

(Pub. L. 99-272, title XI, § 11016(d), Apr. 7, 1986, 100 Stat. 275.)

Editorial Notes

CODIFICATION

Section was enacted as part of the Single-Employer Pension Plan Amendments Act of 1986, and also as part of the Consolidated Omnibus Budget Reconciliation Act of 1985, and not as part of the Employee Retirement Income Security Act of 1974 which comprises this chapter.

§ 1144. Other laws

(a) Supersedure; effective date

Except as provided in subsection (b) of this section, the provisions of this subchapter and subchapter III shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 1003(a) of this title and not exempt under section 1003(b) of this title. This section shall take effect on January 1, 1975.

(b) Construction and application

(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 subchapter 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 1003(a) of this title, which is not exempt under section 1003(b) of this title (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.

(3) Nothing in this section shall be construed to prohibit use by the Secretary of services or facilities of a State agency as permitted under section 1136 of this title.

(4) Subsection (a) shall not apply to any generally applicable criminal law of a State.

(5)(A) Except as provided in subparagraph (B), subsection (a) shall not apply to the Hawaii Prepaid Health Care Act (Haw. Rev. Stat. §§ 393-1 through 393-51).

(B) Nothing in subparagraph (A) shall be construed to exempt from subsection (a)—

(i) any State tax law relating to employee benefit plans, or

(ii) any amendment of the Hawaii Prepaid Health Care Act enacted after September 2, 1974, to the extent it provides for more than the effective administration of such Act as in effect on such date.

(C) Notwithstanding subparagraph (A), parts 1 and 4 of this subtitle, and the preceding sections of this part to the extent they govern matters which are governed by the provisions of such parts 1 and 4, shall supersede the Hawaii Prepaid Health Care Act (as in effect on or after January

14, 1983), but the Secretary may enter into cooperative arrangements under this paragraph and section 1136 of this title with officials of the State of Hawaii to assist them in effectuating the policies of provisions of such Act which are superseded by such parts 1 and 4 and the preceding sections of this part.

(6)(A) Notwithstanding any other provision of this section—

(i) in the case of an employee welfare benefit plan which is a multiple employer welfare arrangement and is fully insured (or which is a multiple employer welfare arrangement subject to an exemption under subparagraph (B)), any law of any State which regulates insurance may apply to such arrangement to the extent that such law provides—

(I) standards, requiring the maintenance of specified levels of reserves and specified levels of contributions, which any such plan, or any trust established under such a plan, must meet in order to be considered under such law able to pay benefits in full when due, and

(II) provisions to enforce such standards, and

(ii) in the case of any other employee welfare benefit plan which is a multiple employer welfare arrangement, in addition to this subchapter, any law of any State which regulates insurance may apply to the extent not inconsistent with the preceding sections of this subchapter.

(B) The Secretary may, under regulations which may be prescribed by the Secretary, exempt from subparagraph (A)(ii), individually or by class, multiple employer welfare arrangements which are not fully insured. Any such exemption may be granted with respect to any arrangement or class of arrangements only if such arrangement or each arrangement which is a member of such class meets the requirements of section 1002(1) and section 1003 of this title necessary to be considered an employee welfare benefit plan to which this subchapter applies.

(C) Nothing in subparagraph (A) shall affect the manner or extent to which the provisions of this subchapter apply to an employee welfare benefit plan which is not a multiple employer welfare arrangement and which is a plan, fund, or program participating in, subscribing to, or otherwise using a multiple employer welfare arrangement to fund or administer benefits to such plan's participants and beneficiaries.

(D) For purposes of this paragraph, a multiple employer welfare arrangement shall be considered fully insured only if the terms of the arrangement provide for benefits the amount of all of which the Secretary determines are guaranteed under a contract, or policy of insurance, issued by an insurance company, insurance service, or insurance organization, qualified to conduct business in a State.

(7) Subsection (a) shall not apply to qualified domestic relations orders (within the meaning of section 1056(d)(3)(B)(i) of this title), qualified medical child support orders (within the meaning of section 1169(a)(2)(A) of this title), and the provisions of law referred to in section 1169(a)(2)(B)(ii) of this title to the extent they apply to qualified medical child support orders.

(8) Subsection (a) of this section shall not be construed to preclude any State cause of action—

(A) with respect to which the State exercises its acquired rights under section 1169(b)(3) of this title with respect to a group health plan (as defined in section 1167(1) of this title), or

(B) for recoupment of payment with respect to items or services pursuant to a State plan for medical assistance approved under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] which would not have been payable if such acquired rights had been executed before payment with respect to such items or services by the group health plan.

(9) For additional provisions relating to group health plans, see section 1191 of this title.

(c) Definitions

For purposes of this section:

(1) The term “State law” includes all laws, decisions, rules, regulations, or other State action having the effect of law, of any State. A law of the United States applicable only to the District of Columbia shall be treated as a State law rather than a law of the United States.

(2) The term “State” includes a State, any political subdivisions thereof, or any agency or instrumentality of either, which purports to regulate, directly or indirectly, the terms and conditions of employee benefit plans covered by this subchapter.

