

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.



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

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

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

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

59 terminated, except as provided in Subsection (8).

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

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

66 (i) a terminated insured;

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

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

69 (A) a surviving spouse; and

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

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

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

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

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

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

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

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

83 (b) the employee or other individual eligible for extension contacts the insurer within
84 60 days of coverage termination.

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

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

90 group coverage.

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

- 94 (a) elects to extend group coverage within 60 days of losing group coverage; and
- 95 (b) tenders the amount required to the employer or insurer.

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

- 98 (a) establishes residence outside of this state;
- 99 (b) moves out of the insurer's service area;
- 100 (c) fails to pay premiums or contributions in accordance with the terms of the insurance
101 policy, including any timeliness requirements;
- 102 (d) performs an act or practice that constitutes fraud in connection with the coverage;
- 103 (e) makes an intentional misrepresentation of material fact under the terms of the
104 coverage;
- 105 (f) becomes eligible for similar coverage under another group insurance policy; or
- 106 (g) has the coverage terminated because the employer's coverage is terminated, except
107 as provided in Subsection (8).

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

- 112 (a) for the balance of the period the terminated insured would have extended coverage
113 under the replaced group insurance policy; and
- 114 (b) if the terminated insured is otherwise eligible for extension of coverage.

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

- 117 (a) an individual who extends group coverage and is current on payment; and
- 118 (b) during the applicable grace period described in Subsection (3) or (4), an individual
119 who is eligible to elect to extend group coverage.

120 (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.