

**Introduced by Senator Speier**

February 1, 1999

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An act to amend Section 1373.621 of the Health and Safety Code, and to amend Section 10116.5 of the Insurance Code, relating to health care coverage.

LEGISLATIVE COUNSEL'S DIGEST

SB 271, as introduced, Speier. Health coverage: continuation of coverage.

Existing law provides for the regulation of health care service plans by the Commissioner of Corporations, and of policies of disability insurance by the Insurance Commissioner. Willful violation of the law regulating health care service plans is a crime. Existing federal law, added by the Consolidated Omnibus Budget Reconciliation Act of 1985, and known as COBRA, requires that certain employers provide former employees with continuation of benefits. Existing state law, the California Continuation Benefits Replacement Act (Cal-COBRA), requires every group health care service plan contract and group disability insurance contract or policy providing specified coverage to employers with 2 to 19 eligible employees to offer continuation coverage to a qualified beneficiary under the contract upon a qualifying event without evidence of insurability.

Existing law requires health care service plan contracts and disability insurance policies that provide hospital, medical, or surgical expense coverage under the plan of an employer subject to COBRA, and health care service plan contracts and disability insurance policies issued, amended, delivered, or

renewed in this state on or after January 1, 1999, that provide hospital, medical, or surgical expense coverage under the plan of an employer group subject to COBRA or for which the plan is required to offer Cal-COBRA coverage, to permit an employer to provide extended coverage to eligible former employees who are 60 years of age or older on the date employment ends, their spouses, and former spouses. Existing law requires the extended coverage to terminate automatically under enumerated circumstances, including, for a spouse, 5 years from the date on which continuation coverage under COBRA, or, on and after January 1, 1999, Cal-COBRA, was scheduled to end for the spouse.

This bill would require those health care service plan contracts and disability insurance policies to permit an employer to provide extended coverage to eligible employees who are instead 55 years of age or older on the date employment ends. The bill would delete the automatic termination date that is applicable specifically to spouses.

Because a violation of the bill's requirements with respect to a health care service plan would be a crime, this bill would impose a state-mandated local program by expanding the definition of an existing crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1373.621 of the Health and  
 2 Safety Code is amended to read:  
 3 1373.621. (a) Except for a specialized health care  
 4 service plan, every health care service plan contract that  
 5 is issued, amended, delivered, or renewed in this state on  
 6 or after January 1, 1999, that provides hospital, medical,  
 7 or surgical expense coverage under an



1 employer-sponsored group plan for an employer subject  
2 to COBRA, as defined in subdivision (e), or an employer  
3 group for which the plan is required to offer Cal-COBRA  
4 coverage, as defined in subdivision (f), including a carrier  
5 providing replacement coverage under Section 1399.63,  
6 shall further offer the former employee the opportunity  
7 to continue benefits as required under subdivision (b),  
8 and shall further offer the former spouse of an employee  
9 or former employee the opportunity to continue benefits  
10 as required under subdivision (c).

11 (b) (1) In the event a former employee who worked  
12 for the employer for at least five years prior to the date  
13 of termination of employment and who is ~~60~~ 55 years of  
14 age or older on the date employment ends is entitled to  
15 and so elects to continue benefits under COBRA or  
16 Cal-COBRA for himself or herself and for any spouse, the  
17 employee or spouse may further continue benefits  
18 beyond the date coverage under COBRA or Cal-COBRA  
19 ends, as set forth in paragraph (2). Except as otherwise  
20 specified in this section, continuation coverage shall be  
21 under the same benefit terms and conditions as if the  
22 continuation coverage under COBRA or Cal-COBRA had  
23 remained in force. For the employee or spouse,  
24 continuation coverage following the end of COBRA or  
25 Cal-COBRA is subject to payment of premiums to the  
26 health care service plan. Individuals ineligible for  
27 COBRA or Cal-COBRA, or who are eligible but have not  
28 elected or exhausted continuation coverage under  
29 federal COBRA or Cal-COBRA, are not entitled to  
30 continuation coverage under this section. Premiums for  
31 continuation coverage under this section shall be billed  
32 by, and remitted to, the health care service plan in  
33 accordance with subdivision (d). Failure to pay the  
34 requisite premiums may result in termination of the  
35 continuation coverage in accordance with the applicable  
36 provisions in the plan's group subscriber agreement with  
37 the former employer.

