



OPINION NO. 84-39A
Sec. 514

OCT 25 1984

Tony Sholar, Director
Business-Government Relations
Kentucky Chamber of Commerce
P.O. Box 817
Frankfort, Kentucky 40602

Dear Mr. Sholar:

This is in reply to your letter of May 31, 1984, on behalf of the Kentucky Chamber of Commerce, concerning the 1984 Kentucky General Assembly's enactment of House Bill 670 (hereinafter the Kentucky Act or the Act). Specifically, you request an advisory opinion stating the Kentucky Act is preempted by section 514 of title I of the Employee Retirement Income Security Act of 1974 (ERISA).

You describe the Kentucky Act as "An Act Relating to Estates" and state that its effective date is July 13, 1984. The Act provides as follows:

Section 1. A New Section of KRS Chapter 65 is Created to Read as Follows:

- (1) KRS 344.030 notwithstanding, for the purposes of this section, 'employer' shall mean the sponsor of and 'employee' shall mean a member of a pension plan governed by the federal 'Employee Retirement Income Security Act of 1974,' and any member of a state pension plan or a pension plan of any unit of local government.
- (2) For any employee who elects not to take a joint and survivor annuity or who selects a beneficiary other than the spouse if living, the employer shall provide forms which provide for the spouse of the employee to acknowledge by signature such action.

Section 514 of title I of ERISA provides, in part, as follows:

- (a) Except as provided in subsection (b) of this section, the provisions of ... [titles I and IV of ERISA] 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) ...
- (b)(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.

Section 514 of ERISA preempts not only those state laws which conflict with ERISA but all state laws relating to employee benefit plans covered by title I of ERISA. The legislative history of ERISA stressed the broad preemptive scope of ERISA. Representative Dent, for example, stated:

Finally, I wish to make note of what is to many the crowning achievement of this

legislation, the reservation to Federal authority the sole power to regulate the field of employee benefit plans. With the preemption of the field, we round out the protection afforded to participants by eliminating the threat of conflicting and inconsistent State and local regulation. 120 Cong. Rec. 29197 (1974).

It appears the Kentucky Act is a state law designed, in pertinent part, to affect the employee pension benefit plans of private employers within Kentucky. Accordingly, because title I of ERISA covers most employee benefit plans of private employers in commerce, including employee pension benefit plans of Kentucky employers, the Department of Labor's position is that, insofar as the Kentucky Act is designed to establish requirements for employee pension benefit plans covered by title I of ERISA, the Act is preempted by section 514(a) of title I of ERISA.

With respect to your inquiry, you should be aware that sections 103 and 203 of the Retirement Equity Act of 1984 amend ERISA and the related provisions of the Internal Revenue Code to require spousal consent to any election by a participant not to receive a joint and survivor annuity or an early survivor annuity.

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,

Elliot I. Daniel
Acting Assistant Administrator for Regulations and Interpretations