(d) Alteration, amendment, modification, invalidation, impairment, or supersedure of any law of the United States prohibited

Nothing in this subchapter shall be construed to alter, amend, modify, invalidate, impair, or supersede any law of the United States (except as provided in sections 1031 and 1137(b) of this title) or any rule or regulation issued under any such law.

(e) Automatic contribution arrangements

(1) Notwithstanding any other provision of this section, this subchapter shall supersede any law of a State which would directly or indirectly prohibit or restrict the inclusion in any plan of an automatic contribution arrangement. The Secretary may prescribe regulations which would establish minimum standards that such an arrangement would be required to satisfy in order for this subsection to apply in the case of such arrangement.

(2) For purposes of this subsection, the term “automatic contribution arrangement” means an arrangement—

(A) under which a participant may elect to have the plan sponsor make payments as contributions under the plan on behalf of the participant, or to the participant directly in cash,

(B) under which a participant is treated as having elected to have the plan sponsor make such contributions in an amount equal to a uniform percentage of compensation provided under the plan until the participant specifically elects not to have such contributions made (or specifically elects to have such contributions made at a different percentage), and

(C) under which such contributions are invested in accordance with regulations pre-

scribed by the Secretary under section 1104(c)(5) of this title.

(3)(A) The plan administrator of an automatic contribution arrangement shall, within a reasonable period before such plan year, provide to each participant to whom the arrangement applies for such plan year notice of the participant's rights and obligations under the arrangement which—

(i) is sufficiently accurate and comprehensive to apprise the participant of such rights and obligations, and

(ii) is written in a manner calculated to be understood by the average participant to whom the arrangement applies.

(B) A notice shall not be treated as meeting the requirements of subparagraph (A) with respect to a participant unless—

(i) the notice includes an explanation of the participant's right under the arrangement not to have elective contributions made on the participant's behalf (or to elect to have such contributions made at a different percentage),

(ii) the participant has a reasonable period of time, after receipt of the notice described in clause (i) and before the first elective contribution is made, to make such election, and

(iii) the notice explains how contributions made under the arrangement will be invested in the absence of any investment election by the participant.

(Pub. L. 93-406, title I, § 514, Sept. 2, 1974, 88 Stat. 897; Pub. L. 97-473, title III, §§ 301(a), 302(b), Jan. 14, 1983, 96 Stat. 2611, 2613; Pub. L. 98-397, title I, § 104(b), Aug. 23, 1984, 98 Stat. 1436; Pub. L. 99-272, title IX, § 9503(d)(1), Apr. 7, 1986, 100 Stat. 207; Pub. L. 101-239, title VII, § 7894(f)(2)(A), (3)(A), Dec. 19, 1989, 103 Stat. 2450, 2451; Pub. L. 103-66, title IV, § 4301(c)(4), Aug. 10, 1993, 107 Stat. 377; Pub. L. 104-191, title I, § 101(f)(1), Aug. 21, 1996, 110 Stat. 1953; Pub. L. 104-204, title VI, § 603(b)(3)(G), Sept. 26, 1996, 110 Stat. 2938; Pub. L. 105-200, title IV, § 401(h)(2)(A)(i), (ii), July 16, 1998, 112 Stat. 668; Pub. L. 109-280, title IX, § 902(f)(1), Aug. 17, 2006, 120 Stat. 1039.)

Editorial Notes

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (b)(8)(B), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Title XIX of the Social Security Act is classified generally to subchapter XIX (§ 1396 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

2006—Subsec. (e). Pub. L. 109-280 added subsec. (e).

1998—Subsec. (b)(7). Pub. L. 105-200, § 401(h)(2)(A)(ii), substituted “they apply to” for “enforced by”.

Pub. L. 105-200, § 401(h)(2)(A)(i), amended directory language of Pub. L. 103-66, § 4301(c)(4)(A). See 1993 Amendment note below.

1996—Subsec. (b)(9). Pub. L. 104-204 made technical amendment to reference in original act which appears in text as reference to section 1191 of this title.

Pub. L. 104-191 added par. (9).

1993—Subsec. (b)(7). Pub. L. 103-66, § 4301(c)(4)(A), as amended by Pub. L. 105-200, § 401(h)(1)(A)(i), inserted “, qualified medical child support orders (within the meaning of section 1169(a)(2)(A) of this title), and the

provisions of law referred to in section 1169(a)(2)(B)(ii) of this title to the extent enforced by qualified medical child support orders" before period at end.

Subsec. (b)(8). Pub. L. 103-66, § 4301(c)(4)(B), added par. (8) and struck out former par. (8) which read as follows: "Subsection (a) of this section shall not apply to any State law mandating that an employee benefit plan not include any provision which has the effect of limiting or excluding coverage or payment for any health care for an individual who would otherwise be covered or entitled to benefits or services under the terms of the employee benefit plan, because that individual is provided, or is eligible for, benefits or services pursuant to a plan under title XIX of the Social Security Act, to the extent such law is necessary for the State to be eligible to receive reimbursement under title XIX of that Act."

