

The Senate Insurance and Labor Committee offered the following substitute to HB 1268:

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 1 of Chapter 24 of Title 33 of the Official Code of Georgia Annotated,
2 relating to general provisions regarding insurance generally, so as to revise the time periods
3 and eligibility for continuation coverage under certain group accident and sickness insurance
4 plans; to provide for related matters; to provide an effective date; to repeal conflicting laws;
5 and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

7
8 Article 1 of Chapter 24 of Title 33 of the Official Code of Georgia Annotated, relating to
9 general provisions regarding insurance generally, is amended by revising Code
10 Section 33-24-21.1, relating to conversion privilege and continuation right provisions for
11 group accident and sickness insurance, as follows:

12 "33-24-21.1.

13 (a) As used in this Code section, the term:

14 (1) 'Assistance eligible individual' shall have the same meaning as provided by Section
15 3001 of Title III of the federal American Recovery and Reinvestment Act of 2009 and
16 as extended by the Department of Defense Appropriations Act of 2010 and the
17 Temporary Extension Act of 2010.

18 (2) 'Creditable coverage' under another health benefit plan means medical expense
19 coverage with no greater than a 90 day gap in coverage under any of the following:

20 (A) Medicare or Medicaid;

21 (B) An employer based accident and sickness insurance or health benefit arrangement;

22 (C) An individual accident and sickness insurance policy, including coverage issued
23 by a health maintenance organization, nonprofit hospital or nonprofit medical service
24 corporation, health care corporation, or fraternal benefit society;

25 (D) A spouse's benefits or coverage under medicare or Medicaid or an employer based
26 health insurance or health benefit arrangement;

- 27 (E) A conversion policy;
- 28 (F) A franchise policy issued on an individual basis to a member of a true association
29 as defined in subsection (b) of Code Section 33-30-1;
- 30 (G) A health plan formed pursuant to 10 U.S.C. Chapter 55;
- 31 (H) A health plan provided through the Indian Health Service or a tribal organization
32 program or both;
- 33 (I) A state health benefits risk pool;
- 34 (J) A health plan formed pursuant to 5 U.S.C. Chapter 89;
- 35 (K) A public health plan; or
- 36 (L) A Peace Corps Act health benefit plan.
- 37 (3) 'Eligible dependent' means a person who is entitled to medical benefits coverage
38 under a group contract or group plan by reason of such person's dependency on or
39 relationship to a group member.
- 40 (4) 'Group contract or group plan' is synonymous with the term 'contract or plan' and
41 means:
- 42 (A) A group contract of the type issued by a nonprofit medical service corporation
43 established under Chapter 18 of this title;
- 44 (B) A group contract of the type issued by a nonprofit hospital service corporation
45 established under Chapter 19 of this title;
- 46 (C) A group contract of the type issued by a health care plan established under Chapter
47 20 of this title;
- 48 (D) A group contract of the type issued by a health maintenance organization
49 established under Chapter 21 of this title; or
- 50 (E) A group accident and sickness insurance policy or contract, as defined in Chapter
51 30 of this title.
- 52 (5) 'Group member' means a person who has been a member of the group for at least six
53 months and who is entitled to medical benefits coverage under a group contract or group
54 plan and who is an insured, certificate holder, or subscriber under the contract or plan.
- 55 (6) 'Insurer' means an insurance company, health care corporation, nonprofit hospital
56 service corporation, medical service nonprofit corporation, health care plan, or health
57 maintenance organization.
- 58 (7) 'Qualifying eligible individual' means:
- 59 (A) A Georgia domiciliary, for whom, as of the date on which the individual seeks
60 coverage under this Code section, the aggregate of the periods of creditable coverage
61 is 18 months or more; and
- 62 (B) Who is not eligible for coverage under any of the following:

- 63 (i) A group health plan, including continuation rights under this Code section or the
 64 federal Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA);
 65 (ii) Part A or Part B of Title XVIII of the federal Social Security Act; or
 66 (iii) The state plan under Title XIX of the federal Social Security Act or any
 67 successor program.

