

COBRA AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd Weiler

House Sponsor: _____

LONG TITLE

General Description:

This bill creates a private right of action for certain violations by an employer.

Highlighted Provisions:

This bill:

- ▶ provides a private right of action against a former employer or administrator for failure to provide certain information regarding mini-COBRA coverage;
- ▶ specifies the damages available to a plaintiff in a cause of action created under this bill; and
- ▶ creates certain exceptions.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

31A-22-722, as last amended by Laws of Utah 2019, Chapter 193

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **31A-22-722** is amended to read:

31A-22-722. Utah mini-COBRA benefits for employer group coverage.



(1) An employer's group policy shall offer an employee's coverage to be extended under the current employer's group policy for a period of 12 months, except as provided in Subsection (2). The right to extend coverage includes:

- (a) voluntary termination;
- (b) involuntary termination;
- (c) retirement;
- (d) death;
- (e) divorce or legal separation;
- (f) loss of dependent status;
- (g) sabbatical;
- (h) a disability;
- (i) leave of absence; or
- (j) reduction of hours.

(2) (a) Notwithstanding Subsection (1), an employee may not extend coverage under the current employer's group insurance policy if the employee:

- (i) fails to pay premiums or contributions in accordance with the terms of the insurance policy;
- (ii) acquires other group coverage covering all preexisting conditions including maternity, if the coverage exists;
- (iii) performs an act or practice that constitutes fraud in connection with the coverage;
- (iv) makes an intentional misrepresentation of material fact under the terms of the coverage;
- (v) is terminated from employment for gross misconduct;
- (vi) is not continuously covered under the current employer's group policy for a period of three months immediately before the termination of the insurance policy due to an event set forth in Subsection (1);
- (vii) is eligible for an extension of coverage required by federal law;
- (viii) establishes residence outside of this state;
- (ix) moves out of the insurer's service area;
- (x) is eligible for similar coverage under another group insurance policy; or
- (xi) has the employee's coverage terminated because the employer's coverage is

terminated, except as provided in Subsection (8).

(b) The right to extend coverage under Subsection (1) applies to spouse or dependent coverage, including a surviving spouse or dependents whose coverage under the insurance policy terminates by reason of the death of the employee or member.

(3) (a) The employer shall notify the following in writing of the right to extend group coverage and the payment amounts required for extension of coverage, including the manner, place, and time in which the payments shall be made:

(i) a terminated insured;

(ii) an ex-spouse of an insured; or

(iii) if Subsection (2)(b) applies:

(A) a surviving spouse; and

(B) the guardian of surviving dependents, if different from a surviving spouse.

(b) The notification required in Subsection (3)(a) shall be sent first class mail within 30 days after the termination date of the group coverage to:

(i) the terminated insured's home address as shown on the records of the employer;

(ii) the address of the surviving spouse, if different from the insured's address and if shown on the records of the employer;

(iii) the guardian of any dependents address, if different from the insured's address, and if shown on the records of the employer; and

(iv) the address of the ex-spouse, if shown on the records of the employer.

(4) The insurer shall provide the employee, spouse, or any eligible dependent the opportunity to extend the group coverage at the payment amount stated in Subsection (5) if:

(a) the employer policyholder does not provide the terminated insured the written notification required by Subsection (3)(a); and

(b) the employee or other individual eligible for extension contacts the insurer within 60 days of coverage termination.

(5) (a) A premium amount for extended group coverage may not exceed 102% of the group rate in effect for a group member, including an employer's contribution, if any, for a group insurance policy.

(b) Except as provided in Subsection (5)(a), an insurer may not charge an insured an additional fee, an additional premium, interest, or any similar charge for electing extended

group coverage.

(6) Except as provided in this Subsection (6), coverage extends without interruption for 12 months and may not terminate if the terminated insured or, with respect to a minor, the parent or guardian of the terminated insured:

(a) elects to extend group coverage within 60 days of losing group coverage; and

(b) tenders the amount required to the employer or insurer.

(7) The insured's coverage may be terminated before 12 months if the terminated insured:

(a) establishes residence outside of this state;

(b) moves out of the insurer's service area;

(c) fails to pay premiums or contributions in accordance with the terms of the insurance policy, including any timeliness requirements;

(d) performs an act or practice that constitutes fraud in connection with the coverage;

(e) makes an intentional misrepresentation of material fact under the terms of the coverage;

(f) becomes eligible for similar coverage under another group insurance policy; or

(g) has the coverage terminated because the employer's coverage is terminated, except as provided in Subsection (8).

(8) If the current employer coverage is terminated and the employer replaces coverage with similar coverage under another group insurance policy, without interruption, the terminated insured, spouse, or the surviving spouse and guardian of dependents if Subsection (2)(b) applies, may obtain extension of coverage under the replacement group insurance policy:

(a) for the balance of the period the terminated insured would have extended coverage under the replaced group insurance policy; and

(b) if the terminated insured is otherwise eligible for extension of coverage.

(9) An insurer shall require an insured employer to offer to the following individuals an open enrollment period at the same time as other regular employees:

(a) an individual who extends group coverage and is current on payment; and

(b) during the applicable grace period described in Subsection (3) or (4), an individual who is eligible to elect to extend group coverage.

(10) (a) An employer who fails to comply with the requirements in this section may, in

121 the court's discretion, be liable to the individuals described in Subsections (3)(a)(i) through (iii)
122 for:
123 (i) up to \$100 a day for each day after the date of the failure;
124 (ii) medical expenses that would have been covered by the offer of coverage that was
125 not made; or
126 (iii) any expense that would have been covered had coverage been offered.
127 (b) An employer is not liable under Subsection (10)(a) if the employer is able to
128 demonstrate that the failure resulted from matters reasonably beyond the control of the
129 employer.
130 (c) Each violation described in Subsection (10)(a) with respect to each individual
131 described in Subsections (3)(a)(i) through (iii) is as a separate violation of this section.