

**State of Utah**  
**Administrative Rule Analysis**  
 Revised June 2021

NOTICE OF PROPOSED RULE		
<b>TYPE OF RULE:</b> New ___; Amendment ___; Repeal <u>x</u> ; Repeal and Reenact ___		
<b>Title No. - Rule No. - Section No.</b>		
<b>Utah Admin. Code Ref (R no.):</b>	<b>R590-88</b>	<b>Filing ID (Office Use Only)</b>
<b>Changed to Admin. Code Ref. (R no.):</b>	<b>R</b>	

**Agency Information**

<b>1. Department:</b>	Insurance	
<b>Agency:</b>	Administration	
<b>Room no.:</b>	Suite 2300	
<b>Building:</b>	Taylorsville State Office Building	
<b>Street address:</b>	4315 S. 2700 W.	
<b>City, state and zip:</b>	Taylorsville, UT 84129	
<b>Mailing address:</b>	PO Box 146901	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6901	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Steve Gooch	801-957-9322	sgooch@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R590-88. Prohibited Transactions Between Producers and Unauthorized Multiple Employer Trusts
<b>3. Purpose of the new rule or reason for the change</b> (Why is the agency submitting this filing?):
The rule is being repealed as a result of Executive Order 2021-12. During the review of this rule, the department determined that the rule is unnecessary.
<b>4. Summary of the new rule or change</b> (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):
This rule is being repealed because it is unnecessary. Entities wishing to organize a multiple employer trust are required to register with the US Department of Labor rather than the state.

**Fiscal Information**

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
There is no anticipated cost or savings to the state budget. Only one entity ever registered a multiple employer plan with the state, and that entity voluntarily surrendered its license in 2012. Also, the licensing chapter for this type of entity was repealed during the 2016 General Session in HB36, Insurance Revisions.
<b>B) Local governments:</b>
There is no anticipated cost or savings to local governments. The option to organize a multiple employer plan is still available through the US Department of Labor, should an entity meet the required criteria and wish to do so.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
There is no anticipated cost or savings to small businesses. The option to organize a multiple employer plan is still available through the US Department of Labor, should an entity meet the required criteria and wish to do so.
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):

There is no anticipated cost or savings to non-small businesses. The option to organize a multiple employer plan is still available through the US Department of Labor, should an entity meet the required criteria and wish to do so.

**E) Persons other than small businesses, non-small businesses, state, or local government entities** ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an **agency**):

There is no anticipated cost or savings to any other persons. The option to organize a multiple employer plan is still available through the US Department of Labor, should an entity meet the required criteria and wish to do so.

**F) Compliance costs for affected persons** (How much will it cost an impacted entity to adhere to this rule or its changes?):

There are no compliance costs for any affected persons. There are currently no entities in Utah to which this rule applies; repealing the rule will have no affect and require no compliance.

**G) Comments by the department head on the fiscal impact this rule may have on businesses** (Include the name and title of the department head):

After conducting a thorough analysis, it was determined that this proposed rule amendment will not result in a fiscal impact to businesses. — Jonathan T. Pike, Insurance Commissioner

**6. A) Regulatory Impact Summary Table** (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table			
Fiscal Cost	FY2022	FY2023	FY2024
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**B) Department head approval of regulatory impact analysis:**

The Commissioner of Insurance, Jonathan T. Pike, has reviewed and approved this fiscal analysis.

**Citation Information**

**7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Section 31A-2-201	Section 31A-23a-402	

**Incorporations by Reference Information**

(If this rule incorporates more than two items by reference, please include additional tables.)

**8. A) This rule adds, updates, or removes the following title of materials incorporated by references** (a copy of materials incorporated by reference must be submitted to the Office of Administrative Rules; *if none, leave blank*):

	First Incorporation
<b>Official Title of Materials Incorporated (from title page)</b>	
<b>Publisher</b>	

<b>Date Issued</b>	
<b>Issue, or version</b>	

**B) This rule adds, updates, or removes the following title of materials incorporated by references** (a copy of materials incorporated by reference must be submitted to the Office of Administrative Rules; *if none, leave blank*):

	<b>Second Incorporation</b>
<b>Official Title of Materials Incorporated (from title page)</b>	
<b>Publisher</b>	
<b>Date Issued</b>	
<b>Issue, or version</b>	

#### Public Notice Information

**9. The public may submit written or oral comments to the agency identified in box 1.** (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

**A) Comments will be accepted until** (mm/dd/yyyy): 10/01/2021

**B) A public hearing (optional) will be held:**

<b>On</b> (mm/dd/yyyy):	<b>At</b> (hh:mm AM/PM):	<b>At</b> (place):

**10. This rule change MAY become effective on** (mm/dd/yyyy): 10/08/2021

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

#### Agency Authorization Information

**To the agency:** Information requested on this form is required by Sections 63G-3-301, 302, 303, and 402. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the *Utah State Bulletin* and delaying the first possible effective date.

