE  
3 MARKET, INCLUDING, BUT NOT LIMITED TO, INFORMATION ON NEWLY  
4 ADMITTED CARRIERS WHO ARE OFFERING HEALTH BENEFIT PLANS GRANTED  
5 WAIVERS UNDER THIS SECTION, AND ANY EVIDENCE OF INCREASED RISK  
6 SEGMENTATION IN THE SMALL GROUP MARKET AS A RESULT OF THE OFFERING  
7 OF HEALTH BENEFIT PLANS GRANTED WAIVERS UNDER THIS SECTION.

8 (6) THIS SECTION DOES NOT PROHIBIT AN EMPLOYER FROM ELECTING  
9 TO EXPAND COVERAGE UNDER A HEALTH BENEFIT PLAN.

10 (7) THIS SECTION DOES NOT PROHIBIT A CARRIER FROM ELECTING TO  
11 EXPAND COVERAGE UNDER A HEALTH BENEFIT PLAN.