

Senator Peter C. Knudson proposes the following substitute bill:

EMPLOYER ASSOCIATION HEALTH PLAN AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Peter C. Knudson

House Sponsor: Don L. Ipson

LONG TITLE

General Description:

This bill amends Chapter 30, Individual, Small Employer, and Group Health Insurance Act, of the Insurance Code.

Highlighted Provisions:

This bill:

- ▶ defines a bona fide employer association; and
- ▶ exempts a bona fide employer association from the requirements of Title 31A,

Chapter 30, Individual, Small Employer, and Group Health Insurance Act.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

31A-30-103, as last amended by Laws of Utah 2012, Chapter 253

31A-30-104, as last amended by Laws of Utah 2011, Chapter 400

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



26 Section 1. Section 31A-30-103 is amended to read:

27 **31A-30-103. Definitions.**

28 As used in this chapter:

29 (1) "Actuarial certification" means a written statement by a member of the American
30 Academy of Actuaries or other individual approved by the commissioner that a covered carrier
31 is in compliance with Sections 31A-30-106 and 31A-30-106.1, based upon the examination of
32 the covered carrier, including review of the appropriate records and of the actuarial
33 assumptions and methods used by the covered carrier in establishing premium rates for
34 applicable health benefit plans.

35 (2) "Affiliate" or "affiliated" means any entity or person who directly or indirectly
36 through one or more intermediaries, controls or is controlled by, or is under common control
37 with, a specified entity or person.

38 (3) "Base premium rate" means, for each class of business as to a rating period, the
39 lowest premium rate charged or that could have been charged under a rating system for that
40 class of business by the covered carrier to covered insureds with similar case characteristics for
41 health benefit plans with the same or similar coverage.

42 (4) (a) "Bona fide employer association" means an association of employers:

43 (i) that meets the requirements of Subsection 31A-22-701(2)(b);

44 (ii) in which the employers of the association, either directly or indirectly, exercise
45 control over the plan;

46 (iii) that is organized:

47 (A) based on a commonality of interest between the employers and their employees
48 that participate in the plan by some common economic or representation interest or genuine
49 organizational relationship unrelated to the provision of benefits; and

50 (B) to act in the best interests of its employers to provide benefits for the employer's
51 employees and their spouses and dependents, and other benefits relating to employment; and

52 (iv) whose association sponsored health plan complies with 45 C.F.R. 146.121.

53 (b) The commissioner shall consider the following with regard to determining whether
54 an association of employers is a bona fide employer association under Subsection (4)(a):

55 (i) how association members are solicited;

56 (ii) who participates in the association;

- 57 (iii) the process by which the association was formed;
- 58 (iv) the purposes for which the association was formed, and what, if any, were the
- 59 pre-existing relationships of its members;
- 60 (v) the powers, rights and privileges of employer members; and
- 61 (vi) who actually controls and directs the activities and operations of the benefit
- 62 programs.

63 ~~[(4)]~~ (5) "Carrier" means any person or entity that provides health insurance in this
64 state including:

- 65 (a) an insurance company;
- 66 (b) a prepaid hospital or medical care plan;
- 67 (c) a health maintenance organization;
- 68 (d) a multiple employer welfare arrangement; and
- 69 (e) any other person or entity providing a health insurance plan under this title.

70 ~~[(5)]~~ (6) (a) Except as provided in Subsection ~~[(5)]~~ (6)(b), "case characteristics" means
71 demographic or other objective characteristics of a covered insured that are considered by the
72 carrier in determining premium rates for the covered insured.

73 (b) "Case characteristics" do not include:

- 74 (i) duration of coverage since the policy was issued;
- 75 (ii) claim experience; and
- 76 (iii) health status.

77 ~~[(6)]~~ (7) "Class of business" means all or a separate grouping of covered insureds that
78 is permitted by the commissioner in accordance with Section 31A-30-105.

79 ~~[(7)]~~ (8) "Conversion policy" means a policy providing coverage under the conversion
80 provisions required in Chapter 22, Part 7, Group Accident and Health Insurance.