68 (a.1) Any group member or qualifying eligible individual who is an assistance eligible
 69 individual as provided by Section 3001 of Title III of the federal American Recovery and
 70 Reinvestment Act (P.L. 111-5), as amended, during the period permitted under such act
 71 whose coverage has been terminated and who has been continuously covered under the
 72 group contract or group plan, and under any contract or plan providing similar benefits that
 73 it replaces, for at least six months immediately prior to such termination, shall be entitled
 74 to have his or her coverage and the coverage of his or her eligible dependents continued
 75 under the contract or plan. Such coverage shall continue for the fractional policy month
 76 remaining, if any, at termination plus ~~nine~~ 15 additional policy months upon payment of
 77 the premium to the insurer by cash, certified check, or money order, at the same rate for
 78 active group members set forth in the contract or plan, on a monthly basis in advance as
 79 such premium becomes due during this coverage period. An assistance eligible individual
 80 who is in a transition period as defined in Section 3001 of Title III of the federal American
 81 Recovery and Reinvestment Act (P.L. 111-5), as amended, shall be treated for purposes of
 82 any COBRA continuation provision as having timely paid such premium if such individual
 83 was covered under the COBRA continuation coverage to which such premium relates for
 84 the period immediately preceding such transition period and such individual pays the
 85 amount of such premium not later than 60 days after December 19, 2009, or 30 days after
 86 the date of provision of the notification required by Section 1010 of the Department of
 87 Defense Appropriations Act of 2010 or the Temporary Extension Act of 2010, whichever
 88 is later. For the period that the assistance eligible individual is eligible for the premium
 89 assistance subsidy as provided in Section 3001 of Title III of the federal American
 90 Recovery and Reinvestment Act (P.L. 111-5), as amended, such premium payment shall
 91 be calculated as 35 percent of the rate for active group members including any portion of
 92 the premium paid by a former employer or other person if such employer or other person
 93 no longer contributes premium payments for this coverage.

94 (a.2) The rights and benefits under this Code section attributable to Section 3001 of Title
 95 III of the federal American Recovery and Reinvestment Act (P.L. 111-5), as amended, shall
 96 expire when that act expires. Any extension of such benefits shall require an Act of the
 97 Georgia General Assembly. Under no circumstances shall the extended benefits for
 98 assistance eligible individuals become the responsibility of the State of Georgia or any
 99 insurer after ~~September 30, 2010~~ the expiration of the premium subsidy made available to

100 individuals pursuant to Section 3001 of Title III of the federal American Recovery and
101 Reinvestment Act (P.L. 111-5), the Department of Defense Appropriations Act of 2010,
102 and the Temporary Extension Act of 2010.

103 (b) Each group contract or group plan delivered or issued for delivery in this state, other
104 than a group accident and sickness insurance policy, contract, or plan issued in connection
105 with an extension of credit, which provides hospital, surgical, or major medical coverage,
106 or any combination of these coverages, on an expense incurred or service basis, excluding
107 contracts and plans which provide benefits for specific diseases or accidental injuries only,
108 shall provide that members and qualifying eligible individuals whose insurance under the
109 group contract or plan would otherwise terminate shall be entitled to continue their
110 hospital, surgical, and major medical insurance coverage under that group contract or plan
111 for themselves and their eligible dependents.

112 (c)(1) Any group member or qualifying eligible individual whose coverage has been
113 terminated and who has been continuously covered under the group contract or group
114 plan, and under any contract or plan providing similar benefits which it replaces, for at
115 least six months immediately prior to such termination, shall be entitled to have his or her
116 coverage and the coverage of his or her eligible dependents continued under the contract
117 or plan. Such coverage must continue for the fractional policy month remaining, if any,
118 at termination plus three additional policy months, ~~except the period of continuation~~
119 ~~coverage for assistance eligible individual in subsection (a.1) of this Code section, shall~~
120 ~~be nine months~~, upon payment of the premium by cash, certified check, or money order,
121 at the option of the employer, to the policyholder or employer, at the same rate for active
122 group members set forth in the contract or plan, on a monthly basis in advance as such
123 premium becomes due during this coverage period. Such premium payment must include
124 any portion of the premium paid by a former employer or other person if such employer
125 or other person no longer contributes premium payments for this coverage. The period
126 of continuation of coverage for an assistance eligible individual shall continue for the
127 fractional policy month remaining, if any, at termination plus 15 additional policy months
128 upon payment of the premium as specified in subsection (a.1) of this Code section. At
129 the end of such period, the group member shall have the same conversion rights that were
130 available on the date of termination of coverage in accordance with the conversion
131 privileges contained in the group contract or group plan.

