Beyond Seinfeld’s Good Samaritan Debacle: Protecting Citizens Who Render Care at the Scene of an Accident from Civil Liability

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Code Section Affected
AB 83 (Feuer); 2009 STAT. Ch. 77.

“Why would we want to help somebody? That’s what nuns and Red Cross workers are for.”

—Seinfeld, Series Finale

I. INTRODUCTION

Jerry Seinfeld built a lucrative career pointing out the predicaments that self-absorbed characters find themselves in when they only look out for their own interests. Unfortunately, selfless Good Samaritans can also find themselves in real world predicaments that adversely affect their lives. For example, on Halloween night 2004, co-workers Lisa Torti and Alexandra Van Horn were riding home in two separate cars after a night of drinking and carousing. The car carrying Van Horn struck a light pole on Topanga Canyon Boulevard in Los Angeles. After witnessing the incident, Torti feared the car was about to explode. Risking her own life, she ran up to the car and pulled her friend out of the passenger-side window. Torti, in her haste to pull Van Horn from the car, accidentally flung her to the ground, rendering her paraplegic.

Van Horn sued her friend, contending that Torti negligently “yanked her out, then dropped her next to the car” under the “irrational” assumption that the car

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4. Id.
5. Id.
6. Id.
7. Id.
was about to explode.\textsuperscript{8} Van Horn claimed that Torti’s actions exacerbated her injuries, thus leaving her permanently paralyzed.\textsuperscript{9}

The California Supreme Court, in a four-to-three decision, construed the state’s Good Samaritan Law narrowly and held Torti liable for Van Horn’s injuries.\textsuperscript{10} The court interpreted the law as protecting only Good Samaritans rendering “emergency medical care.”\textsuperscript{11} Since pulling her friend out of a car was not technically “medical care,” the court found Torti civilly liable for Van Horn’s injuries.\textsuperscript{12}

According to the California Emergency Nurses Association, the court’s decision “stressed that its ruling was primarily one of statutory interpretation,” thus leaving “the Legislature to clarify its intentions as to how broadly it wishes to protect Good Samaritans’ good faith actions.”\textsuperscript{13} Chapter 77 is a response to the court’s invitation, expanding protections afforded to Good Samaritans in an effort to encourage the public to help one another during emergencies.\textsuperscript{14}

\textbf{II. LEGAL BACKGROUND}

\textbf{A. Common Law Duty to Rescue and Statutory Alterations}

California common law does not impose a duty on citizens “to come to the aid of another” in an emergency.\textsuperscript{15} However, once a person engages in providing aid, he or she is required to do so with reasonable care.\textsuperscript{16} To encourage citizens to come to the aid of others, the California Legislature passed the Good Samaritan Act, providing civil immunity to those who “render[] emergency care at the scene of an emergency.”\textsuperscript{17}

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\begin{itemize}
\item \textsuperscript{8} \textit{Id.}
\item \textsuperscript{9} \textit{Williams, supra note 3.}
\item \textsuperscript{10} \textit{Van Horn v. Watson, 45 Cal. 4th 322, 197 P.3d 164 (2008); see also ASSEMBLY FLOOR, FLOOR ANALYSIS OF AB 83, at 2-3 (Mar. 9, 2009) (explaining that the court’s decision was a narrow interpretation of the California Health and Safety Code, providing immunity for good Samaritans who “render[] emergency care at the scene of an emergency”).}
\item \textsuperscript{11} \textit{Van Horn, 45 Cal. 4th at 325, 197 P.3d at 166.}
\item \textsuperscript{12} \textit{See id. at 330-32, 197 P.3d at 169-70 (“[T]he legislative history indicates that . . . the Legislature intended section 1799.102 to apply only to those rendering emergency medical care.”).}
\item \textsuperscript{13} Letter from Debby Rogers, Cal. Emergency Nurses Ass’n, available at http://www.calena.us/Government\%20Affairs/Good\%20Sam\%20Law.doc [hereinafter Nurses’ Letter] (on file with the \textit{McGeorge Law Review}).
\item \textsuperscript{14} \textit{See CAL. HEALTH & SAFETY CODE § 1799.102(b)(1) (amended by Chapter 77) (stating the intent of the legislation is to encourage individuals to help others in need during an emergency).}
\item \textsuperscript{15} \textit{Van Horn, 45 Cal. 4th at 324, 197 P.3d at 165.}
\item \textsuperscript{16} \textit{Id.}
\item \textsuperscript{17} \textit{CAL. HEALTH & SAFETY CODE § 1799.102 (West 2007); see also ASSEMBLY FLOOR, FLOOR ANALYSIS OF AB 83, at 2 (Mar. 9, 2009) (“In enacting [section 1799.102] in 1980, the Legislature sought to encourage people to come to the aid of accident victims without fear of later being sued for their efforts . . . .”).}
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B. The California Supreme Court’s Interpretation of the Good Samaritan Law

1. Strict Statutory Interpretation

In Van Horn v. Watson, the California Supreme Court held that, while the California Health and Safety Code provides immunity for any harm caused by those who render emergency services, immunity applies only to volunteers who render traditional medical services, such as CPR.\(^{18}\) The majority based its decision on an interpretation of both legislative intent and the overall statutory scheme.\(^{19}\) The court’s decision relied on the canons of statutory interpretation, which require “a statute’s language [to] be construed in context, and provisions relating to the same subject matter must be harmonized to the extent possible.”\(^{20}\)

The court, following this standard, explained that the division of the Health and Safety Code containing the Good Samaritan Act is titled “Emergency Medical Services,” and therefore the overall statutory scheme does not support an interpretation that would provide immunity for non-medical care given at the scene of an emergency.\(^{21}\) Additionally, the court pointed out numerous sections of the Code that imply that the particular division of the Health and Safety Code containing the Act specifically relate to rendering emergency medical care.\(^{22}\) The majority also explained that an immunity statute for non-medical care would more likely be located in the Civil Code, as opposed to the Health and Safety Code.\(^{23}\) The court ultimately looked to the legislative history, which indicates that the bill enacting the section was intended to “encourage citizen involvement in providing emergency assistance, such as cardiopulmonary resuscitation and first aid.”\(^{24}\)

\(^{18}\) Van Horn, 45 Cal. 4th 322, 197 P.3d 164.

\(^{19}\) See ASSEMBLY COMMITTEE ON JUDICIARY, COMMITTEE ANALYSIS OF AB 83, at E (Mar. 10, 2009) (explaining that the court based its ruling on statutory interpretation and determined that the Legislature intended to provide narrow immunity only to those rendering medical emergency care).

\(^{20}\) Van Horn, 45 Cal. 4th at 326, 197 P.3d at 167.

\(^{21}\) Id.

\(^{22}\) Id. at 327-33, 197 P.3d at 167-71. The court points out multiple sections of the code that relate solely to emergency “medical services.” For example, section 1797.1 states that the intent of the Act is “to provide the state with a statewide system for emergency medical services.” Id. at 328, 197 P.3d at 167. Further, section 1797.5 explains that the intent of the Legislature was to “promote the development, accessibility, and provision of the emergency medical services to the people of the State of California.” Id. at 328, 197 P.3d at 168. The court goes on to explain that the purpose of these provisions is to encourage citizens to learn emergency medical care. Id. at 328, 197 P.3d at 168.

