Employee Retirement Income Security Act (ERISA), as Amended
The following pages display the Employee Retirement Income Security Act (ERISA), as amended by the Patient Protection and Affordable Care Act (P.L. 111-148. New text is shown in *italics*.
Employee Retirement Income Security Act (ERISA), As Amended

[¶ 16,130] INTRODUCTION.

The Employee Retirement Income Security Act (ERISA) provisions amended by the Patient Protection and Affordable Care Act (P.L. 111-148), and the Health Care and Education Reconciliation Act of 2010 (P.L. 111-152) are shown in the following paragraphs. Deleted ERISA material or the text of the ERISA section prior to amendment appears in the amendment notes following each amended ERISA provision. Any changed or added material is set out in italics.

[¶ 16,131] DUTY OF DISCLOSURE AND REPORTING

ERISA Sec. 101.

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REPORTING BY CERTAIN ARRANGEMENTS.— The Secretary shall, by regulation, require multiple employer welfare arrangements providing benefits consisting of medical care (within the meaning of section 733(a)(2)) which are not group health plans to register with the Secretary prior to operating in a State and may, by regulation, require such multiple employer welfare arrangements to report, not more frequently than annually, in such form and such manner as the Secretary may require for the purpose of determining the extent to which the requirements of part 7 are being carried out in connection with such benefits.

[CCH Explanation at ¶ 1875.]

Amendment

P.L. 111-148, § 6606:

Amended ERISA Sec. 101(g) by striking “Secretary may” and inserting “Secretary shall” and by inserting “to register with the Secretary prior to operating in a State and may, by *regulation, require such multiple employer welfare arrangements” after “not group health plans”.

The above amendment is effective on the date of enactment (March 23, 2010).

[¶ 16,141] CRIMINAL PENALTIES

ERISA Sec. 501(a) Any person who willfully violates any provision of part 1 of this subtitle, or any regulation or order issued under any such provision, shall upon conviction be fined not more than $100,000 or imprisoned not more than 10 years, or both; except that in the case of such violation by a person not an individual, the fine imposed upon such person shall be a fine not exceeding $500,000.

(b) Any person that violates section 519 shall upon conviction be imprisoned not more than 10 years or fined under title 18, United States Code, or both.

[CCH Explanation at ¶ 1865.]

Amendment

P.L. 111-148, § 6601(b):

Amended ERISA Sec. 501 by inserting “(a)” before “Any person” and by adding at the end new subsection (b).

The above amendment is effective on the date of enactment (March 23, 2010).

[¶ 16,151] INVESTIGATIVE AUTHORITY

ERISA Sec. 504.

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Act Sec. ¶16,151
(d) The Secretary may promulgate a regulation that provides an evidentiary privilege for, and provides for the confidentiality of communications between or among, any of the following entities or their agents, consultants, or employees:

(1) A State insurance department.
(2) A State attorney general.
(3) The National Association of Insurance Commissioners.
(4) The Department of Labor.
(5) The Department of the Treasury.
(6) The Department of Justice.
(7) The Department of Health and Human Services.
(8) Any other Federal or State authority that the Secretary determines is appropriate for the purposes of enforcing the provisions of this title.

(e) The privilege established under subsection (d) shall apply to communications related to any investigation, audit, examination, or inquiry conducted or coordinated by any of the agencies. A communication that is privileged under subsection (d) shall not waive any privilege otherwise available to the communicating agency or to any person who provided the information that is communicated.

[CCH Explanation at ¶ 1880.]

Amendments

P.L. 111-148, § 6607:

Amended ERISA Sec. 504 by inserting at the end new subsections (d) and (e).

¶ 16,161 PROHIBITION ON FALSE STATEMENTS AND REPRESENTATIONS

ERISA Sec. 519. No person, in connection with a plan or other arrangement that is multiple employer welfare arrangement described in section 3(40), shall make a false statement or false representation of fact, knowing it to be false, in connection with the marketing or sale of such plan or arrangement, to any employee, any member of an employee organization, any beneficiary, any employer, any employee organization, the Secretary, or any State, or the representative or agent of any such person, State, or the Secretary, concerning—

(1) the financial condition or solvency of such plan or arrangement;
(2) the benefits provided by such plan or arrangement;
(3) the regulatory status of such plan or other arrangement under any Federal or State law governing collective bargaining, labor management relations, or union union affairs; or
(4) the regulatory status of such plan or other arrangement regarding exemption from state regulatory authority under this Act.

