

U.S. DEPARTMENT OF LABOR
Pension and Welfare Benefit Programs
Washington, D.C. 20216



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Mr. Robert M. Yeates
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Third Floor John Hancock Building
455 South Third East Street
Salt Lake City, Utah 84111

OPINION 78-3 A

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Dear Mr. Yeates:

This is in response to your letters concerning preemption of state laws under section 514(a) of the Employee Retirement Income Security Act of 1974 (ERISA). We regret that our heavy workload has resulted in a delay in responding to your letters.

You advise that the Utah Department of Insurance intends to file a bill with the State Legislature for the purpose of regulating non-insured employee welfare benefit plans. You request an opinion letter that such a law would be preempted by section 514(a) of ERISA.

The Department of Labor is charged with the administration and enforcement of certain provisions of ERISA. Among such provisions is section 514(a) which provides:

EFFECT ON OTHER LAWS

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.

The effect of this section is to preempt all state laws which relate to employee benefit plans subject to the coverage of title I of ERISA (Protection of Employee Benefit Rights), whether such state laws conflict with the terms of the Federal legislation or would merely supplement the Federal scheme. The coverage of ERISA under section 4(a) extends to employee benefit plans established or maintained by employers engaged in commerce or in any industry or activity affecting commerce or by employee organizations representing employees so engaged or by both.

The term "employee benefit plan" encompasses both employee pension benefit plans and employee welfare benefit plans. Included in the

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definition of employee welfare benefit plans found in §3(1) of ERISA are plans established or maintained by employers, employee organizations, or both, for the purpose of providing "medical, surgical, or hospital care or benefits" to their participants or beneficiaries.

It is the view of the Department of Labor that, to the extent that the proposed act in the Utah State Legislature to regulate non-insured employee welfare benefit plans may be applicable by its terms to employee benefit plans covered by ERISA, the proposed act would be preempted by §514 of ERISA. Moreover, under §514(b)(2)(B) of ERISA, an employee benefit plan subject to ERISA may not be deemed to be an insurance company or insurer for the purpose of state laws purporting to regulate insurance companies or insurance contracts. Thus, a state may not obtain power to regulate what is truly an employee benefit plan by deeming it to be in the business of insurance. Such a plan is outside the reach of state regulation.

The reasons for broad preemption of state law under ERISA were succinctly stated by Senator Javits, a sponsor and floor manager of the bill, during its final consideration.

Both the House and Senate bills provided for preemption of State law, but — with one major exception appearing in the House bill — defined the perimeters of preemption in relation to the areas regulated by the bill. Such a formulation raised the possibility of endless litigation over the validity of State action that might impinge on Federal regulation, as well as opening the door to multiple and potentially conflicting State laws hastily contrived to deal with some particular aspect of private welfare or pension plans not clearly connected to the Federal regulatory scheme.

Although the desirability of further regulation -- at either the State or Federal level — undoubtedly warrants further attention, on balance, the emergence of a comprehensive and pervasive Federal interest and the interests of uniformity with respect to interstate plans required -- but for certain exceptions -- the displacement of State action in the field of private employee benefit programs. 120 Cong. Rec. S15751 (daily ed. Aug. 22, 1974).

The major reasons for broad preemption disclosed in these remarks include (1) the need to prevent conflicting regulation over interstate

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plans, (2) the desire to avoid the litigation that would ensue from piecemeal preemption, (3) the emergence of a pervasive Federal interest in employee benefit plans, and (4) the existence of a comprehensive Federal program for future study.

The proposed act, insofar as it relates to ERISA-covered plans, includes several provisions of the type subject to preemption by ERISA. These include, among others, the requirement that such plans be approved (receive a certificate of authority) by the commissioner (Sect. 3(1)), and that plans disclose certain information to participants (Sect. 3(1)(c)).

We regard such provisions to be legally indistinguishable from those of the California Knox-Keene Health Care Service Plan Act of 1975 (Cal. Health and Safety Code S1340, et seq.) held to be preempted by ERISA in Hewlett-Packard Co. et al v. Barnes, 425 F. Supp. 1294 (N.D. Cal. 1977) (on appeal), and the Hawaii Prepaid Health Care Act held preempted in Standard Oil Co. v. Aghsalud, No. C76-2740-CBR (N.D. Cal. 1977). (Copies of opinions enclosed.)

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

Enclosures