\(^{23}\) See id. at 327 n.6, 197 P.3d at 167 n.6 (explaining that the Court of Appeal “reasonably concluded” that a statute providing general immunity for rendering non-medical services would be located in the Civil Code and not in the Health and Safety Code).

\(^{24}\) Id. at 331, 197 P.3d at 170 (citing ASSEMBLY COMMITTEE ON HEALTH, COMMITTEE ANALYSIS OF AB 1301, at 2 (May 2, 1977)).
2. Requirement of Adhering to Common Law Principles

Finally, the majority pointed out that interpreting the statute broadly to provide immunity to any person who provides assistance during an emergency would undermine the common law principle that any care provided to persons injured in an accident must be undertaken with “due care.”\textsuperscript{25} The court explained that it is bound to follow common law principles, unless the Legislature clearly “intends, when it enacts a statute, to overthrow long-established principles of law.”\textsuperscript{26} According to various analyses of Van Horn, this narrow interpretation sent a clear message to the Legislature to clarify its intent in providing immunity to those who extend assistance during an emergency.\textsuperscript{27}

C. The Van Horn Dissent

The dissent fervently countered the majority’s interpretation of the Act, explaining that a plain reading of the statute’s meaning does not impose “limits or qualif[y] the kind of emergency aid—medical or non-medical—that an uncompensated lay volunteer may provide without fear of legal reprisal.”\textsuperscript{28} In his dissenting opinion, Justice Baxter berated the majority for coming to such a narrow conclusion that renders one type of volunteer immune but not another, simply because the Good Samaritan statute was located in the section of the Health and Safety Code titled “Emergency Medical Services.”\textsuperscript{29}

Justice Baxter contends that the clear reading of the statutory language declaring that “[n]o person who in good faith, and not for compensation, renders emergency care at the scene of an emergency shall be liable for any civil damages” is more susceptible to a plain interpretation, providing immunity to all those who render care at the scene of an emergency regardless of whether the care given is “medical” or “non-medical.”\textsuperscript{30} Justice Baxter explained that the statute must be read literally, unless such a reading would lead to an absurd result. According to the dissent, a plain reading is not absurd, but it supports “logical public policy.”\textsuperscript{31}

Justice Baxter then refuted the majority’s assertion that the statutory scheme supports a conclusion that immunity applies only to those providing traditional medical care.\textsuperscript{32} For example, chapter headings have never been the basis for

\begin{itemize}
\item \textsuperscript{25} Id. at 332-33, 197 P.3d at 170-71.
\item \textsuperscript{26} Id. at 333, 197 P.3d at 171.
\item \textsuperscript{27} See, e.g., ASSEMBLY COMMITTEE ON JUDICIARY, COMMITTEE ANALYSIS OF AB 83, at E (Mar. 10, 2009) (pointing out that the narrow interpretation was “an open invitation to the Legislature to clarify its intentions as to how broadly it wishes to protect Good Samaritans [sic] good faith action.”).
\item \textsuperscript{28} Van Horn, 45 Cal. 4th at 334, 197 P.3d at 172 (Baxter, J., dissenting).
\item \textsuperscript{29} Id. at 335-36, 197 P.3d at 172-73 (Baxter, J., dissenting).
\item \textsuperscript{30} Id. at 334, 197 P.3d at 172 (Baxter, J., dissenting).
\item \textsuperscript{31} Id.
\item \textsuperscript{32} Id. at 336-42, 197 P.3d at 172-77 (Baxter, J., dissenting).
\end{itemize}
determining legislative intent or the overall compass of a statute.\textsuperscript{33} As explained above, the majority insinuated that the purpose of the legislation was to promote the development of emergency medical services.\textsuperscript{34} However, Justice Baxter countered that section 1799.107 of the Health and Safety Code provides immunity to emergency rescue personnel, which logically includes rescue procedures and transportation services that do not fall within the majority’s definition of medical services.\textsuperscript{35} Finally, Justice Baxter refuted the majority’s assertion that the chief purpose of the act was to encourage training in medical services by pointing out that “immunity applies regardless of whether the uncompensated layperson rendering assistance has been trained in emergency first aid.”\textsuperscript{36}

\section*{III. Chapter 77}

Chapter 77 amends the California Health and Safety Code to provide immunity from civil liability for those rendering emergency services at the site of an accident, regardless of whether their actions are considered “medical” (e.g., performing CPR) or “non-medical” (e.g., pulling someone out of a burning building).\textsuperscript{37} Chapter 77 directly states that the intent of the legislation is to encourage Good Samaritans to assist others during an emergency without fear of subsequent civil liability.\textsuperscript{38}

Chapter 77 does not provide immunity for harm caused while rendering emergency services in places that offer traditional medical services.\textsuperscript{39} Further, civil immunity does not apply to any person whose acts or omissions while rendering emergency care constitute gross negligence or wanton misconduct.\textsuperscript{40} Chapter 77, however, ensures that medical, law enforcement, and emergency personnel who act in good faith will continue to be immune from liability for harm caused while responding to an emergency.\textsuperscript{41}

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\textsuperscript{33} \textit{Id. at} 336, 197 P.3d at 173 (Baxter, J., dissenting). \\
\textsuperscript{34} \textit{Van Horn}, 45 Cal. 4th at 331, 197 P.3d at 170. \\
\textsuperscript{35} \textit{Id. at} 337, 197 P.3d at 173 (Baxter, J., dissenting). \\
\textsuperscript{36} \textit{Id. at} 338, 197 P.3d at 174 (Baxter, J., dissenting). \\
\textsuperscript{37} \textsc{Cal. Health & Safety Code} § 1799.102(a) (amended by Chapter 77); see also \textsc{Assembly Committee on Judiciary, Committee Analysis of AB 83, at E (Mar. 10, 2009)} (explaining that medical care includes rendering services such as CPR, while non-medical care includes actions such as pulling someone out of a burning building). \\
\textsuperscript{38} \textsc{Cal. Health & Safety Code} § 1799.102(b)(1) (amended by Chapter 77). \\
\textsuperscript{39} \textit{Id. §} 1799.102(a) (amended by Chapter 77). \\
\textsuperscript{40} \textit{Id. §} 1799.102(b)(2) (amended by Chapter 77). \\
\textsuperscript{41} \textit{Id.}
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IV. ANALYSIS OF CHAPTER 77

A. Encouraging Good Samaritans to Volunteer

Media outlets and advocacy groups were up in arms about the California Supreme Court’s Van Horn decision. Van Horn reverberated all the way to the Eastern Seaboard, where the New York Times printed an editorial describing the “implications of the ruling [as] disturbing” and invited the California Legislature to re-write the law to prevent discouraging bystanders from providing aid at the scene of emergencies. The California Legislature did exactly that by enacting Chapter 77 with the intent to incentivize Good Samaritans to help fellow citizens injured in an emergency. There was no registered opposition to Chapter 77, which unanimously passed through both houses of the California Legislature.