81 ~~[(8)]~~ (9) "Covered carrier" means any individual carrier or small employer carrier
82 subject to this chapter.

83 ~~[(9)]~~ (10) "Covered individual" means any individual who is covered under a health
84 benefit plan subject to this chapter.

85 ~~[(10)]~~ (11) "Covered insureds" means small employers and individuals who are issued
86 a health benefit plan that is subject to this chapter.

87 ~~[(11)]~~ (12) "Dependent" means an individual to the extent that the individual is defined

88 to be a dependent by:

89 (a) the health benefit plan covering the covered individual; and

90 (b) Chapter 22, Part 6, Accident and Health Insurance.

91 [~~12~~] (13) "Established geographic service area" means a geographical area approved
92 by the commissioner within which the carrier is authorized to provide coverage.

93 [~~13~~] (14) "Index rate" means, for each class of business as to a rating period for
94 covered insureds with similar case characteristics, the arithmetic average of the applicable base
95 premium rate and the corresponding highest premium rate.

96 [~~14~~] (15) "Individual carrier" means a carrier that provides coverage on an individual
97 basis through a health benefit plan regardless of whether:

98 (a) coverage is offered through:

99 (i) an association;

100 (ii) a trust;

101 (iii) a discretionary group; or

102 (iv) other similar groups; or

103 (b) the policy or contract is situated out-of-state.

104 [~~15~~] (16) "Individual conversion policy" means a conversion policy issued to:

105 (a) an individual; or

106 (b) an individual with a family.

107 [~~16~~] (17) "Individual coverage count" means the number of natural persons covered
108 under a carrier's health benefit products that are individual policies.

109 [~~17~~] (18) "Individual enrollment cap" means the percentage set by the commissioner
110 in accordance with Section 31A-30-110.

111 [~~18~~] (19) "New business premium rate" means, for each class of business as to a
112 rating period, the lowest premium rate charged or offered, or that could have been charged or
113 offered, by the carrier to covered insureds with similar case characteristics for newly issued
114 health benefit plans with the same or similar coverage.

115 [~~19~~] (20) "Premium" means money paid by covered insureds and covered individuals
116 as a condition of receiving coverage from a covered carrier, including any fees or other
117 contributions associated with the health benefit plan.

118 [~~20~~] (21) (a) "Rating period" means the calendar period for which premium rates

119 established by a covered carrier are assumed to be in effect, as determined by the carrier.

120 (b) A covered carrier may not have:

121 (i) more than one rating period in any calendar month; and

122 (ii) no more than 12 rating periods in any calendar year.

123 [~~(21)~~] (22) "Resident" means an individual who has resided in this state for at least 12
124 consecutive months immediately preceding the date of application.

125 [~~(22)~~] (23) "Short-term limited duration insurance" means a health benefit product that:

126 (a) is not renewable; and

127 (b) has an expiration date specified in the contract that is less than 364 days after the
128 date the plan became effective.

129 [~~(23)~~] (24) "Small employer carrier" means a carrier that provides health benefit plans
130 covering eligible employees of one or more small employers in this state, regardless of
131 whether:

132 (a) coverage is offered through:

133 (i) an association;

134 (ii) a trust;

135 (iii) a discretionary group; or

136 (iv) other similar grouping; or

137 (b) the policy or contract is situated out-of-state.

138 [~~(24)~~] (25) "Uninsurable" means an individual who:

139 (a) is eligible for the Comprehensive Health Insurance Pool coverage under the
140 underwriting criteria established in Subsection 31A-29-111(5); or

141 (b) (i) is issued a certificate for coverage under Subsection 31A-30-108(3); and

142 (ii) has a condition of health that does not meet consistently applied underwriting
143 criteria as established by the commissioner in accordance with Subsections 31A-30-106(1)(g)
144 and (h) for which coverage the applicant is applying.

145 [~~(25)~~] (26) "Uninsurable percentage" for a given calendar year equals UC/CI where, for
146 purposes of this formula:

147 (a) "CI" means the carrier's individual coverage count as of December 31 of the
148 preceding year; and

149 (b) "UC" means the number of uninsurable individuals who were issued an individual

150 policy on or after July 1, 1997.