38 (2) The former employer shall notify the former  
39 employee or spouse or both, or the former spouse of the  
40 employee or former employee, of the availability of the



1 continuation benefits under this section in accordance  
2 with Section 2800.2 of the Labor Code. To continue health  
3 care coverage pursuant to this section, the individual shall  
4 elect to do so by notifying the plan in writing within 30  
5 calendar days prior to the date continuation coverage  
6 under COBRA or Cal-COBRA is scheduled to end. Every  
7 health care service plan and specialized health care  
8 service plan shall provide to the employer replacing a  
9 health care service plan contract issued by the plan, or to  
10 the employer's agent or broker representative, within 15  
11 days of any written request, information in possession of  
12 the plan reasonably required to administer the  
13 requirements of Section 2800.2 of the Labor Code.

14 (3) The continuation coverage shall end automatically  
15 on the earlier of (A) the date the individual reaches age  
16 65, (B) the date the individual is covered under any group  
17 health plan not maintained by the employer or any other  
18 health plan, regardless of whether that coverage is less  
19 valuable, (C) the date the individual becomes entitled to  
20 Medicare under Title XVIII of the Social Security Act, *or*  
21 ~~(D) for a spouse, five years from the date on which~~  
22 ~~continuation coverage under COBRA or Cal-COBRA was~~  
23 ~~scheduled to end for the spouse, or (E) the date on which~~  
24 the former employer terminates its group subscriber  
25 agreement with the health care service plan and ceases  
26 to provide coverage for any active employees through  
27 that plan, in which case the health care service plan shall  
28 notify the former employee or spouse, or both, of the right  
29 to a conversion plan in accordance with Section 1373.6.

30 (c) (1) If a former spouse of an employee or former  
31 employee was covered as a qualified beneficiary under  
32 COBRA or Cal-COBRA, the former spouse may further  
33 continue benefits beyond the date coverage under  
34 COBRA or Cal-COBRA ends, as set forth in paragraph (2)  
35 of subdivision (b). Except as otherwise specified in this  
36 section, continuation coverage shall be under the same  
37 benefit terms and conditions as if the continuation  
38 coverage under COBRA or Cal-COBRA had remained in  
39 force. Continuation coverage following the end of  
40 COBRA or Cal-COBRA is subject to payment of



1 premiums to the health care service plan. Premiums for  
2 continuation coverage under this section shall be billed  
3 by, and remitted to, the health care service plan in  
4 accordance with subdivision (d). Failure to pay the  
5 requisite premiums may result in termination of the  
6 continuation coverage in accordance with the applicable  
7 provisions in the plan's group subscriber agreement with  
8 the employer or former employer.

9 (2) The continuation coverage for the former spouse  
10 shall end automatically on the earlier of (A) the date the  
11 individual reaches 65 years of age, (B) the date the  
12 individual is covered under any group health plan not  
13 maintained by the employer or any other health plan,  
14 regardless of whether that coverage is less valuable, (C)  
15 the date the individual becomes entitled to Medicare  
16 under Title XVIII of the Social Security Act, *or* (D) ~~five~~  
17 ~~years from the date on which continuation coverage~~  
18 ~~under COBRA or Cal-COBRA was scheduled to end for~~  
19 ~~the former spouse, or (E) the date on which the employer~~  
20 ~~or former employer terminates its group subscriber~~  
21 ~~agreement with the health care service plan and ceases~~  
22 ~~to provide coverage for any active employees through~~  
23 ~~that plan, in which case the health care service plan shall~~  
24 ~~notify the former spouse of the right to a conversion plan~~  
25 ~~in accordance with Section 1373.6.~~