B. Support for Chapter 77 and the Van Horn Dissent

While there was no registered opposition to Chapter 77, numerous media outlets and advocacy groups registered fervent support for the measure. The majority of support for Chapter 77 points to Justice Baxter’s dissenting opinion in Van Horn. For example, Justice Baxter’s opinion pointed out that, under the majority’s reasoning, “an uncompensated lay volunteer—whether or not trained . . . . There is no reason why one kind of lay volunteer should be immune, while another is not”).

42. See, e.g., Editorial, I’ll Have to Call My Lawyer, N.Y. TIMES, Jan. 3, 2009, at A18 (describing the decision as “disturbing” and predicting that Californians would “hesitate” to offer help to those in trouble); see also Posting of Shaun Martin to California Appellate Report, http://calapp.blogspot.com/2008/12/van-horn-v-watson-cal-supreme-ct-dec-18.html (Dec. 18, 2008, 15:11) (on file with the McGeorge Law Review) (pointing out that the California Supreme Court’s decision provides no immunity for Good Samaritans who pull someone out of a car but does provide immunity for a person “trying [his] hand at a tracheotomy with some scissors and a bic pen”).

43. I’ll Have to Call My Lawyer, supra note 42.

44. See ASSEMBLY COMMITTEE ON JUDICIARY, COMMITTEE ANALYSIS OF AB 83, at E (Mar. 10, 2009) (explaining that the legislation was “designed to encourage Good Samaritans to volunteer in an emergency by protecting them from inappropriate liability when they render assistance to others”).

45. See id. at I (noting that there was no opposition to the measure registered on file); SENATE FLOOR, ANALYSIS OF AB 83, at 1 (June 16, 2009) (pointing out that there were zero “no” votes on the Assembly Floor); Assembly Floor Vote of AB 83, Unofficial Ballot (June 22, 2009) http://info.sen.ca.gov/pub/09-10/bill/asm/ab_0051-0100/ab_83_vote_20090622_1258PM_sen_floor.html (on file with the McGeorge Law Review) (listing the result as forty “Ayes” and zero “No” votes).

46. E.g., ASSEMBLY COMMITTEE ON JUDICIARY, COMMITTEE ANALYSIS OF AB 83, at I (Mar. 10, 2009) (listing as registered support for the measure, among others, the Civil Justice Association of California, the Consumer Attorneys of California, and the California Fire Chiefs Association); Letter from Kim Stone, Vice President, Legislation, Civil Justice Ass’n of Cal., to Ellen Corbett, Assembly Member, Cal. State Assembly (May 19, 2009) [hereinafter CJAC letter] (on file with the McGeorge Law Review); Nurses’ Letter, supra note 13; Good Samaritan Bill Passes Senate Judiciary Committee and Moves to Senate Floor, CAL. CHRON., June 10, 2009, at 1, available at http://www.californiachronicle.com/articles/view/105492 [hereinafter CAL. CHRON. Article] (on file with the McGeorge Law Review).

47. See, e.g., CJAC letter, supra note 46 (citing Justice Baxter’s proposition that “[t]he purpose of ‘Good Samaritan’ laws, of course, is to encourage persons not to pass by those in need of emergency help . . . . There is no reason why one kind of lay volunteer should be immune, while another is not”).
in the rudiments of first aid—is immune for any incompetent and injurious medical assistance he or she renders to a person in need of medical treatment, but is fully exposed to civil liability for emergency rescue or transportation efforts. While the dissenting opinion in Van Horn and the supporters of Chapter 77 effectively point out the flaws in the majority opinion, they fail to offer any response to the majority’s contention that a statute providing immunity for non-medical care would most likely be found in the Civil Code.

C. Chapter 77: A Direct Response to the Uproar Following Van Horn

According to an editorial in the Los Angeles Times, the ruling left a “loud message that [a citizen’s] heroism might backfire” and that Chapter 77 “would send a new message: that random acts of kindness are encouraged and protected.” Chapter 77’s author—who has his own experience rendering care during an emergency—explained that the measure was a response to the criticism following Van Horn. The majority in Van Horn reasoned that providing broad immunity to include non-medical services would undermine California common law principles that require any person who renders emergency care to do so cautiously. Even Justice Baxter, in his fiery dissent, admitted that Torti’s actions may not have satisfied the prerequisites for immunity because those actions may have been wholly unreasonable. Chapter 77 takes into account the majority’s concern by requiring that those who render care do so in a manner that is consistent with the common law requirement that those rendering care do so carefully.

By refusing to shield reckless caregivers from liability, Chapter 77 balances the majority’s concern for ameliorating common law principles with the dissent’s

48. See Van Horn v. Watson, 45 Cal. 4th 322, 335, 197 P.3d 164, 172 (2008) (Baxter, J., dissenting). Justice Baxter then provided numerous hypotheticals to justify his view that the majority decision was distorted, including the fact that a hiker who carried an injured companion down the hill could be sued, but if instead he fails in an attempt to set a broken leg with no past training in such an endeavor, he would be immune. Id.; see also I’ll Have To Call My Lawyer, supra note 42 (“When people see an accident, the law should not discourage them from offering the best help they can . . . . If they offer non-medical help . . . . they may be putting their life savings at risk.”).

49. Van Horn, 45 Cal. 4th at 327 n.6, 197 P.3d at 167 n.6.


51. See CAL. CHRON. Article, supra note 46 (“While driving home from work on a Los Angeles freeway several years ago, [Feuer] witnessed the driver of a pickup truck swerve and lose control, overturning the truck in traffic. Feuer helped pull the driver and his family from the overturned vehicle while others blocked traffic on the busy freeway.”).

52. The author told the Assembly Committee on Judiciary that Chapter 77 “responds directly to the [California] Supreme Court’s invitation for legislative clarification in a measured manner that encourages Good Samaritan acts that can save lives.” ASSEMBLY COMMITTEE ON JUDICIARY, COMMITTEE ANALYSIS OF AB 83, at D (Mar. 10, 2009).

53. Van Horn, 45 Cal. 4th at 332-34, 197 P.3d at 170-71.

54. Id. at 342, 197 P.3d at 177 (Baxter, J., dissenting).

55. CAL. HEALTH & SAFETY CODE § 1799.102(b)(2) (amended by Chapter 77).
criticism that a narrow interpretation will dissuade Good Samaritans from volunteering. The author of Chapter 77 explains that the measure “strikes a proper and delicate balance” by “offer[ing] fair protection to Good Samaritans, while at the same time protecting rescued victims from the reckless or grossly negligent interloper.” Christine Spagnoli of the California Consumer Attorneys reverberated the author’s sentiments, explaining that Chapter 77 is an effective equilibrium between the safety of the injured victim and the human incentive to help those in need.

