

Senator Todd Weiler proposes the following substitute bill:

COBRA AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd Weiler

House Sponsor: Eric K. Hutchings

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 under certain circumstances.

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

ENACTS:



26 **34-56-101**, Utah Code Annotated 1953
27 **34-56-102**, Utah Code Annotated 1953

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

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

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

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

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

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

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

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

57 forth in Subsection (1);

58 (vii) is eligible for an extension of coverage required by federal law;

59 (viii) establishes residence outside of this state;

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

61 (x) is eligible for similar coverage under another group insurance policy; or

62 (xi) has the employee's coverage terminated because the employer's coverage is
63 terminated, except as provided in Subsection (8).

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

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

70 (i) a terminated insured;

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

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

73 (A) a surviving spouse; and

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

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

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

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

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

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

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

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

87 (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) For a group policy, an insurer shall include in the insurer's notice of cancellation of coverage that the individual may qualify under state or federal law to continue coverage through the employer for a limited period.

Section 2. Section **34-56-101** is enacted to read:

CHAPTER 56. NOTIFICATION BY EMPLOYERS

34-56-101. Title.

This chapter is known as "Notification by Employers."

Section 3. Section **34-56-102** is enacted to read:

34-56-102. Failure to provide notification regarding mini-COBRA coverage - Penalties - Exceptions.

(1) An employer shall provide the notification required in Subsection [31A-22-722\(3\)](#).

(2) An employer who fails to comply with the notice requirement described in Subsection (1) is subject to a fine of up to \$25 a day for each day after the date of the failure.

(3) The penalty under Subsection (2):

(a) 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;

(b) may not be imposed if a penalty has been imposed under federal law for the same failure; and

(c) may not exceed \$500.

(4) An employer is not liable under Subsection (2) if the employer is able to demonstrate that the failure resulted from matters reasonably beyond the control of the employer.

(5) Each violation under Subsection (2) with respect to each individual described in Subsections [31A-22-722\(3\)\(a\)\(i\)](#) through (iii) is a separate violation of this section.