

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2001

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SENATE BILL 241  
Insurance and Consumer Protection Committee Substitute Adopted 4/10/01  
House Committee Substitute Favorable 8/15/01

Short Title: Health Insurance Termination Notice.

(Public)

Sponsors:

Referred to:

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; 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, 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).~~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 multiple employer welfare arrangement.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. 58-49-30(a).

- 1           (2) 'Group health plan' means a single employer self-insured group health  
2 plan as defined in section 607(1) of the Employee Retirement Income  
3 Security Act of 1974, 29 U.S.C. § 1167(1), as amended.
- 4           (3) 'Insurance fiduciary' means any person, employer, principal, agent,  
5 trustee, or third-party administrator who is responsible for the payment  
6 of group health or group life insurance premiums or has the authority  
7 or ability to terminate a group health plan.
- 8           (4) 'Premiums' includes contributions to a group health plan or to a  
9 multiple employer welfare arrangement.
- 10       (b) No insurance fiduciary shall:
- 11           (1) Cause the cancellation or nonrenewal of group health or group life  
12 insurance and the consequential loss of the coverages of the persons  
13 insured by willfully failing to pay such premiums in accordance with  
14 the terms of a group health or group life insurance contract; or, in the  
15 case of a group health plan to which there are no premiums  
16 contributed, willfully terminate the plan; and
- 17           (2) Willfully fail to deliver, at least 45 days before the termination of ~~such~~  
18 ~~insurance, the group health or group life insurance or group health~~  
19 ~~plan, to all persons covered by the group policy or group health plan a~~  
20 ~~written notice of the insurance fiduciary's intention to stop payment of~~  
21 ~~premiums-premiums or terminate the group health plan.~~
- 22       (c) Any insurance fiduciary who violates subsection (b) of this section shall be  
23 guilty of a Class H felony.
- 24       (e) Upon conviction under subsection (c) of this section the court shall order the  
25 insurance fiduciary to make full restitution to persons insured who incurred expenses  
26 that would have been covered by the group health insurance or group health plan or full  
27 restitution to beneficiaries of the group life insurance for death benefits that would have  
28 been paid if the coverage had not been terminated.
- 29       (f) Insurance fiduciaries subject to this section shall be subject to the provisions  
30 of G.S. 58-2-200 with respect only to transactions involving group health or life  
31 insurance.
- 32       (g) In the notice required by subsection (b) of this section, the insurance fiduciary  
33 shall also notify those persons of their rights to health insurance conversion policies  
34 under Article 53 of this Chapter and their rights ~~under the federal Consolidated~~  
35 ~~Omnibus Budget Reconciliation Act (COBRA).~~ to purchase individual policies under  
36 the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA),  
37 Public Law 104-191, as amended, and Article 68 of this Chapter.
- 38       (h) In the event of the insolvency of an employer or insurance fiduciary who has  
39 violated this section, any person specified in subsection (e) of this section shall have a  
40 lien upon the assets of the employer or insurance fiduciary for the expenses or benefits  
41 specified in subsection (e) of this section. With respect to personal property within the  
42 estate of the insolvent employer or insurance fiduciary, the lien shall have priority over  
43 unperfected security interests.

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

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

6 "**§ 58-50-45. Group health or life insurers to notify insurance fiduciaries of**  
7 **obligations.**

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

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

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

40 **SECTION 3.** If any section or provision of this act is declared  
41 unconstitutional, preempted, or otherwise invalid by the courts, it does not affect the  
42 validity of the act as a whole or any part other than the part declared to be  
43 unconstitutional, preempted, or otherwise invalid.

1           **SECTION 4.** This act becomes effective December 1, 2001.