26 (d) (1) If the premium charged to the employer for  
27 a specific employee or dependent eligible under this  
28 section is adjusted for the age of the specific employee, or  
29 eligible dependent, on other than a composite basis, the  
30 rate for continuation coverage under this section shall not  
31 exceed 102 percent of the premium charged by the plan  
32 to the employer for an employee of the same age as the  
33 former employee electing continuation coverage in the  
34 case of an individual who was eligible for COBRA, and 110  
35 percent in the case of an individual who was eligible for  
36 Cal-COBRA. If the coverage continued is that of a former  
37 spouse, the premium charged shall not exceed 102  
38 percent of the premium charged by the plan to the  
39 employer for an employee of the same age as the former  
40 spouse selecting continuation coverage in the case of an



1 individual who was eligible for COBRA, and 110 percent  
2 in the case of an individual who was eligible for  
3 Cal-COBRA.

4 (2) If the premium charged to the employer for a  
5 specific employee or dependent eligible under this  
6 section is not adjusted for age of the specific employee, or  
7 eligible dependent, then the rate for continuation  
8 coverage under this section shall not exceed 213 percent  
9 of the applicable current group rate. For purposes of this  
10 section, the “applicable current group rate” means the  
11 total premiums charged by the health care service plan  
12 for coverage for the group, divided by the relevant  
13 number of covered persons.

14 (3) However, in computing the premiums charged to  
15 the specific employer group, the health care service plan  
16 shall not include consideration of the specific medical  
17 care expenditures for beneficiaries receiving  
18 continuation coverage pursuant to this section.

19 (e) For purposes of this section, “COBRA” means  
20 Section 4980B of Title 26 of the United States Code,  
21 Section 1161 et seq. of Title 29 of the United States Code,  
22 and Section 300bb of Title 42 of the United States Code,  
23 as added by the Consolidated Omnibus Budget  
24 Reconciliation Act of 1985 (Public Law 99-272), and as  
25 amended.

26 (f) For purposes of this section, “Cal-COBRA” means  
27 the continuation coverage that must be offered pursuant  
28 to Article 4.5 (commencing with Section 1366.20), or  
29 Article 1.7 (commencing with Section 10128.50) of  
30 Chapter 1 of Part 2 of Division 2 of the Insurance Code.

31 (g) For the purposes of this section, “former spouse”  
32 means either an individual who is divorced from an  
33 employee or former employee or an individual who was  
34 married to an employee or former employee at the time  
35 of the death of the employee or former employee.

36 (h) Every plan evidence of coverage that is issued,  
37 amended, or renewed after July 1, 1999, shall contain a  
38 description of the provisions and eligibility requirements  
39 for the continuation coverage offered pursuant to this  
40 section.



1 ~~(i) This section shall take effect on January 1, 1999.~~

2 SEC. 2. Section 10116.5 of the Insurance Code is  
3 amended to read:

4 10116.5. (a) Every policy of disability insurance that  
5 is issued, amended, delivered, or renewed in this state on  
6 or after January 1, 1999, that provides hospital, medical,  
7 or surgical expense coverage under an  
8 employer-sponsored group plan for an employer subject  
9 to COBRA, as defined in subdivision (e), or an employer  
10 group for which the disability insurer is required to offer  
11 Cal-COBRA coverage, as defined in subdivision (f),  
12 including a carrier providing replacement coverage  
13 under Section 10128.3, shall further offer the former  
14 employee the opportunity to continue benefits as  
15 required under subdivision (b), and shall further offer  
16 the former spouse of an employee or former employee  
17 the opportunity to continue benefits as required under  
18 subdivision (c).