V. CONCLUSION

Chapter 77 is a widely supported piece of legislation that clarifies the Legislature’s intent in protecting Good Samaritans who come to the aid of others. The measure’s author effectively balances the sometimes contradictory goals of protecting injured victims and encouraging kind acts by ensuring that those who help at the scene of an emergency will be statutorily protected, unless they act in a wholly unreasonable manner. Chapter 77 is a logical measure that supersedes the restraints of judicial construction in order to ensure that brave acts, like those of Lisa Torti pulling her friend out of her car, will be rewarded and not punished.

Seinfeld’s season finale parodied the somewhat absurd notion of altering the common law by criminally penalizing the bystander who refuses to offer care during an emergency; Chapter 77, conversely, seeks to statutorily protect the bystander who selflessly offers care to those in need, while re-enforcing common law principles by ensuring that they do so with caution.

56. See id. (stating that there is no immunity from civil liability that results from “an act or omission constituting gross negligence or willful or wanton conduct”); see also City of Santa Barbara v. Superior Court, 41 Cal. 4th 747, 754 n.4, 161 P.3d 1095, 1099 n.4 (2007) (defining “wanton” or “reckless” misconduct as “conduct by a person who may have no intent to cause harm, but who intentionally performs an act so unreasonable and dangerous that he or she knows or should know it is highly probable that harm will result”); Weber v. Pinyan, 9 Cal. 2d 226, 232, 70 P.2d 183, 186 (1937) (defining “gross negligence” as “the entire failure to exercise care, or the exercise of so slight a degree of care as to justify the belief that there is an indifference to the interest and welfare of others”).

57. ASSEMBLY COMMITTEE ON JUDICIARY, COMMITTEE ANALYSIS OF AB 83, at B (Mar. 10, 2009).

58. CAL. CHRON. Article, supra note 46.

59. ASSEMBLY COMMITTEE ON JUDICIARY, COMMITTEE ANALYSIS OF AB 83, at H (Mar. 10, 2009). The author of Chapter 77 explained to the Committee that his bill is similar to the approach taken by many other states in balancing the need to immunize Good Samaritans while protecting victims from blatant irrational behavior by a rescuer. Id.

60. See CAL. CHRON. Article, supra note 46 (“This bill strikes an important balance between the human desire to help people who are in distress, and the rights of victims.”).

61. See Nurses’ Letter, supra note 13 (explaining that the decision was merely one of statutory interpretation and that it is now up to the Legislature to properly determine the extent to which Good Samaritans should be protected).

62. Compare Seinfeld: The Finale (NBC television broadcast May 14, 1998) (portraying the plot of the series finale in which the sitcom’s characters find themselves on trial for violation of a fictitious “Good Samaritan” statute when they refused to help a man getting car-jacked), with CAL. HEALTH & SAFETY CODE § 1799.102(b)(2) (amended by Chapter 77) (providing protection for those who do help others during an emergency in the tort context).
Chapter 3: Weakening the Sting of COBRA’s Bite

Brooke Tomlinson

Code Sections Affected
Health and Safety Code §§ 1366.20, 1366.21, 1366.22, 1366.25 (amended); Insurance Code §§ 10128.50, 10128.51, 10128.52, 10128.55 (amended).
AB 23 (Jones); 2009 STAT. Ch. 3 (Effective May 12, 2009).

I. INTRODUCTION

A 2008 survey ranked California as the twenty-fourth healthiest state in the country. Though California has the second lowest percentage of smokers compared to other states, the fact that it has a high rate of individuals without health insurance weakens its ranking. Almost one-in-five Californians lacked health insurance in 2008, which is no surprise considering that employers are the main source of health insurance and California’s unemployment rate has steadily increased since late 2006.

When an individual is terminated from his or her job, any health insurance received through the employer’s group plan coverage is typically discontinued. Programs enacted by state and federal laws, such as the Consolidated Omnibus Budget Reconciliation Act of 1996 (COBRA) and the Health Insurance Portability and Accountability Act of 1996 (HIPAA), permit employees to elect special health coverage enrollment while they are in between jobs. However,

2. Id. (listing “a low prevalence of smoking at 14.3 percent of the population” as one of California’s strengths, but listing one of California’s health challenges as the “high rate of uninsured population”).
3. Id. (stating that 18.5 percent of Californians lacked health insurance in 2008, giving California the forty-fourth highest rate of residents without health coverage).
6. See U.S. Dep’t of Labor, Employee Benefits Security Admin., FAQs for Employees About COBRA Continuation Health Coverage, http://www.dol.gov/ebsa/faqs/faq_consumer_cobra.HTML (last visited Jan. 2, 2010) [hereinafter FAQs for Employees] (on file with the McGeorge Law Review) (explaining at questions one and two that COBRA provides health coverage when such employer health coverage would otherwise be terminated due to specific events, such as job termination).
elected health coverage through a state or federal COBRA program is costly, especially for newly unemployed individuals.\(^8\)

To offset the high costs of COBRA—and alleviate the anxiety of simultaneously losing one’s job and health insurance—President Barack Obama created a federal subsidy in the American Recovery and Reinvestment Act of 2009, better known as the Stimulus Package.\(^9\) Chapter 3 ensures that Californians may take full advantage of this federal subsidy\(^10\) and aims to decrease the number of state residents who live without health coverage.\(^11\)

II. BACKGROUND

A. Federal Law

In 1986, Congress passed the Consolidated Omnibus Budget Reconciliation Act (COBRA) to provide continuing group health coverage to employees and their families when such coverage would otherwise be discontinued.\(^12\) COBRA continuation coverage is available to employees, spouses, and dependents, who are members of a group health plan of an employer with twenty or more employees, upon the occurrence of a qualifying event.\(^13\)

Qualifying events are specific events that would cause the individual to lose insurance coverage provided through the group health plan but for the availability of COBRA assistance.\(^14\) An employee, his or her spouse, and dependents become eligible upon the employee’s voluntary or involuntary termination, a reduction in the employee’s work hours, or qualification for Medicare.\(^15\) An employee’s spouse and dependents become qualified for COBRA

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8. Annette Wells, Crises Drive Doctor Visits, LAS VEGAS REV. J., Jan. 17, 2009, at 1B (“COBRA premiums are unaffordable for most laid-off workers.”).


10. See ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF AB 23, at 4 (May 6, 2009) (stating that supporters of Chapter 3 argued that the measure would allow Californians “to take full advantage of the federal premium assistance”).

11. See Victoria Colliver, COBRA Assistance for Laid-Off Workers, S.F. CHRON., May 14, 2009, at B3 (explaining that Chapter 3 will help laid-off Californians keep their health insurance, which will ensure that more residents remain insured).

12. FAQs for Employees, supra note 6. “Continuing group health coverage” and “continuation coverage” refer to the group health plan coverage that an employee receives while working for the employer. The COBRA program extends the employee’s health coverage when the coverage would be lost due to a qualifying event. Id.

