

ARKANSAS



DEPARTMENT OF COMMERCE  
INSURANCE DEPARTMENT

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BULLETIN NO. 2-77

TO ALL AUTHORIZED LIFE AND DISABILITY INSURERS AND AGENTS

RE: U.S. PUBLIC LAW 93-406, THE EMPLOYEE RETIREMENT INCOME  
SECURITY ACT OF 1974 ("ERISA") AS IT RELATES TO THE  
REGULATION OF INSURANCE IN THE STATE OF ARKANSAS

Since the enactment of the above-referenced law in 1974, much speculation has existed regarding the extent to which, if any, the ERISA legislation preempts the right of the several states, including Arkansas, to regulate the sale of insurance on persons or risks situated within our borders.

As many of you are aware, this Department has taken the position that ERISA does not preempt our traditional authority to regulate the solicitation and sale of insurance in this State and we have, also, been very active in the efforts of the National Association of Insurance Commissioners (NAIC) to secure clarification of this Act by the Department of Labor, by Congress, or through the judicial process.

It is our suggestion to you that if any of you are considering forming an entity under ERISA or participating in any programs formed by others which purport to be exempt from State regulation as insurance by virtue of the provisions of the ERISA legislation, you should be aware of the provisions of Ark. Stats. §66-2901, which prohibits any person from representing or aiding unauthorized insurers, and §66-3521 and §66-3522, which requires all group life and disability insurance placed by an employer on employees who are Arkansas residents to be placed with authorized or admitted insurers, and makes the employer liable for any uncollectable judgments against an unauthorized insurer.

The aforementioned statutes will be strictly enforced by the Department. We are maintaining a list of these alleged unauthorized entities and we will provide information upon inquiry.

Each of the captioned insurers is hereby made responsible for the dissemination of this Bulletin to all of its Arkansas agents.