This section shall not apply to any plan or arrangement that does not fall within the meaning of the term ‘multiple employer welfare arrangement’ under section 3(40)(A).

[CCH Explanation at ¶ 1865.]

Amendments

P.L. 111-148, § 6601(a):

Added ERISA Sec. 519 to read as above.

The above amendment is effective on the date of enactment (March 23, 2010).

¶ 16,171 APPLICABILITY OF STATE LAW TO COMBAT FRAUD AND ABUSE

ERISA Sec. 520. The Secretary may, for the purpose of identifying, preventing, or prosecuting fraud and abuse, adopt regulatory standards establishing, or issue an order relating to a specific person establishing, that a person engaged in the business of providing insurance through a multiple employer welfare arrangement described in section 3(40) is subject to the laws of the States in which such person operates which regulate insurance in such State, notwithstanding section 514(b)(6) of this Act or the Liability Risk Retention Act of 1986, and regardless of whether the law of the State is otherwise preempted under any of such provisions. This
section shall not apply to any plan or arrangement that does not fall within the meaning of the term ‘multiple employer welfare arrangement’ under section 3(40)(A).

[CCH Explanation at ¶ 1871.]

Amendments

P.L. 111-148, §6604(a):
Added ERISA Sec. 520 to read as above.

The above amendment is effective on the date of enactment (March 23, 2010).

[¶ 16,181] ADMINISTRATIVE SUMMARY CEASE AND DESIST ORDERS AND SUMMARY SEIZURE ORDERS AGAINST MULTIPLE EMPLOYER WELFARE ARRANGEMENTS IN FINANCIALLY HAZARDOUS CONDITION

ERISA Sec. 521(a) In general.—The Secretary may issue a cease and desist (ex parte) order under this title if it appears to the Secretary that the alleged conduct of a multiple employer welfare arrangement described in section 3(40), other than a plan or arrangement described in subsection (g), is fraudulent, or creates an immediate danger to the public safety or welfare, or is causing or can be reasonably expected to cause significant, imminent, and irreparable public injury.

(b) Hearing.—A person that is adversely affected by the issuance of a cease and desist order under subsection (a) may request a hearing by the Secretary regarding such order. The Secretary may require that a proceeding under this section, including all related information and evidence, be conducted in a confidential manner.

(c) Burden of proof.—The burden of proof in any hearing conducted under subsection (b) shall be on the party requesting the hearing to show cause why the cease and desist order should be set aside.

(d) Determination.—Based upon the evidence presented at a hearing under subsection (b), the cease and desist order involved may be affirmed, modified, or set aside by the Secretary in whole or in part.

(e) Seizure.—The Secretary may issue a summary seizure order under this title if it appears that a multiple employer welfare arrangement is in a financially hazardous condition.

(f) Regulations.—The Secretary may promulgate such regulations or other guidance as may be necessary or appropriate to carry out this section.

(g) Exception.—This section shall not apply to any plan or arrangement that does not fall within the meaning of the term ‘multiple employer welfare arrangement’ under section 3(40)(A).

[CCH Explanation at ¶ 1873.]

Amendments

P.L. 111-148, §6605(a):
Added ERISA Sec. 521 to read as above.

The above amendment is effective on the date of enactment (March 23, 2010).

[¶ 16,191] ADDITIONAL MARKET REFORMS

ERISA Sec. 715(a) General rule.—Except as provided in subsection (b)—

(1) the provisions of part A of title XXVII of the Public Health Service Act (as amended by the Patient Protection and Affordable Care Act) shall apply to group health plans, and health insurance issuers providing health insurance coverage in connection with group health plans, as if included in this subpart; and

(2) to the extent that any provision of this part conflicts with a provision of such part A with respect to group health plans, or health insurance issuers providing health insurance coverage in connection with group health plans, the provisions of such part A shall apply.

(b) Exception.—Notwithstanding subsection (a), the provisions of sections 2716 and 2718 of title XXVII of the Public Health Service Act (as amended by the Patient Protection and Affordable Care Act) shall not apply
with respect to self-insured group health plans, and the provisions of this part shall continue to apply to such plans as if such sections of the Public Health Service Act (as so amended) had not been enacted.

[CCH Explanation at ¶ 2470.]

Amendments

P.L. 111-148, §1562(e) [as redesignated by Act Sec. 10107(b)]

The above amendment is effective on the date of enactment (March 23, 2010).

Added ERISA Sec. 715 to read as above.