151 Section 2. Section **31A-30-104** is amended to read:

152 **31A-30-104. Applicability and scope.**

153 (1) This chapter applies to any:

154 (a) health benefit plan that provides coverage to:

155 (i) individuals;

156 (ii) small employers, except as provided in Subsection (3); or

157 (iii) both Subsections (1)(a)(i) and (ii); or

158 (b) individual conversion policy for purposes of Sections 31A-30-106.5 and
159 31A-30-107.5.

160 (2) This chapter applies to a health benefit plan that provides coverage to small
161 employers or individuals regardless of:

162 (a) whether the contract is issued to:

163 (i) an association, except as provided in Subsection (3);

164 (ii) a trust;

165 (iii) a discretionary group; or

166 (iv) other similar grouping; or

167 (b) the situs of delivery of the policy or contract.

168 (3) This chapter does not apply to:

169 (a) short-term limited duration health insurance; [~~or~~]

170 (b) federally funded or partially funded programs[-]; or

171 (c) a bona fide employer association.

172 (4) (a) Except as provided in Subsection (4)(b), for the purposes of this chapter:

173 (i) carriers that are affiliated companies or that are eligible to file a consolidated tax
174 return shall be treated as one carrier; and

175 (ii) any restrictions or limitations imposed by this chapter shall apply as if all health
176 benefit plans delivered or issued for delivery to covered insureds in this state by the affiliated
177 carriers were issued by one carrier.

178 (b) Upon a finding of the commissioner, an affiliated carrier that is a health
179 maintenance organization having a certificate of authority under this title may be considered to
180 be a separate carrier for the purposes of this chapter.

181 (c) Unless otherwise authorized by the commissioner or by Chapter 42, Defined
182 Contribution Risk Adjuster Act, a covered carrier may not enter into one or more ceding
183 arrangements with respect to health benefit plans delivered or issued for delivery to covered
184 insureds in this state if the ceding arrangements would result in less than 50% of the insurance
185 obligation or risk for the health benefit plans being retained by the ceding carrier.

186 (d) Section 31A-22-1201 applies if a covered carrier cedes or assumes all of the
187 insurance obligation or risk with respect to one or more health benefit plans delivered or issued
188 for delivery to covered insureds in this state.

189 (5) (a) A Taft Hartley trust created in accordance with Section 302(c)(5) of the Federal
190 Labor Management Relations Act, or a carrier with the written authorization of such a trust,
191 may make a written request to the commissioner for a waiver from the application of any of the
192 provisions of Subsection 31A-30-106(1) with respect to a health benefit plan provided to the
193 trust.

194 (b) The commissioner may grant a trust or carrier described in Subsection (5)(a) a
195 waiver if the commissioner finds that application with respect to the trust would:

196 (i) have a substantial adverse effect on the participants and beneficiaries of the trust;
197 and

198 (ii) require significant modifications to one or more collective bargaining arrangements
199 under which the trust is established or maintained.

200 (c) A waiver granted under this Subsection (5) may not apply to an individual if the
201 person participates in a Taft Hartley trust as an associate member of any employee
202 organization.

203 (6) Sections 31A-30-106, 31A-30-106.5, 31A-30-106.7, 31A-30-107, 31A-30-108, and
204 31A-30-111 apply to:

205 (a) any insurer engaging in the business of insurance related to the risk of a small
206 employer for medical, surgical, hospital, or ancillary health care expenses of the small
207 employer's employees provided as an employee benefit; and

208 (b) any contract of an insurer, other than a workers' compensation policy, related to the
209 risk of a small employer for medical, surgical, hospital, or ancillary health care expenses of the
210 small employer's employees provided as an employee benefit.

211 (7) The commissioner may make rules requiring that the marketing practices be

- 212 consistent with this chapter for:
- 213 (a) a small employer carrier;
 - 214 (b) a small employer carrier's agent;
 - 215 (c) an insurance producer; and
 - 216 (d) an insurance consultant.