1989—Subsec. (b)(5)(C). Pub. L. 101-239, § 7894(f)(2)(A), substituted "by such parts 1 and 4 and the preceding sections of this part" for "by such parts".

Subsec. (b)(6)(B). Pub. L. 101-239, § 7894(f)(3)(A), substituted "section 1002(1)" for "section 1002(1)".

1986—Subsec. (b)(8). Pub. L. 99-272 added par. (8).

1984—Subsec. (b)(7). Pub. L. 98-397 added par. (7).

1983—Subsec. (b)(5). Pub. L. 97-473, § 301(a), added par. (5).

Subsec. (b)(6). Pub. L. 97-473, § 302(b), added par. (6).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-200, title IV, § 401(h)(2)(C), July 16, 1998, 112 Stat. 668, provided that: "The amendments made by subparagraph (A) [amending this section and section 1169 of this title] shall be effective as if included in the enactment of section 4301(c)(4)(A) of the Omnibus Budget Reconciliation Act of 1993 [Pub. L. 103-66]."

EFFECTIVE DATE OF 1996 AMENDMENTS

Amendment by Pub. L. 104-204 applicable with respect to group health plans for plan years beginning on or after Jan. 1, 1998, see section 603(c) of Pub. L. 104-204, set out as a note under section 1003 of this title.

Amendment by Pub. L. 104-191 applicable with respect to group health plans for plan years beginning after June 30, 1997, except as otherwise provided, see section 101(g) of Pub. L. 104-191, set out as a note under section 1181 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101-239, title VII, § 7894(f)(2)(B), Dec. 19, 1989, 103 Stat. 2451, provided that: "The amendment made by this paragraph [amending this section] shall take effect as if included in section 301 of Public Law 97-473."

Pub. L. 101-239, title VII, § 7894(f)(3)(B), Dec. 19, 1989, 103 Stat. 2451, provided that: "The amendments made by this paragraph [amending this section] shall take effect as if included in section 302 of Public Law 97-473."

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99-272, title IX, § 9503(d)(2), Apr. 7, 1986, 100 Stat. 207, provided that:

"(2)(A) Except as provided in subparagraph (B), the amendment made by paragraph (1) [amending this section] shall become effective on October 1, 1986.

"(B) In the case of a plan maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers ratified on or before the date of the enactment of this Act [Apr. 7, 1986], the amendment made by paragraph (1) shall become effective on the later of—

"(i) October 1, 1986; or

"(ii) the earlier of—

"(I) the date on which the last of the collective bargaining agreements under which the plan is maintained, which were in effect on the date of the enactment of this Act, terminates (determined without regard to any extension thereof agreed to after the date of the enactment of this Act); or

"(II) three years after the date of the enactment of this Act."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-397 effective Jan. 1, 1985, except as otherwise provided, see section 303(d) of Pub. L. 98-397, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 97-473, title III, § 301(c), Jan. 14, 1983, 96 Stat. 2612, provided that: "The amendment made by this section [amending this section] shall take effect on the date of the enactment of this Act [Jan. 14, 1983]."

Amendment by section 302(b) of Pub. L. 97-473 effective Jan. 14, 1983, see section 302(c) of Pub. L. 97-473, set out as a note under section 1002 of this title.

REGULATIONS

Secretary authorized, effective Sept. 2, 1974, to promulgate regulations wherever provisions of this subchapter call for the promulgation of regulations, see section 1031 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

For provisions setting forth circumstances under which any amendment to a plan required to be made by an amendment made by section 4301 of Pub. L. 103-66 shall not be required to be made before the first plan year beginning on or after Jan. 1, 1994, see section 4301(d) of Pub. L. 103-66, set out as an Effective Date of 1993 Amendment note under section 1021 of this title.

TREATMENT OF OTHER STATE LAWS

Pub. L. 97-473, title III, § 301(b), Jan. 14, 1983, 96 Stat. 2612, provided that: "The amendment made by this section [amending this section] shall not be considered a precedent with respect to extending such amendment to any other State law."

§ 1144a. Clarification of church welfare plan status under State insurance law

(a) In general

For purposes of determining the status of a church plan that is a welfare plan under provisions of a State insurance law described in subsection (b), such a church plan (and any trust under such plan) shall be deemed to be a plan sponsored by a single employer that reimburses costs from general church assets, or purchases insurance coverage with general church assets, or both.

(b) State insurance law

A State insurance law described in this subsection is a law that—

(1) requires a church plan, or an organization described in section 414(e)(3)(A) of title 26 and section 1002(33)(C)(i) of this title to the extent that it is administering or funding such a plan, to be licensed; or

(2) relates solely to the solvency or insolvency of a church plan (including participation in State guaranty funds and associations).

(c) Definitions

For purposes of this section:

(1) Church plan

The term "church plan" has the meaning given such term by section 414(e) of title 26 and section 1002(33) of this title.

(2) Reimburses costs from general church assets

The term "reimburses costs from general church assets" means engaging in an activity