

2023 Regular Session

HOUSE BILL NO. 190

BY REPRESENTATIVE HOLLIS

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

INSURANCE: Provides relative to employee benefit plans preempted by the Employee Retirement Income Security Act of 1974

1 AN ACT
2 To amend and reenact R.S. 22:1044(A)(introductory paragraph) and (4),
3 1060.1(introductory paragraph) and (6), 1061(2)(b), 1221(introductory paragraph)
4 and (3), 1831(introductory paragraph) and (14), and 1852(introductory paragraph)
5 and (7) and to enact R.S. 22:470, relative to employee benefit plans preempted by
6 the Employee Retirement Income Security Act of 1974; to provide for applicability;
7 to provide for and delete certain references to preemption; to provide for
8 severability; to provide for technical changes; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. R.S. 22:1044(A)(introductory paragraph) and (4), 1060.1(introductory
11 paragraph) and (6), 1061(2)(b), 1221(introductory paragraph) and (3), 1831(introductory
12 paragraph) and (14), and 1852(introductory paragraph) and (7) are hereby amended and
13 reenacted and R.S. 22:470 is hereby enacted to read as follows:

14 §470. Applicability; preemption; severability

15 The provisions of this Title apply to employee benefit plans only to the extent
16 not preempted by the Employee Retirement Income Security Act of 1974. If any
17 phrase, clause, sentence, or provision of this Title is declared preempted by the
18 Employee Retirement Income Security Act of 1974 through a final, definitive
19 decision by a court of competent jurisdiction, or if the commissioner determines
20 application of a provision of this Title to an employee benefit plan is reasonably

1 likely to be preempted by the Employee Retirement Income Security Act of 1974,
2 the validity of the remainder of this Title and the applicability thereof to any other
3 entity, person, or circumstance shall not be affected.

4 * * *

5 §1044. Health coverage; participants in clinical trials

6 A. As used in this Section, the following terms and phrases ~~shall~~ have the
7 following meanings unless the context clearly indicates otherwise:

8 * * *

9 (4) "Health insurance issuer" means an insurance company, including a
10 health maintenance organization as defined and licensed pursuant to Subpart I of Part
11 I of Chapter 2 of this Title, ~~unless preempted as an employee benefit plan under the~~
12 ~~Employee Retirement Income Security Act of 1974.~~ For purposes of this Section
13 and Subpart B of Part II of Chapter 6 of this Title, a "health insurance issuer" ~~shall~~
14 ~~include~~ includes the Office of Group Benefits programs.

15 * * *

16 §1060.1. Definitions

17 As used in this Subpart, the following definitions ~~shall~~ apply:

18 * * *

19 (6) "Health insurance issuer" or "issuer" means any entity that offers a health
20 benefit plan through a policy, contract, or certificate of insurance subject to state law
21 that regulates the business of insurance. For purposes of this Subpart, a "health
22 insurance issuer" or "issuer" ~~shall include but not be~~ includes but is not limited to a
23 health maintenance organization as defined and licensed pursuant to Subpart I of Part
24 I of Chapter 2 of this Title. A "health insurance issuer" or "issuer" ~~shall not include~~
25 ~~any entity preempted as an employee benefit plan under the Employee Retirement~~
26 ~~Income Security Act of 1974 or~~ does not include the Office of Group Benefits.

27 * * *

28 §1061. Definitions

29 * * *

1 (2) Definitions relating to health insurance are:

2 * * *

3 (b) "Health insurance issuer" means an insurance company, including a health
4 maintenance organization, as defined and licensed to engage in the business of
5 insurance under Subpart I of Part I of Chapter 2 of this Title, ~~unless preempted as an~~
6 ~~employee benefit plan under the Employee Retirement Income Security Act of 1974.~~
7 Such term does not include a group health plan.

8 * * *

9 §1221. Definitions

10 For purposes of this Subpart, the following definitions ~~shall~~ apply:

11 * * *

12 (3) "Health insurance issuer" means an insurance company, including a
13 health maintenance organization as defined and licensed pursuant to Subpart I of Part
14 I of Chapter 2 of this Title, ~~unless preempted as an employee benefit plan under the~~
15 ~~Employee Retirement Income Security Act of 1974.~~

16 * * *

17 §1831. Definitions

18 As used in this Subpart, the following terms ~~shall be~~ are defined as follows:

19 * * *

20 (14) "Health insurance issuer" or "issuer" means any entity that offers health
21 insurance coverage through a policy, contract, or certificate of insurance subject to
22 state law that regulates the business of insurance. For purposes of this Subpart, a
23 "health insurance issuer" or "issuer" ~~shall include but not be~~ includes but is not
24 limited to a health maintenance organization as defined and licensed pursuant to
25 Subpart I of Part I of Chapter 2 of this Title. ~~A "health insurance issuer" or "issuer"~~
26 ~~shall not include any entity preempted as an employee benefit plan under the~~
27 ~~Employee Retirement Income Security Act of 1974.~~

28 * * *

1 §1852. Definitions

2 As used in this Subpart, the following terms ~~shall be~~ are defined as follows:

3 * * *

4 (7) "Health insurance issuer" means an insurance company, including a
5 health maintenance organization as defined and licensed pursuant to Subpart I of Part
6 I of Chapter 2 of this Title, ~~unless preempted as an employee benefit plan under the~~
7 ~~Employee Retirement Income Security Act of 1974~~. For purposes of this Subpart,
8 a "health insurance issuer" ~~shall include~~ includes the Office of Group Benefits.

9 * * *

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 190 Original

2023 Regular Session

Hollis

Abstract: Modifies relative to a health insurance issuer and its application as an employee benefit plan under the federal Employee Retirement Income Security Act of 1974 (ERISA).

Present law provides for the La. Insurance Code (Title 22 of the La. Revised Statutes of 1950).

Present law applies varying definitions of "health insurance issuer" within the La. Insurance Code. Further provides that a health insurance issuer does not include an entity preempted as an employee benefit plan under ERISA.

Proposed law (R.S. 22:470) deletes certain present law references to non-inclusion of health insurance issuers preempted as employee benefit plans under ERISA. Further specifies that the La. Insurance Code applies to an employee benefit plan only to the extent that such plan is not preempted by ERISA.

Proposed law provides that if any provision of the La. Insurance Code is preempted by ERISA through a final, definitive decision by a court of competent jurisdiction, or if the commissioner of insurance determines application of a provision of the La. Insurance Code to an employee benefit plan is reasonably likely to be preempted by ERISA, the validity of the remainder of the La. Insurance Code and the Code's applicability to any other entity, person, or circumstance will not be affected.

(Amends R.S. 22:1044(A)(intro. para.) and (4), 1060.1(intro. para.) and (6), 1061(2)(b), 1221(intro. para.) and (3), 1831(intro. para.) and (14), and 1852(intro. para.) and (7); Adds R.S. 22:470)