132 (2) A covered individual who is an assistance eligible individual has a right to elect
133 continuation of his or her coverage and the coverage of his or her dependents at any time
134 between May 5, 2009, and 60 days after receiving notice from the employer's insurer of
135 the right to participate in a ~~second election period~~ for state continuation benefits under

136 this Code section in accordance with Section 3001 of Title III of the federal American
 137 Recovery and Reinvestment Act (P.L. 111-5), as amended if:

138 (A) The individual was involuntarily terminated from employment between September
 139 1, 2008, and ~~February 17, 2009~~ March 31, 2010, as defined in Section 3001 of Title III
 140 of the federal American Recovery and Reinvestment Act (P.L. 111-5), as amended;

141 (B) The individual was eligible for state continuation under this chapter at the time of
 142 termination;

143 (C) The individual continues to be eligible for state continuation benefits under this
 144 chapter, provided that the total period of continuous eligibility shall not exceed ~~nine~~ 15
 145 policy months from the month of the qualifying event making the individual an
 146 assistance eligible individual or the date of the election as provided in this paragraph,
 147 whichever is later; and

148 (D) The individual or the employer of the individual contacts the insurer and informs
 149 the insurer that the individual wants to take advantage of ~~the second election period for~~
 150 state continuation coverage under the provisions of Section 3001 of Title III of the
 151 federal American Recovery and Reinvestment Act (P.L. 111-5), as amended.

152 (3) In addition to the group policy under which the group member was insured, the group
 153 member and any qualifying eligible individual shall, to the extent that such plan is
 154 currently offered under the group plans offered by the company, also be offered the
 155 option of continuation coverage through a high deductible health plan, or its actuarial
 156 equivalent, that is eligible for use with a health savings account under the applicable
 157 provisions of Section 223 of the Internal Revenue Code. Such high deductible health
 158 plans shall have premiums consistent with the underlying group plan of coverage rated
 159 relative to the standard or manual rates for the benefits provided.

160 ~~(4) Claims for a covered individual under continuation of coverage shall not be~~
 161 ~~considered in rating or rerating the group premiums for the group from which the~~
 162 ~~continuation of coverage is provided, except that the pooled experience for all of the~~
 163 ~~insurer's continuation of coverage claims for fully insured claims may impact all such~~
 164 ~~groups on an equal percentage basis.~~

165 (d)(1) A group member shall not be entitled to have coverage continued if: (A)
 166 termination of coverage occurred because the employment of the group member was
 167 terminated for cause; (B) termination of coverage occurred because the group member
 168 failed to pay any required contribution; or (C) any discontinued group coverage is
 169 immediately replaced by similar group coverage including coverage under a health
 170 benefits plan as defined in the federal Employee Retirement Income Security Act of
 171 1974, 29 U.S.C. Section 1001, et seq. Further, a group member shall not be entitled to
 172 have coverage continued if the group contract or group plan was terminated in its entirety

173 or was terminated with respect to a class to which the group member belonged. This
174 subsection shall not affect conversion rights available to a qualifying eligible individual
175 under any contract or plan.

176 (2) A qualifying eligible individual shall not be entitled to have coverage continued if
177 the most recent creditable coverage within the coverage period was terminated based on
178 one of the following factors: (A) failure of the qualifying eligible individual to pay
179 premiums or contributions in accordance with the terms of the health insurance coverage
180 or failure of the issuer to receive timely premium payments; (B) the qualifying eligible
181 individual has performed an act or practice that constitutes fraud or made an intentional
182 misrepresentation of material fact under the terms of coverage; or (C) any discontinued
183 group coverage is immediately replaced by similar group coverage including coverage
184 under a health benefits plan as defined in the federal Employee Retirement Income
185 Security Act of 1974, 29 U.S.C. Section 1001, et seq. This subsection shall not affect
186 conversion rights available to a group member under any contract or plan.