13. CAL. HEALTH & SAFETY CODE § 1366.21(c)(1) (amended by Chapter 3); CAL. INS. CODE § 10128.51(c)(1) (amended by Chapter 3) (listing the employee, his or her spouse, and dependents as “qualified beneficiaries” under the COBRA program and noting that a qualified beneficiary is any individual who is enrolled in the employer’s group health plan and who has a qualifying event that makes the individual eligible for COBRA continuation coverage); FAQs for Employees, supra note 6; see also 42 U.S.C.A. § 300bb-1 (West 2003) (explaining that a qualified beneficiary who would lose coverage due to a qualifying event may elect to continue such coverage through COBRA).

14. FAQs for Employees, supra note 6 (explaining qualifying events at questions three and four).

15. 42 U.S.C.A. § 300bb-3(2), 300bb-3(4) (West 2003); FAQs for Employees, supra note 6.
continuation coverage upon legal separation, divorce, or death. An employee’s dependent is also qualified upon the loss of dependent child status under the group health plan rules.

Qualified beneficiaries who elect COBRA continuation coverage due to job termination or a reduction in work hours are eligible for a maximum of eighteen months of health coverage through the program. The occurrence of other qualifying events or a second qualifying event during the initial period of COBRA coverage may permit a beneficiary to receive up to thirty-six months of coverage.

Employers typically pay part or all of their participating employees’ group health-plan premiums. However, upon the occurrence of a qualifying event, the employee who elects COBRA coverage pays both the portion of the premium that he or she paid as an active employee, plus the amount of the contribution previously made by his or her employer. In addition, the COBRA plan may require that the employee pay an additional two-percent administrative fee, requiring the beneficiary to pay 102 percent of the group plan coverage price.

B. California Law

To regulate statewide Health Management Organizations (HMOs), California enacted the Knox-Keene Health Care Service Plan of 1975 to permit the Director of the Department of Managed Health Care to oversee health care providers. In 1997, the Legislature amended the plan to implement the California Continuation Benefits Replacement Act (Cal-COBRA) program,

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16. 42 U.S.C.A. § 300bb-3(1), 300bb-3(3); FAQs for Employees, supra note 6.
17. 42 U.S.C.A. § 300bb-3(5); FAQs for Employees, supra note 6.
18. 42 U.S.C.A. § 300bb-2(2)(A)(i) (West 2003); FAQs for Employees, supra note 6 (explaining coverage duration at questions nine and fourteen). The eighteen-month period measures the amount of time after the beneficiary elects COBRA coverage that he can receive insurance through the employer’s group health plan. FAQs for Employees, supra note 6.
19. 42 U.S.C.A. § 300bb-2(2)(ii)-(iii). The thirty-six month period measures the amount of time after the beneficiary elects COBRA coverage that he can receive insurance through the employer’s plan. Id.
20. FAQs for Employees, supra note 6 (providing payment information at question sixteen).
21. Id.
providing continuation health insurance coverage to employees and their dependents who are not offered continuation coverage under the federal COBRA program.\textsuperscript{26} Cal-COBRA is different from the federal program in three ways. First, it extends coverage to employees of employers with two to nineteen employees;\textsuperscript{27} second, it allows a maximum of thirty-six months of continuation coverage;\textsuperscript{28} and third, the Cal-COBRA qualified beneficiary may be charged up to ten percent of the premium price as an administrative fee.\textsuperscript{29}

As under the federal program, eligible Cal-COBRA beneficiaries include the employee, and his or her spouse and dependents, upon the occurrence of a qualifying event.\textsuperscript{30} Beneficiaries who are eligible for and who exhaust federal COBRA coverage may elect to receive up to an additional eighteen months under Cal-COBRA, for a total of thirty-six months of coverage.\textsuperscript{31}

C. Other States

Thirty-five states besides California have “mini-COBRA”\textsuperscript{32} programs that provide continuing health insurance to employees of small firms with less than twenty employees.\textsuperscript{33} The available periods of continuation coverage range from three months to thirty-six months.\textsuperscript{34} Since the enactment of the Stimulus Package on February 17, 2009, many of these states have proposed or passed legislation to take full advantage of the federal premium assistance.\textsuperscript{35} Five states have increased the maximum amount of available coverage to nine months from the previously


\textsuperscript{27} CAL. HEALTH & SAFETY CODE § 1366.20(b) (amended by Chapter 3); CAL. INS. CODE § 10128.50(b) (amended by Chapter 3); Cal-COBRA Benefits, supra note 26.

\textsuperscript{28} Cal-COBRA Benefits, supra note 26.

\textsuperscript{29} Id.

\textsuperscript{30} CAL. HEALTH & SAFETY CODE § 1366.21(d) (amended by Chapter 3); CAL. INS. CODE § 10128.51(d) (amended by Chapter 3). Qualifying events that trigger eligibility for Cal-COBRA continuation coverage include the death of the covered employee, the termination of the employee or a reduction in the employee’s work hours, the divorce or legal separation of the employee from the employee’s spouse, or the employee’s dependent’s loss of dependent status. CAL. INS. CODE § 10128.51(d) (amended by Chapter 3).

\textsuperscript{31} Cal-COBRA Benefits, supra note 26.

\textsuperscript{32} See Families USA, STATES ACT TO HELP PEOPLE LAID OFF FROM SMALL FIRMS: MORE NEEDS TO BE DONE 1 (2009) (on file with the McGeorge Law Review) (explaining that state programs that provide COBRA insurance to employees of small firms are often called “mini-COBRA” laws).


\textsuperscript{34} Mini COBRA State Laws, supra note 33 (listing duration of state COBRA coverage available in each state).

\textsuperscript{35} See Families USA, supra note 32, at 6 (listing names of states that have passed, enacted, or have pending legislation pursuant to the Stimulus Package).
allotted three to six months of state COBRA coverage.\textsuperscript{36} Eighteen states, including California, have either pending or enacted legislation to allow beneficiaries who rejected the state COBRA coverage in the past a second chance to elect the coverage with the subsidy.\textsuperscript{37}

Because state COBRA coverage premiums may still be unaffordable after the federal subsidy is applied, Massachusetts provides additional assistance for certain qualified individuals.\textsuperscript{38} The Governor of Maine has also proposed a plan to provide larger subsidies beyond the federal premium assistance to low-income, unemployed workers.\textsuperscript{39}

\textbf{D. Making COBRA Affordable}

Even if a beneficiary is eligible for COBRA continuation coverage, COBRA insurance premiums are often unaffordable.\textsuperscript{40} The average annual cost of COBRA coverage is $4,906 for an individual and $13,427 for a family.\textsuperscript{41} The COBRA subsidy, provided through the Stimulus Package, makes this coverage more affordable.\textsuperscript{42}

