

**Senator Todd Weiler** proposes the following substitute bill:

**COBRA AMENDMENTS**

2020 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Todd Weiler**

House Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill amends provisions relating to the requirement that an employer provide notice regarding mini-COBRA coverage.

**Highlighted Provisions:**

This bill:

- ▶ creates penalties for an employer who fails to provide certain information regarding mini-COBRA coverage; and
- ▶ requires an employer or an entity that contracts with an employer to provide health insurance coverage to include information regarding mini-COBRA coverage in the notice of cancellation of coverage.

**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

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

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

28 **31A-22-722. Utah mini-COBRA benefits for employer group coverage.**

29 (1) An employer's group policy shall offer an employee's coverage to be extended  
30 under the current employer's group policy for a period of 12 months, except as provided in

31 Subsection (2). The right to extend coverage includes:

- 32 (a) voluntary termination;
- 33 (b) involuntary termination;
- 34 (c) retirement;
- 35 (d) death;
- 36 (e) divorce or legal separation;
- 37 (f) loss of dependent status;
- 38 (g) sabbatical;
- 39 (h) a disability;
- 40 (i) leave of absence; or
- 41 (j) reduction of hours.

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

- 44 (i) fails to pay premiums or contributions in accordance with the terms of the insurance  
45 policy;
- 46 (ii) acquires other group coverage covering all preexisting conditions including  
47 maternity, if the coverage exists;
- 48 (iii) performs an act or practice that constitutes fraud in connection with the coverage;
- 49 (iv) makes an intentional misrepresentation of material fact under the terms of the  
50 coverage;
- 51 (v) is terminated from employment for gross misconduct;
- 52 (vi) is not continuously covered under the current employer's group policy for a period  
53 of three months immediately before the termination of the insurance policy due to an event set  
54 forth in Subsection (1);
- 55 (vii) is eligible for an extension of coverage required by federal law;
- 56 (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

88 group insurance policy.

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

92 (6) Except as provided in this Subsection (6), coverage extends without interruption for  
93 12 months and may not terminate if the terminated insured or, with respect to a minor, the  
94 parent or guardian of the terminated insured:

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

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

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

99 (a) establishes residence outside of this state;

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

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

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

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

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

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

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

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

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

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

118 (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) In addition to the notification required in Subsections (3) and (4), an employer shall require an insurer or third party administrator that provides the employer's group policy to provide a notice with the information described in Subsection (3)(a) in the notice of cancellation of coverage that is sent to an employee by the insurer or the third party administrator.

(11) (a) An employer who fails to comply with the notice requirement described in Subsection (3) or (4) is subject to a fine of up to \$25 a day for each day after the date of the failure.

(b) The penalty under Subsection (11)(a):

(i) does not apply to an employer that is subject to the requirements of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. No. 99-272, 100 Stat. 82;  
(ii) may not be imposed if a penalty has been imposed under federal law for the same failure; and

(iii) may not exceed \$500.

(c) An employer is not liable under Subsection (11)(a) if the employer is able to demonstrate that the failure resulted from matters reasonably beyond the control of the employer.

(d) Each violation under Subsection (11)(a) with respect to each individual described in Subsection (3)(a)(i) through (iii) is a separate violation of this section.