

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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SENATE BILL 241

Short Title: Health Insurance Termination Notice.

(Public)

Sponsors: Senators Dalton, Reeves; Hoyle, Purcell, and Wellons.

Referred to: Insurance and Consumer Protection.

February 26, 2001

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN THE LAW MAKING IT A FELONY FOR AN
INSURANCE FIDUCIARY TO CAUSE TERMINATION OF GROUP HEALTH
OR LIFE INSURANCE COVERAGE BY NONPAYMENT OF PREMIUM
WITHOUT GIVING NOTICE TO MEMBERS OF THE GROUP.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-50-40 reads as rewritten:

"§ 58-50-40. Willful failure to pay group insurance premiums; notice to persons insured; penalty; restitution; examination of insurance transactions.

(a) As used in this section and in G.S. 58-50-45, the term "group health insurance" means: (1) any policy described in G.S. 58-51-75, 58-51-80, or 58-51-90; (2) any group insurance certificate or group subscriber contract issued by a hospital service corporation pursuant to Articles 65 and 66 of this Chapter; (3) any health care plan provided or arranged by a health maintenance organization pursuant to Article 67 of this Chapter; ~~or~~ (4) any multiple employer welfare arrangement as defined in ~~G.S. 58-49-30(a)~~ G.S. 58-49-30(a); or (5) a group health plan, as defined in section 607(1) of the Employee Retirement Income Security Act of 1974.

As used in this section and in G.S. 58-50-45, the term "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. As used in this section and in G.S. 58-50-45, "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; and

1 (2) Willfully fail to deliver, at least 45 days before the termination of such
2 insurance, to all persons covered by the group policy a written notice
3 of the insurance fiduciary's intention to stop payment of premiums.

4 (c) Any insurance fiduciary who violates subsection (b) of this section shall be
5 guilty of a Class ~~H~~ G felony.

6 (e) Upon conviction under subsection (c) of this section the court shall order the
7 insurance fiduciary to make full restitution to persons insured who incurred expenses
8 that would have been covered by the group health insurance or full restitution to
9 beneficiaries of the group life insurance for death benefits that would have been paid if
10 the coverage had not been terminated.

11 (f) Insurance fiduciaries subject to this section shall be subject to the provisions
12 of G.S. 58-2-200 with respect only to transactions involving group health or life
13 insurance.

14 (g) In the notice required by subsection (b) of this section, the insurance fiduciary
15 shall also notify those persons of their rights to health insurance conversion policies
16 under Article 53 of this Chapter and their rights ~~under the federal Consolidated~~
17 ~~Omnibus Budget Reconciliation Act (COBRA)~~ to purchase individual policies under
18 the federal Health Insurance Portability and Accountability Act (HIPAA) and Article 68
19 of this Chapter.

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

26 (i) Upon the nonpayment of or refusal to pay group health or life insurance
27 premiums by an insurance fiduciary, the insurer or MEWA underwriting the group
28 insurance contract shall immediately (1) notify the Commissioner, and (2) publish in a
29 newspaper or newspapers of general circulation in the geographic area or areas in which
30 the employer's business is located a notice reasonably calculated to inform those
31 persons that the premium for their group insurance has not been paid in accordance with
32 the group insurance contract.

33 (j) Upon compliance with subsection (i) of this section, the insurer shall have a cause
34 of action against the insurance fiduciary for the costs of publication and related
35 administrative expenses. These costs of publication and related expenses shall not be
36 recovered by any offset against premiums collected under the group insurance contract.

37 (k) There shall be no liability on the part of and no cause of action shall arise against
38 any insurer, its agents, or employees, or the Commissioner or his representatives, for
39 any action taken by them in the performance of their duties under subsection (i) of this
40 section."

41 **SECTION 2.** G.S. 58-50-45 reads as rewritten:

42 **"§ 58-50-45. Group health or life insurers to notify insurance fiduciaries of**
43 **obligations.**

1 (a) ~~On and after January 1, 1986, upon~~ Upon the issuance or renewal of any
2 policy, contract, certificate, or evidence of coverage of group health or life insurance,
3 the insurer, corporation, or health maintenance organization shall give written notice to
4 the insurance fiduciary of the provisions of G.S. 58-50-40.

5 (b) The notice required by subsection (a) of this section shall be printed in 10
6 point type and shall read as follows:

7 "UNDER NORTH CAROLINA GENERAL STATUTE SECTION 58-50-40, NO
8 PERSON, EMPLOYER, PRINCIPAL, AGENT, TRUSTEE, OR THIRD PARTY
9 ADMINISTRATOR, WHO IS RESPONSIBLE FOR THE PAYMENT OF GROUP
10 HEALTH OR LIFE INSURANCE OR GROUP HEALTH CARE PLAN PREMIUMS,
11 SHALL: (1) CAUSE THE CANCELLATION OR NONRENEWAL OF GROUP
12 HEALTH OR LIFE INSURANCE, HOSPITAL, MEDICAL, OR DENTAL SERVICE
13 CORPORATION PLAN, MULTIPLE EMPLOYER WELFARE ARRANGEMENT,
14 OR GROUP HEALTH CARE PLAN COVERAGES AND THE CONSEQUENTIAL
15 LOSS OF THE COVERAGES OF THE PERSONS INSURED, BY WILLFULLY
16 FAILING TO PAY SUCH PREMIUMS IN ACCORDANCE WITH THE TERMS OF
17 THE INSURANCE OR PLAN CONTRACT, AND (2) WILLFULLY FAIL TO
18 DELIVER, AT LEAST 45 DAYS ~~PRIOR TO~~ BEFORE THE TERMINATION OF
19 SUCH COVERAGES, TO ALL PERSONS COVERED BY THE GROUP POLICY A
20 WRITTEN NOTICE OF THE PERSON'S INTENTION TO STOP PAYMENT OF
21 PREMIUMS. THIS WRITTEN NOTICE MUST ALSO CONTAIN A NOTICE TO
22 ALL PERSONS COVERED BY THE GROUP POLICY OF THEIR RIGHTS TO
23 HEALTH INSURANCE CONVERSION POLICIES UNDER ARTICLE 53 OF
24 CHAPTER 58 OF THE GENERAL STATUTES ~~CHAPTER 58~~ AND THEIR RIGHTS
25 TO PURCHASE INDIVIDUAL POLICIES UNDER THE FEDERAL
26 CONSOLIDATED OMNIBUS BUDGET RECONCILIATION ACT (COBRA).
27 HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT AND
28 UNDER ARTICLE 68 OF CHAPTER 58 OF THE GENERAL STATUTES.
29 VIOLATION OF THIS LAW IS A FELONY. ANY PERSON VIOLATING THIS
30 LAW IS ALSO SUBJECT TO A COURT ORDER REQUIRING THE PERSON TO
31 COMPENSATE PERSONS INSURED FOR EXPENSES OR LOSSES INCURRED
32 AS A RESULT OF THE TERMINATION OF THE INSURANCE."

33 **SECTION 3.** This act is effective when it becomes law.