187 (e) If the group contract or group plan terminates while any group member or qualifying
188 eligible individual is covered or whose coverage is being continued, the group
189 administrator, as prescribed by the insurer, must notify each such group member or
190 qualifying eligible individual that he or she must exercise his or her conversion rights
191 within:

192 (1) Thirty days of such notice for group members who are not qualifying eligible
193 individuals; or

194 (2) Sixty-three days of such notice for qualifying eligible individuals.

195 (f) Every group contract or group plan, other than a group accident and sickness insurance
196 policy, contract, or plan issued in connection with an extension of credit, which provides
197 hospital, surgical, or major medical expense insurance, or any combination of these
198 coverages, on an expense incurred or service basis, excluding policies which provide
199 benefits for specific diseases or for accidental injuries only, shall contain a conversion
200 privilege provision.

201 (g) Eligibility for the converted policies or contracts shall be as follows:

202 (1) Any qualifying eligible individual whose insurance and its corresponding eligibility
203 under the group policy, including any continuation available, elected, and exhausted
204 under this Code section or the federal Consolidated Omnibus Budget Reconciliation Act
205 of 1986 (COBRA), has been terminated for any reason, including failure of the employer
206 to pay premiums to the insurer, other than fraud or failure of the qualifying eligible
207 individual to pay a required premium contribution to the employer or, if so required, to
208 the insurer directly and who has at least 18 months of creditable coverage immediately
209 prior to termination shall be entitled, without evidence of insurability, to convert to

210 individual or group based coverage covering such qualifying eligible individual and any
211 eligible dependents who were covered under the qualifying eligible individual's coverage
212 under the group contract or group plan. Such conversion coverage must be, at the option
213 of the individual, retroactive to the date of termination of the group coverage or the date
214 on which continuation or COBRA coverage ended, whichever is later. The insurer must
215 offer qualifying eligible individuals at least two distinct conversion options from which
216 to choose. One such choice of coverage shall be comparable to comprehensive health
217 insurance coverage offered in the individual market in this state or comparable to a
218 standard option of coverage available under the group or individual health insurance laws
219 of this state. The other choice may be more limited in nature but must also qualify as
220 creditable coverage. Each coverage shall be filed, together with applicable rates, for
221 approval by the Commissioner. Such choices shall be known as the 'Enhanced
222 Conversion Options';

223 (2) Premiums for the enhanced conversion options for all qualifying eligible individuals
224 shall be determined in accordance with the following provisions:

225 (A) Solely for purposes of this subsection, the claims experience produced by all
226 groups covered under comprehensive major medical or hospitalization accident and
227 sickness insurance for each insurer shall be fully pooled to determine the group pool
228 rate. Except to the extent that the claims experience of an individual group affects the
229 overall experience of the group pool, the claims experience produced by any individual
230 group of each insurer shall not be used in any manner for enhanced conversion policy
231 rating purposes;

232 (B) Each insurer's group pool shall consist of each insurer's total claims experience
233 produced by all groups in this state, regardless of the marketing mechanism or
234 distribution system utilized in the sale of the group insurance from which the qualifying
235 eligible individual is converting. The pool shall include the experience generated under
236 any medical expense insurance coverage offered under separate group contracts and
237 contracts issued to trusts, multiple employer trusts, or association groups or trusts,
238 including trusts or arrangements providing group or group-type coverage issued to a
239 trust or association or to any other group policyholder where such group or group-type
240 contract provides coverage, primarily or incidentally, through contracts issued or issued
241 for delivery in this state or provided by solicitation and sale to Georgia residents
242 through an out-of-state multiple employer trust or arrangement; and any other
243 group-type coverage which is determined to be a group shall also be included in the
244 pool for enhanced conversion policy rating purposes; and

245 (C) Any other factors deemed relevant by the Commissioner may be considered in
246 determination of each enhanced conversion policy pool rate so long as it does not have

247 the effect of lessening the risk-spreading characteristic of the pooling requirement.
248 Duration since issue and tier factors may not be considered in conversion policy rating.
249 Notwithstanding subparagraph (A) of this paragraph, the total premium calculated for
250 all enhanced conversion policies may deviate from the group pool rate by not more than
251 plus or minus 50 percent based upon the experience generated under the pool of
252 enhanced conversion policies so long as rates do not deviate for similarly situated
253 individuals covered through the pool of enhanced conversion policies;