The Stimulus Package allows eligible COBRA beneficiaries who were involuntarily terminated from their jobs between September 1, 2008, and December 31, 2009,\textsuperscript{43} to pay only thirty-five percent of the insurance premium.\textsuperscript{44} The person to whom the insurance premiums are paid, either the employer, plan administrator, or insurance company, is reimbursed for the sixty-five percent premium reduction through a tax credit.\textsuperscript{45} The Stimulus Package extends the sixty-five percent subsidy to both the COBRA federal program and comparable

\begin{itemize}
\item \textsuperscript{36} Id. at 1 (listing the five states that extended their COBRA coverage as District of Columbia, Georgia, Ohio, Utah, and Virginia).
\item \textsuperscript{37} Id. at 2, 4-5 (listing the eighteen states that allow or will allow a second chance to reelect COBRA coverage as California, Connecticut, Georgia, Kansas, Kentucky, Maryland, Minnesota, New Hampshire, New Jersey, New York, North Carolina, Oregon, Rhode Island, South Dakota, Texas, Utah, Virginia, and West Virginia).
\item \textsuperscript{38} Id. at 2.
\item \textsuperscript{39} Id.
\item \textsuperscript{40} See Wells, supra note 8 ("[I]n cases where workers are laid-off and offered COBRA benefits many may not be able to afford them.").
\item \textsuperscript{41} \textit{Assembly Floor, Committee Analysis of AB 23}, at 6 (Apr. 2, 2009) (stating the 2008 average).
\item \textsuperscript{42} See Lesley Alderman, \textit{A Guide for the Newly Jobless on Getting Health Coverage}, N.Y. Times, Feb. 28, 2009, at B6 (explaining that the Stimulus Package will make COBRA coverage less expensive, therefore providing relief to individuals who elect COBRA coverage).
\item \textsuperscript{44} Id. § 3001(a)(1).
\item \textsuperscript{45} Cal-COBRA Benefits, supra note 26, at 2 (explaining that the person to whom the insurance premiums are paid receives thirty-five percent of the premium cost from the beneficiary and the remaining sixty-five percent from the government as a tax credit); \textit{see also} American Recovery and Reinvestment Act § 6432(c)(1) (stating that each person entitled to reimbursement will receive a tax credit).
\end{itemize}
state programs, such as California’s Cal-COBRA insurance program. Eligible beneficiaries can receive the sixty-five percent subsidy for up to nine months of their total federal or state COBRA coverage. This nine-month period may be shortened if the beneficiary becomes eligible for Medicare or other group plan coverage, or if the beneficiary reaches the end of the maximum COBRA period.

III. CHAPTER 3

Chapter 3 requires health care service plans to administer the Cal-COBRA program and to provide to Cal-COBRA qualified beneficiaries, who experience a qualifying event between September 1, 2008, and December 31, 2009, a written notice containing information about the availability of premium assistance under the Stimulus Package. Chapter 3 also creates a separate definition for a qualified beneficiary eligible for premium assistance. These qualified beneficiaries who rejected or discontinued Cal-COBRA continuation coverage before receiving notice of the premium assistance may withdraw the rejection and elect continuation with the sixty-five percent subsidy.

Finally, Chapter 3 permits the Director of the Department of Managed Health Care and the Insurance Commissioner to adopt emergency regulations to implement the Cal-COBRA provisions in the event that federal assistance becomes available to Cal-COBRA-qualified beneficiaries. The adoption of such emergency regulations “shall be considered by the Office of Administrative Law

46. See Cal-COBRA Benefits, supra note 26, at 1 (comparing federal COBRA with Cal-COBRA).
47. American Reinvestment and Recovery Act § 3001(a)(2)(A)(ii)(I); FAQs for Employees, supra note 6 (explaining at question seventeen that the beneficiary continues to receive coverage for the maximum allotted time under the COBRA program, but the coverage is only available at the reduced price through the stimulus package for nine months after the date of COBRA election).
48. FAQs for Employees, supra note 6.
49. See Cal-COBRA Benefits, supra note 26, at 2 (stating that Cal-COBRA and the premium reduction applies to “all group health plans sponsored by private-sector employers or employee organizations” and “to plans sponsored by State or local governments”).
50. CAL. HEALTH & SAFETY CODE §1366.21(d) (amended by Chapter 3); CAL. INS. CODE § 10128.51(d) (amended by Chapter 3).
51. CAL. HEALTH & SAFETY CODE § 1366.25(g)(1) (amended by Chapter 3); CAL. INS. CODE § 10128.55(g)(1) (amended by Chapter 3).
52. CAL. HEALTH & SAFETY CODE § 1366.25(g)(2) (amended by Chapter 3); CAL. INS. CODE § 10128.51(c)(2) (amended by Chapter 3) (stating that to qualify for the sixty-five-percent reduction for continuation insurance coverage through the stimulus package, an individual must be a member of his or her employer’s group health plan and be involuntarily terminated from his or her employment between September 1, 2008, and December 31, 2009).
53. CAL. HEALTH & SAFETY CODE § 1366.25(g)(1)(G) (amended by Chapter 3); CAL. INS. CODE § 10128.55(g)(1)(G) (amended by Chapter 3). Health care plans are required to notify and deliver enrollment forms to qualified beneficiaries. To enroll in the Cal-COBRA program—and receive the subsidy—beneficiaries only must fill out and return the appropriate forms. CAL. HEALTH & SAFETY CODE § 1366.25(g)(1)(B); CAL. INS. CODE § 10128.55(g)(1)(B); Cal-COBRA Benefits, supra note 26, at 2-3.
54. CAL. HEALTH & SAFETY CODE § 1366.20(d) (amended by Chapter 3); CAL. INS. CODE § 10128.50(d) (amended by Chapter 3).
to be necessary to avoid serious harm to the public peace, health, safety, or general welfare.\footnote{55}

IV. ANALYSIS

A. The Need for Chapter 3

California has one of the highest uninsured health coverage rates and unemployment rates in the country, and job loss is the primary reason people lose their health insurance coverage.\footnote{56} Although the Cal-COBRA program allows individuals to continue receiving group plan insurance after termination, few qualified beneficiaries can afford the high premium costs.\footnote{57}

Between 2001 and 2002, the United States Congress considered several policies to assist unemployed COBRA participants by subsidizing sixty to seventy-five percent of the coverage premiums.\footnote{58} Although nothing came of the policies, a 2002 survey found that while only twenty-three percent of adults with employer-sponsored insurance would buy COBRA without a subsidy, fifty-nine percent were “very likely to buy COBRA” with a subsidy.\footnote{59} The Stimulus Package’s sixty-five-percent COBRA subsidy mirrors what Congress previously considered,\footnote{60} and based on the 2002 survey results, enrollment should increase in the federal and state COBRA programs.\footnote{61} Chapter 3’s detailed notice requirements are necessary to ensure that Californians know and take advantage of the federal assistance.\footnote{62}

55. \textsc{Cal. Health & Safety Code} § 1366.20(d) (amended by Chapter 3); \textsc{Cal. Ins. Code} § 10128.50(d) (amended by Chapter 3).

56. \textsc{Assembly Floor, Committee Analysis of AB 23}, at 3 (May 6, 2009). California’s three-year average for residents living without health insurance is 20.5 percent, compared to the national average of 17.4 percent. In March 2009, California’s unemployment rate was 11.2 percent. \textit{Id}.

