

§ 58-50-40. Willful failure to pay group insurance premiums; willful termination of a group health plan; notice to persons insured; penalty; restitution; examination of insurance transactions.

- (a) As used in this section and in G.S. 58-50-45:
- (1) "Group health insurance" means any policy described in G.S. 58-51-75, 58-51-80, or 58-51-90; any group insurance certificate or group subscriber contract issued by a service corporation pursuant to Articles 65 and 66 of this Chapter; any health care plan provided or arranged by a health maintenance organization pursuant to Article 67 of this Chapter; or any multiple employer welfare arrangement as defined in G.S. 58-50A-1.
 - (2) "Group health plan" means a single employer self-insured group health plan as defined in section 607(1) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1167(1), as amended.
 - (3) "Insurance fiduciary" means any person, employer, principal, agent, trustee, or third-party administrator who is responsible for the payment of group health or group life insurance premiums or who is responsible for funding a group health plan.
 - (4) "Premiums" includes contributions to a group health plan or to a multiple employer welfare arrangement.
- (b) No insurance fiduciary shall:
- (1) Cause the cancellation or nonrenewal of group health or group life insurance and the consequential loss of the coverages of the persons insured by willfully failing to pay such premiums in accordance with the terms of a group health or group life insurance contract; or, in the case of a group health plan to which there are no premiums contributed, terminate the plan by willfully failing to fund the plan; and
 - (2) Willfully fail to deliver, at least 45 days before the termination of the group health or group life insurance or group health plan, to all persons covered by the group policy or group health plan a written notice of the insurance fiduciary's intention to stop payment of premiums for the group life or health insurance or the insurance fiduciary's intention to cease funding of a group health plan.
- (c) Any insurance fiduciary who violates subsection (b) of this section shall be guilty of the following felony offense:
- (1) If the total value of losses suffered as a result of an insurance fiduciary's violation of subsection (b) of this section is one hundred thousand dollars (\$100,000) or more, the violation is a Class F felony.
 - (2) If the total value of losses suffered as a result of an insurance fiduciary's violation of subsection (b) of this section is less than one hundred thousand dollars (\$100,000), the violation is a Class H felony.
- (d) Repealed by Session Laws 1991, c. 644, s. 37.
- (e) Upon conviction under subsection (c) of this section the court shall order the insurance fiduciary to make full restitution to persons insured who incurred expenses that would have been covered by the group health insurance or group health plan or full restitution to beneficiaries of the group life insurance for death benefits that would have been paid if the coverage had not been terminated.
- (f) Insurance fiduciaries subject to this section shall be subject to the provisions of G.S. 58-2-200 with respect only to transactions involving group health or life insurance.
- (g) In the notice required by subsection (b) of this section, the insurance fiduciary shall also notify those persons of their rights to health insurance conversion policies under Article 53
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of this Chapter and their rights to purchase individual policies under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191, as amended, and Article 68 of this Chapter.

(h) In the event of the insolvency of an employer or insurance fiduciary who has violated this section, any person specified in subsection (e) of this section shall have a lien upon the assets of the employer or insurance fiduciary for the expenses or benefits specified in subsection (e) of this section. With respect to personal property within the estate of the insolvent employer or insurance fiduciary, the lien shall have priority over unperfected security interests.

(i) Upon the termination of a group health insurance contract by the insurer, the insurer shall notify every subscriber and certificate holder under the contract of the termination of the contract along with the certification required to be provided under G.S. 58-68-30(e). Upon the termination of a group health insurance contract by the insurance fiduciary, the insurance fiduciary shall notify every subscriber and certificate holder under the contract of the termination of the contract along with the certification required to be provided under G.S. 58-68-30(e).

(j) This section shall not apply to the cessation of individual contributions made by any person covered by a group health or group life insurance policy or group health plan. (1985, c. 507, s. 1; 1989, c. 485, s. 51; 1989 (Reg. Sess., 1990), c. 1055, ss. 2, 3.1; 1991, c. 644, s. 37; 1993, c. 539, s. 1274; 1994, Ex. Sess., c. 24, s. 14(c); 2001-422, s. 1; 2006-105, s. 1.8; 2016-78, s. 3.1; 2019-202, s. 8; 2020-69, s. 3(b).)