

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



May 22 1979

OPINION 79-31 A

Honorable Jeff Douthwaite
Member of the House of
Representatives of the
State of Washington
Chairman, House Committee
on Insurance
Olympia, Washington 98504

514(a)

Dear Mr. Douthwaite:

This is in response to your letter of November 22, 1978, requesting an advisory opinion regarding the preemption provisions of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you ask whether a certain proposal to amend the insurance laws of the State of Washington is preempted under ERISA.

You advise that your committee is considering a proposed amendment to the state insurance laws. The proposed amendment would require the approval of the Insurance commissioner before an insurance company in the state could assume the obligations of an employee welfare benefit plan. Currently, the Insurance Commissioner must give approval before two or more insurance companies may merge or consolidate. The specific section of the proposed amendment provides:

(3) For the purposes of this section, assumption by a domestic insurer of the obligations of a fund established pursuant to federal regulation under the Employee Retirement Income Security Act (29 USC 1001 et seq.) shall require the approval of the commissioner as if it were a consolidation with another insurer.

Section 514 of ERISA 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.

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

Section 514 does not preempt only those state laws which conflict with ERISA but all state laws relating to employee benefit plans. The reasons for broad preemption of state laws were succinctly stated by Senator Javits, a major 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. 29942 (Aug. 22, 1974).

The major reasons for broad preemption disclosed in these remarks include (1) the need to prevent conflicting regulation over interstate plans, (2) the desire to avoid the litigation that would result 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 (see §3022).

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It appears that the proposed amendment would apply to the situation in which an insurer assumes the obligations of an employee benefit plan as a result of plan purchases of insurance contracts from the insurer. Therefore, one of the effects of the proposed amendment to the state insurance laws would be to grant the Insurance Commissioner the authority to determine which plans may use insurance contracts as funding media.

Therefore, it is the position of the Department of Labor that the proposed amendment to the insurance laws of the State of Washington would be preempted by ERISA section 514(a).

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,

Ian D. Lanoff
Administrator
of Pension and Welfare
Benefit Programs