57. \textsc{Assembly Floor, Committee Analysis of AB 23}, at 6 (Apr. 2, 2009); \textit{see also} Michelle M. Doty et al., \textit{Maintaining Health Insurance During a Recession: Likely COBRA Eligibility}, \textsc{The Commonwealth Fund}, Jan. 2009, at 1 (on file with the \textit{McGeorge Law Review}) (discussing a January 2009 issue brief which found that, “because of the high premiums,” only nine percent of unemployed qualified adults bought health insurance under COBRA in 2007).


59. \textit{Id}. at 4, 8 (stating that the survey, which was conducted by Princeton Survey Research Associates in January 2002, consisted of telephone interviews with a national sample of 1,001 adults).

60. \textit{Compare} American Reinvestment and Recovery Act of 2009, Pub. L. No. 111-5, § 3001(a)(1)(A), 123 Stat. 115, 455 (stating that an individual who pays thirty-five percent of the COBRA premium will be treated as paying in full because of the sixty-five-percent subsidy); \textit{with} Edwards et al., \textsc{supra} note 58, at 4 (stating that Congress previously considered COBRA subsidies in amounts between sixty and seventy-five percent).

61. See Edwards et al., \textsc{supra} note 58, at 4 (assuming that a similar number of employer-insured adults would select COBRA coverage with the subsidy in 2009 as reported in the 2002 survey).

62. See \textsc{Assembly Floor, Committee Analysis of AB 23}, at 3 (May 6, 2009) ("[T]his bill would ensure that Californians who lose their job while working for a small employer . . . are notified that they may be eligible for premium assistance through the federal stimulus bill.").
1. The Notice Requirement

Health care plans must follow Chapter 3’s special notification requirements for those Cal-COBRA beneficiaries who were involuntarily terminated from their jobs between September 1, 2008, and December 31, 2009, and therefore qualify for the subsidy. The notice must be sent to the beneficiary’s last known address and “shall include clear and easily understandable language to inform the qualified beneficiary that changes in federal law provide a new opportunity to elect continuation coverage with a 65-percent premium subsidy.” The notice must also contain the subsidized premium amount to be paid by the beneficiary. If such amount is unknown, a toll-free telephone number must be included for the beneficiary to request further information.

All qualified beneficiaries will receive a notice accompanied by an explanation of the requirements for the premium assistance, the duration of such assistance, and a statement that the beneficiary must elect coverage within sixty days. Qualified beneficiaries who rejected Cal-COBRA coverage prior to receiving notice of the subsidy must additionally be notified of the individual’s right to reelect coverage at the reduced premium cost. Beneficiaries who are not already covered by Cal-COBRA will receive enrollment forms in addition to benefit and disclosure information.

To further ensure that Californians understand the availability of premium assistance, Chapter 3 requires that this statement be included with the notice: “IF YOU ARE HAVING ANY DIFFICULTIES READING OR UNDERSTANDING THIS NOTICE, PLEASE CONTACT [name of health plan] at [insert appropriate telephone number].”

63. See CAL. HEALTH & SAFETY CODE § 1366.25(g) (amended by Chapter 3) (listing the applicable notice requirements for health care service plans providing coverage to qualified beneficiaries under the Stimulus Package); CAL. INS. CODE § 10128.55(g) (amended by Chapter 3) (same).
64. CAL. HEALTH & SAFETY CODE § 1366.25(g)(1) (amended by Chapter 3); CAL. INS. CODE § 10128.55(g)(1)(A) (amended by Chapter 3).
65. CAL. HEALTH & SAFETY CODE § 1366.25(g)(1)(A) (amended by Chapter 3); CAL. INS. CODE § 10128.55(g)(1)(A) (amended by Chapter 3).
66. CAL. HEALTH & SAFETY CODE § 1366.25(g)(1)(A) (amended by Chapter 3); CAL. INS. CODE § 10128.55(g)(1)(A) (amended by Chapter 3).
67. CAL. HEALTH & SAFETY CODE § 1366.25(g)(1)(D)-(F) (amended by Chapter 3); CAL. INS. CODE § 10128.55(g)(1)(D)-(F) (amended by Chapter 3).
68. CAL. HEALTH & SAFETY CODE § 1366.25(g)(1)(G) (amended by Chapter 3); CAL. INS. CODE § 10128.55(g)(1)(G) (amended by Chapter 3).
69. CAL. HEALTH & SAFETY CODE § 1366.25(e), (g)(1)(B) (amended by Chapter 3); CAL. INS. CODE § 10128.55(e), (g)(1)(B) (amended by Chapter 3).
70. CAL. HEALTH & SAFETY CODE § 1366.25(g)(1)(H) (amended by Chapter 3); CAL. INS. CODE § 10128.55(g)(1)(H) (amended by Chapter 3).
2. The New “Qualified Beneficiary”

Qualification standards for subsidized COBRA coverage are narrower than those for non-subsidized coverage. For both forms of coverage, the qualified beneficiary must be an employee, or the spouse or dependent of an employee, who is covered by an employer health plan and has a qualifying event. Non-subsidized Cal-COBRA qualifying events include death, termination, reduction in hours, divorce, loss of dependent status, or eligibility for Medicare. However, because the Stimulus Package intends to provide “assistance to the unemployed” through the COBRA subsidy, only involuntary job termination will qualify a beneficiary for subsidized coverage. Qualifying involuntary terminations are limited to those occurring between September 1, 2008, and December 31, 2009.

Salary limitations further narrow the subsidized qualified beneficiary definition. Beneficiaries who individually earn between $125,000 and $145,000 per taxable year, or married couples who file a joint tax return between $250,000 and $290,000, may have to pay back part or all of the premium reduction through an income tax increase. Individuals earning more than $145,000, or married couples earning more than $290,000, must reimburse the entire 65-percent subsidy reduction.

71. See CAL. HEALTH & SAFETY CODE § 1366.21(c)(1)-(2) (amended by Chapter 3) (defining a qualified beneficiary for subsidized coverage the same as a non-subsidized beneficiary, but with additional qualification standards); CAL. INS. CODE § 10128.51(c)(1)-(2) (amended by Chapter 3) (same).

72. CAL. HEALTH & SAFETY CODE § 1366.21(c)(1)-(2) (amended by Chapter 3) (defining a qualified beneficiary for non-subsidized coverage as an individual enrolled in a group health plan and including this definition in the subsidized qualified beneficiary requirements); CAL. INS. CODE § 10128.51(c)(1)-(2) (amended by Chapter 3); FAQs for Employees, supra note 6 (defining COBRA qualified beneficiary standards at question three).

73. CAL. HEALTH & SAFETY CODE § 1366.21(c)(1)-(2) (amended by Chapter 3); CAL. INS. CODE § 10128.51(c)(1)-(2) (amended by Chapter 3).


75. CAL. HEALTH & SAFETY CODE § 1366.21(c)(2) (amended by Chapter 3); CAL. INS. CODE § 10128.51(c)(2) (amended by Chapter 3).

76. CAL. HEALTH & SAFETY CODE § 1366.21(c)(2) (amended by Chapter 3); CAL. INS. CODE § 10128.51(c)(2) (amended by Chapter 3).

77. See American Reinvestment and Recovery Act, § 139C(b), 123 Stat. 115, 465-66 (listing the income limitations on receiving subsidized coverage); Cal-COBRA Benefits, supra note 26, at 3 (explaining the income limitations on subsidized coverage).


