

U.S. DEPARTMENT OF LABOR

Pension and Welfare Benefit Programs

Washington, D.C. 20216



Mr. Gil McCarty
Deputy Commissioner
Life & Health Division
Department of Insurance
Second Floor
Capital Plaza Tower
Frankfort, Kentucky 40601

OPINION 78-2 A

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Dear Mr. McCarty:

This is in response to your letter regarding section 514 of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you ask whether the Department of Insurance of the Commonwealth of Kentucky may require group health insurance contracts issued in the State to include a guaranteed conversion privilege.

You advise that, in 1974, the Kentucky General Assembly enacted a guaranteed conversion law effective June, 1974 (Subtitle 18 KRS 304.18-010 through 304.18-120). The law requires group health insurance contracts written in the Commonwealth of Kentucky to provide a guaranteed health conversion provision upon issuance or the anniversary date of issuance.

Section 514 provides in part:

Sec. 514. (a) Except as provided in subsection (b) of this section, the provisions of this title and title IV shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 4(a) and not exempt under section 4(b). This section shall take effect on January 1, 1975.

(b)(1) This section shall not apply with respect to any cause of action which arose, or any act or omission which occurred, before January 1, 1975.

(2)(A) Except as provided in subparagraph (B), nothing in this title shall be construed to exempt or relieve any person from any law of any State which regulates insurance, banking, or securities.

(B) Neither an employee benefit plan described in section 4(a), which is not exempt under section 4(b) (other than a plan established primarily for the purpose of providing death benefits), nor any trust established under such a plan, shall be deemed to be an insurance company or other insurer, bank, trust company, or investment company or to be engaged in the business of

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insurance or banking for purposes of any law of any State purporting to regulate insurance companies, insurance contracts, banks, trust companies, or investment companies.

While ERISA §514(a) preempts state laws relating to employee benefit plans, §514(b)(2)(A) expressly saves from preemption state laws regulating insurance.^{1/} The Kentucky statute in question appears to deal only with group policies issued by licensed insurance companies. We do not understand the statute to deem employee benefit plans to be insurers, nor to regulate such plans directly. It is therefore the position of the Department of Labor that the guaranteed conversion law is not preempted by ERISA because it falls within the exception provided in §514(b)(2)(A) of the act. The foregoing interpretation of the effect of §514 on state insurance laws was adopted by the United States Court of Appeals for the First Circuit in Wadsworth v. Whaland, 562 F. 2d 70 (1st Cir. 1977).

This letter constitutes an advisory opinion under ERISA Procedure 76-1. Accordingly, this letter is issued subject to the provisions of the procedure, including section 10 thereof relating to the effect of advisory opinions.

Sincerely,

Fred W. Stuckwisch
Director
Office of Regulatory Standards
and Exceptions

^{1/} §514(b)(2)(B) prevents circumvention of the basic preemptive effects of §514(a) by barring the states from deeming ERISA-covered employee benefit plans to be insurance companies or insurers.