19 (b) (1) In the event a former employee who worked  
20 for the employer for at least five years prior to the date  
21 of termination of employment and who is ~~60~~ 55 years of  
22 age or older on the date employment ends is entitled to  
23 and so elects to continue benefits under COBRA or  
24 Cal-COBRA for himself or herself and for any spouse, the  
25 employee or spouse may further continue benefits  
26 beyond the date coverage under COBRA or Cal-COBRA  
27 ends, as set forth in paragraph (2). Except as otherwise  
28 specified in this section, continuation coverage shall be  
29 under the same benefit terms and conditions as if the  
30 continuation coverage under COBRA or Cal-COBRA had  
31 remained in force. For the employee or spouse,  
32 continuation coverage following the end of COBRA or  
33 Cal-COBRA is subject to payment of premiums to the  
34 insurer. Individuals ineligible for COBRA or Cal-COBRA  
35 or who are eligible but have not elected or exhausted  
36 continuation coverage under federal COBRA or  
37 Cal-COBRA are not entitled to continuation coverage  
38 under this section. Premiums for continuation coverage  
39 under this section shall be billed by, and remitted to, the  
40 insurer in accordance with subdivision (d). Failure to pay



1 the requisite premiums may result in termination of the  
2 continuation coverage in accordance with the applicable  
3 provisions in the insurer's group contract with the former  
4 employer.

5 (2) The former employer shall notify the former  
6 employee or spouse or both, or the former spouse of the  
7 employee or former employee, of the availability of the  
8 continuation benefits under this section in accordance  
9 with Section 2800.2 of the Labor Code. To continue health  
10 care coverage pursuant to this section, the individual shall  
11 elect to do so by notifying the insurer in writing within 30  
12 calendar days prior to the date continuation coverage  
13 under COBRA or Cal-COBRA is scheduled to end. Every  
14 disability insurer shall provide to the employer replacing  
15 a group benefit plan policy issued by the insurer, or to the  
16 employer's agent or broker representative, within 15 days  
17 of any written request, information in possession of the  
18 insurer reasonably required to administer the  
19 requirements of Section 2800.2 of the Labor Code.

20 (3) The continuation coverage shall end automatically  
21 on the earlier of (A) the date the individual reaches age  
22 65, (B) the date the individual is covered under any group  
23 health plan not maintained by the employer or any other  
24 insurer or health care service plan, regardless of whether  
25 that coverage is less valuable, (C) the date the individual  
26 becomes entitled to Medicare under Title XVIII of the  
27 Social Security Act, *or* (D) ~~for a spouse, five years from~~  
28 ~~the date on which continuation coverage under COBRA~~  
29 ~~or Cal-COBRA was scheduled to end for the spouse, or~~  
30 ~~(E) the date on which the former employer terminates~~  
31 its group contract with the insurer and ceases to provide  
32 coverage for any active employees through that insurer,  
33 in which case the insurer shall notify the former  
34 employee or spouse, or both, of the right to a conversion  
35 policy.

36 (c) (1) If a former spouse of an employee or former  
37 employee was covered as a qualified beneficiary under  
38 COBRA or Cal-COBRA, the former spouse may further  
39 continue benefits beyond the date coverage under  
40 COBRA or Cal-COBRA ends, as set forth in paragraph (2)



1 of subdivision (b). Except as otherwise specified in this  
2 section, continuation coverage shall be under the same  
3 benefit terms and conditions as if the continuation  
4 coverage under COBRA or Cal-COBRA had remained in  
5 force. Continuation coverage following the end of  
6 COBRA or Cal-COBRA is subject to payment of  
7 premiums to the insurer. Premiums for continuation  
8 coverage under this section shall be billed by, and  
9 remitted to, the insurer in accordance with subdivision  
10 (d). Failure to pay the requisite premiums may result in  
11 termination of the continuation coverage in accordance  
12 with the applicable provisions in the insurer's group  
13 contract with the employer or former employer.