79. Cal-COBRA Benefits, supra note 26, at 3.
3. Disciplinary Actions for Chapter 3 Violations

The Knox-Keene Health Care Service Plan Act of 1975 provides disciplinary actions in the event that a health care plan violates state law.80 Because the Cal-COBRA program is part of the Knox-Keene Act, health care plans that violate Chapter 3’s notice requirements will be disciplined accordingly.81 If a health care plan violates any section of the Act, including sections implemented by Chapter 3, the Director of the Department of Managed Health Care may suspend or revoke the health care plan’s license or assess administrative penalties.82 Civil penalties may be assessed in an amount not to exceed $2,500 per violation.83

B. Support for and Opposition to Chapter 3

California Insurance Commissioner Steve Poizner sponsored Chapter 3, and many groups, including the Department of Managed Health Care and the California Medical Association, supported the bill.84 The Insurance Commissioner and other supporters argue that Chapter 3 is necessary for “employees of small businesses . . . to maintain their health insurance through these difficult economic times.”85 The notice requirements will ensure that Californians can take full advantage of the subsidy available through the Stimulus Package.86 Supporters further stress that the changes in the law made by Chapter 3 will reduce the demand for “already-overburdened state and local health programs.”87

Opponents of Chapter 3, the Association of California Life and Health Insurance Companies (ACLHIC) and the California Association of Health Plans (CAHP), raise concerns about the lack of guidance from the IRS about whether or how health care plans should verify an employee’s termination for purposes of health care plans receiving the subsidy tax credit.88 Earlier versions of Chapter 3 did not clarify whether the health care plan should rely on the employee’s attestation that he or she was involuntarily terminated or request verification from the employer.89 The ACLHIC and CAHP did not wish for health care plans

80. CAL. HEALTH & SAFETY CODE § 1386 (West 2008).
81. See id. § 1340 (citing Chapter 2.2 of Division 2 of the California Health and Safety Code as the “Knox-Keene Health Care Service Plan Act of 1975”); id. § 1366.20 (amended by Chapter 3) (listing the Cal-COBRA program laws as part of the Knox-Keene Act within Chapter 2.2 of Division 2 of the California Health and Safety Code).
82. Id. § 1386(a), (b)(6) (West 2008).
83. Id. § 1387(a).
84. ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF AB 23, at 4 (May 6, 2009).
85. SENATE COMMITTEE ON HEALTH, COMMITTEE ANALYSIS OF AB 23, at 12 (Apr. 15, 2009).
86. ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF AB 23, at 4 (May 6, 2009).
87. SENATE COMMITTEE ON HEALTH, COMMITTEE ANALYSIS OF AB 23, at 13 (Apr. 15, 2009).
88. Id.
89. See id. at 14 (explaining that opponents requested an amendment to offer guidance about whether health care plans could or must require verification before providing subsidized Cal-COBRA coverage).
to request verification from the employer; however, the groups also do not want health care plans to rely on the employee’s attestation, only to have the IRS request employer verification and deny the tax credit if verification is not given.  

The Legislature responded to opponents’ concerns by permitting health care plans to request and require employer verification of an employee’s involuntary termination. Accordingly, Chapter 3 was amended to permit health care plans to request verification from the employer in the absence of federal guidance or if required by the federal government. Detailed verification notice requirements must be followed or an employee risks denial of Cal-COBRA coverage at the subsidized cost. The opponents otherwise support Chapter 3’s attempt to provide Californians with the same premium assistance under the federal COBRA program.

V. CONCLUSION

The high number of unemployed Californians without health insurance justifies Chapter 3’s urgent enactment. In 2008, almost one-in-five Californians lacked health coverage, while the unemployment rate increased monthly. Because “[t]he cost of COBRA insurance can be overwhelming,” Chapter 3 was enacted to “offer stability to hard-working Californians by ensuring them an affordable opportunity to keep their doctors.”

Chapter 3 permits Cal-COBRA qualified beneficiaries to benefit from any applicable and available federal assistance under the Cal-COBRA program, such as the Obama Administration’s sixty-five percent subsidy provided through

90. Id. (explaining the groups’ concern that the IRS would require verification and disallow tax credits for the subsidy if the health plan did not have the employer verification).

91. ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF AB 23, at 1 (May 6, 2009).

92. CAL. HEALTH & SAFETY CODE § 1366.25(j)(1) (amended by Chapter 3); CAL. INS. CODE § 10128.55(j)(1) (amended by Chapter 3).

93. CAL. HEALTH & SAFETY CODE § 1366.25(j)(2)-(5) (amended by Chapter 3); CAL. INS. CODE § 10128.55(j)(2)-(5) (amended by Chapter 3).

94. SENATE COMMITTEE ON HEALTH, COMMITTEE ANALYSIS OF AB 23, at 10 (Apr. 15, 2009).

95. See Dave Jones, Cal-COBRA Premium Assistance Passes Senate Floor with Bipartisan Support, CAL. PROGRESS REP., May 7, 2009, http://www.californiaprogressreport.com/site/?q=node/584 (on file with the McGeorge Law Review) (explaining that California has one of the highest unemployment and uninsured rates in the country, and the quick passage of the bill was critical to meet the health care needs of California families).

96. See AMERICA’S HEALTH RANKINGS, supra note 1 (stating that 18.5 percent of Californians lacked health insurance in 2008).

97. See Labor Statistics, supra note 5 (showing that between January 2008 and December 2008 California’s unemployment rate rose at least 0.1 percent each month).

98. Jones, supra note 95 (quoting California Assembly Member Nathan Fletcher, Vice-Chair of the Assembly Health Committee).

99. Id. (quoting California Assembly Member Nathan Fletcher, Vice-Chair of the Assembly Health Committee).

100. CAL. HEALTH & SAFETY CODE § 1366.20(c) (amended by Chapter 3); CAL. INS. CODE § 10128.50(c) (amended by Chapter 3).
the Stimulus Package.\textsuperscript{101} Although the Stimulus Package applies the federal subsidy to both federal and state COBRA programs, Chapter 3 separately ensures that beneficiaries will be notified of their eligibility to receive Cal-COBRA coverage at the reduced premium cost.\textsuperscript{102} These notification requirements are expected to assist Californians in taking full advantage of the Stimulus Package’s subsidy.\textsuperscript{103}

\textsuperscript{101} See Jones, supra note 95 (explaining that Chapter 3 will ensure that laid-off Californians are notified of their eligibility for the subsidy provided by the federal stimulus bill).

\textsuperscript{102} See ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF AB 23, at 3 (May 6, 2009) (explaining that the Stimulus Package subsidizes health benefits under both federal and state COBRA programs, but Chapter 3 ensures that Cal-COBRA beneficiaries will be notified of their subsidy eligibility).

\textsuperscript{103} See id. at 4 (stating that supporters of Chapter 3 argue that the bill will ensure that Californians may “take full advantage of federal premium assistance made available” by the Stimulus Package).