254 (3) Any group member who is not a qualifying eligible individual and whose insurance
255 under the group policy has been terminated for any reason, including failure of the
256 employer to pay premiums to the insurer, other than eligibility for medicare (reaching a
257 limiting age for coverage under the group policy) or failure of the group member to pay
258 a required premium contribution, and who has been continuously covered under the
259 group contract or group plan, and under any contract or plan providing similar benefits
260 which it replaces, for at least six months immediately prior to termination shall be
261 entitled, without evidence of insurability, to convert to individual or group coverage
262 covering such group member and any eligible dependents who were covered under the
263 group member's coverage under the group contract or group plan. Such conversion
264 coverage must be, at the option of the individual, retroactive to the date of termination
265 of the group coverage or the date on which continuation or COBRA coverage ended,
266 whichever is later. The premium of the basic converted policy shall be determined in
267 accordance with the insurer's table of premium rates applicable to the age and
268 classification of risks of each person to be covered under that policy and to the type and
269 amount of coverage provided. This form of conversion coverage shall be known as the
270 'Basic Conversion Option'; and

271 (4) Nothing in this Code section shall be construed to prevent an insurer from offering
272 additional options to qualifying eligible individuals or group members.

273 (h) Each group certificate issued to each group member or qualifying eligible individual,
274 in addition to setting forth any conversion rights, shall set forth the continuation right in a
275 separate provision bearing its own caption. The provisions shall clearly set forth a full
276 description of the continuation and conversion rights available, including all requirements,
277 limitations, and exceptions, the premium required, and the time of payment of all premiums
278 due during the period of continuation or conversion.

279 (i) This Code section shall not apply to limited benefit insurance policies. For the
280 purposes of this Code section, the term 'limited benefit insurance' means accident and
281 sickness insurance designed, advertised, and marketed to supplement major medical
282 insurance. The term limited benefit insurance includes accident only, CHAMPUS
283 supplement, dental, disability income, fixed indemnity, long-term care, medicare

284 supplement, specified disease, vision, and any other accident and sickness insurance other
 285 than basic hospital expense, basic medical-surgical expense, and comprehensive major
 286 medical insurance coverage.

287 (j) The Commissioner shall adopt such rules and regulations as he or she deems necessary
 288 for the administration of this Code section. Such rules and regulations may prescribe
 289 various conversion plans, including minimum conversion standards and minimum benefits,
 290 but not requiring benefits in excess of those provided under the group contract or group
 291 plan from which conversion is made, scope of coverage, preexisting limitations, optional
 292 coverages, reductions, notices to covered persons, and such other requirements as the
 293 Commissioner deems necessary for the protection of the citizens of this state.

294 (k)(1) Except as provided in paragraph (2) of this subsection, this Code section shall
 295 apply to all group plans and group contracts delivered or issued for delivery in this state
 296 on or after July 1, 2009, and to group plans and group contracts then in effect on the first
 297 anniversary date occurring on or after July 1, 2009.

298 (2) The provisions of paragraphs (1), (2), and (3) of subsection (c) of this Code section
 299 shall apply to all group plans and group contracts in effect on September 1, 2008.

300 (l) As soon as practicable, but no later than June 4, 2009, the Commissioner shall develop
 301 and direct insurers to issue notices for assistance eligible individuals regarding availability
 302 of expanded eligibility, ~~second election~~, and continuation coverage assistance to be sent to
 303 the last known addresses of such assistance eligible individuals.

304 (m) Nothing in this chapter shall imply that individuals entitled to continuation coverage
 305 who are not assistance eligible individuals shall receive benefits beyond the period of
 306 coverage provided in paragraph (1) of subsection (c) of this Code section or that assistance
 307 eligible individuals are entitled to any continuation benefit period beyond what is provided
 308 by Section 3001 of Title III of the federal American Recovery and Reinvestment Act of
 309 2009 or extensions to that Act which are enacted on and after May 5, 2009."

310 **SECTION 2.**

311 This Act shall become effective upon its approval by the Governor or upon its becoming law
 312 without such approval.

313 **SECTION 3.**

314 All laws and parts of laws in conflict with this Act are repealed.