14 (2) The continuation coverage for the former spouse  
15 shall end automatically on the earlier of (A) the date the  
16 individual reaches 65 years of age, (B) the date the  
17 individual is covered under any group health plan not  
18 maintained by the employer or any other health care  
19 service plan or insurer, regardless of whether that  
20 coverage is less valuable, (C) the date the individual  
21 becomes entitled to Medicare under Title XVIII of the  
22 Social Security Act, *or* (D) ~~five years from the date on~~  
23 ~~which continuation coverage under COBRA or~~  
24 ~~Cal-COBRA was scheduled to end for the former spouse,~~  
25 ~~or (E) the date on which the employer or former~~  
26 ~~employer terminates its group contract with the insurer~~  
27 ~~and ceases to provide coverage for any active employees~~  
28 ~~through that insurer, in which case the insurer shall notify~~  
29 ~~the former spouse of the right to a conversion policy.~~

30 (d) (1) If the premium charged to the employer for  
31 a specific employee or dependent eligible under this  
32 section is adjusted for the age of the specific employee, or  
33 eligible dependent, on other than a composite basis, the  
34 rate for continuation coverage under this section shall not  
35 exceed 102 percent of the premium charged by the  
36 insurer to the employer for an employee of the same age  
37 as the former employee electing continuation coverage  
38 in the case of an individual who was eligible for COBRA,  
39 and 110 percent in the case of an individual who was  
40 eligible for Cal-COBRA. If the coverage continued is that



1 of a former spouse, the premium charged shall not exceed  
2 102 percent of the premium charged by the plan to the  
3 employer for an employee of the same age as the former  
4 spouse selecting continuation coverage in the case of an  
5 individual who was eligible for COBRA, and 110 percent  
6 in the case of an individual who was eligible for  
7 Cal-COBRA.

8 (2) If the premium charged to the employer for a  
9 specific employee or dependent eligible under this  
10 section is not adjusted for age of the specific employee, or  
11 eligible dependent, then the rate for continuation  
12 coverage under this section shall not exceed 213 percent  
13 of the applicable current group rate. For purposes of this  
14 section, the “applicable current group rate” means the  
15 total premiums charged by the insurer for coverage for  
16 the group, divided by the relevant number of covered  
17 persons.

18 (3) However, in computing the premiums charged to  
19 the specific employer group, the insurer shall not include  
20 consideration of the specific medical care expenditures  
21 for beneficiaries receiving continuation coverage  
22 pursuant to this section.

23 (e) For purposes of this section, “COBRA” means  
24 Section 4980B of Title 26 of the United States Code,  
25 Section 1161 et seq. of Title 29 of the United States Code,  
26 and Section 300bb of Title 42 of the United States Code,  
27 as added by the Consolidated Omnibus Budget  
28 Reconciliation Act of 1985 (Public Law 99-272), and as  
29 amended.

30 (f) For purposes of this section, “Cal-COBRA” means  
31 the continuation coverage that must be offered pursuant  
32 to Article 1.7 (commencing with Section 10128.50), or  
33 Article 4.5 (commencing with Section 1366.20) of  
34 Chapter 2.2 of Division 2 of the Health and Safety Code.

35 (g) For the purposes of this section, “former spouse”  
36 means either an individual who is divorced from an  
37 employee or former employee or an individual who was  
38 married to an employee or former employee at the time  
39 of the death of the employee or former employee.



1 (h) Every group benefit plan evidence of coverage  
2 that is issued, amended, or renewed after January 1, 1999,  
3 shall contain a description of the provisions and eligibility  
4 requirements for the continuation coverage offered  
5 pursuant to this section.

6 ~~(i) This section shall take effect on January 1, 1999.~~

7 SEC. 3. No reimbursement is required by this act  
8 pursuant to Section 6 of Article XIII B of the California  
9 Constitution because the only costs that may be incurred  
10 by a local agency or school district will be incurred  
11 because this act creates a new crime or infraction,  
12 eliminates a crime or infraction, or changes the penalty  
13 for a crime or infraction, within the meaning of Section  
14 17556 of the Government Code, or changes the definition  
15 of a crime within the meaning of Section 6 of Article  
16 XIII B of the California Constitution.

17 Notwithstanding Section 17580 of the Government  
18 Code, unless otherwise specified, the provisions of this act  
19 shall become operative on the same date that the act  
20 takes effect pursuant to the California Constitution.