<b>Agency head or designee, and title:</b>	Steve Gooch, Public Information Officer	<b>Date</b> (mm/dd/yyyy):	08/13/2021
--	---	---------------------------	------------

#### **~~R590. Insurance, Administration.~~**

#### **~~R590 88. Prohibited Transactions Between Producers And Unauthorized Multiple Employer Trusts.~~**

#### **~~R590 88 1. Purpose and Authority.~~**

~~It is the responsibility of the Utah State Insurance Department to assist with the maintenance of a fair and honest insurance market and to protect the residents of this state against acts by persons attempting to evade the insurance laws of the state. The insurance market is subject to regulation to prevent, among other things, unfair competition from persons and entities not authorized to conduct an insurance business.~~

~~This rule is issued pursuant to the authority vested in the commissioner under Sections 31A 2 201, and 31A 23a 402.~~

#### **~~R590 88 2. Background.~~**

~~In the State of Utah entities representing themselves as Multiple Employer Trusts (METs) under the Employee Retirement Income Security Act of 1974 (ERISA) are undertaking contractual obligations to provide life, accident and health, disability, or other related insurance type benefits. In many cases these programs are not insured by an insurer licensed in the State of Utah. These programs and entities appear to be providing insurance benefits, although a MET may not refer to such benefits as "insurance."~~

~~METs are not licensed to provide insurance benefits under Section 31A 4 103. METs do not submit reports of financial condition to the Utah State Insurance Department or remit premium taxes on business written. Furthermore, most METs do not meet certain minimum capital and surplus requirements of the Utah insurance laws which are designed to provide protection against an insolvency. A MET may offer certain annuity or insurance type benefits to persons because of their status as employees. These benefits include those common to the following types of insurance: medical, surgical, hospital, sickness, accident, disability, death, retirement income, income deferral.~~

~~\_\_\_\_\_ METs are required to file annual reports with the United States Department of Labor. The annual report should state the extent to which a MET's annuity or insurance type benefits are provided by an insurance carrier.~~

**~~R590-88-3. Definitions.~~**

~~\_\_\_\_\_ (A) Multiple Employer Trust (MET) An entity is herein referred to as a Multiple Employer Trust (MET) if that entity is providing insurance type benefits to employees of more than one employer, and that entity is not an insurance company authorized to do business in the state of Utah.~~

~~\_\_\_\_\_ (B) Unauthorized Multiple Employer Trust An entity purporting to be a Multiple Employer Trust (MET) is hereby defined as an Unauthorized Multiple Employer Trust if:~~

~~\_\_\_\_\_ (1) The MET has not received an opinion letter from the United States Department of Labor recognizing the entity as a qualified trust under ERISA, or~~

~~\_\_\_\_\_ (2) The benefits offered are not fully insured by an insurer licensed to do business in the State of Utah and no opinion letter recognizing the entity as a qualified ERISA plan has been issued from the U.S. Department of Labor.~~

~~\_\_\_\_\_ (C) An unauthorized MET is defined to be an unauthorized insurer. Any claimed multiple employer trust which does not fulfill the requirements of a multiemployer plan as defined by ERISA, 29 U.S.C. 1001 et seq., as amended, is also defined to be an unauthorized MET and consequently an unauthorized insurer.~~

~~\_\_\_\_\_ (D) All other definitions are the same as are provided in Chapter 1, Title 31A.~~

**~~R590-88-4. Prohibited Transactions.~~**

~~\_\_\_\_\_ When the Insurance Department finds evidence that a person (as defined in Section 31A-1-301) is engaging, or has engaged, in one or more of the following practices, that person's actions will be treated as prima facie evidence that the person has shown himself to be incompetent, untrustworthy, and/or a source of injury to the public pursuant to Section 31A-23a-111. These practices are:~~

~~\_\_\_\_\_ (A) Accepting commissions, salaries, or any other remuneration for placing business with or soliciting membership in an unauthorized MET, whether or not the arrangement involves a formal contract or is called a commission.~~

~~\_\_\_\_\_ (B) Using the status or title as a licensed insurance producer in any way in connection with placement of business with an unauthorized MET. This shall include, but not be limited to:~~

~~\_\_\_\_\_ (1) Using a producer's letterhead;~~

~~\_\_\_\_\_ (2) Using a producer's office;~~

~~\_\_\_\_\_ (3) Using customer lists or contracts developed as a producer; and~~

~~\_\_\_\_\_ (4) Representing in any manner that the person placing this business is a licensed insurance producer.~~

**~~R590-88-5. Sanctions.~~**

~~\_\_\_\_\_ Producers found to be engaging in, or to have engaged in, the prohibited transactions with unauthorized METs set forth under Section 4 of this rule are subject to one or more of the following sanctions:~~

~~\_\_\_\_\_ (A) Revocation or suspension of the producer's license and/or the imposition of a fine pursuant to Section 31A-23a-111; and~~

~~\_\_\_\_\_ (B) Recovery of any claims or losses pursuant to Section 31A-15-105; and~~

~~\_\_\_\_\_ (C) Any other sanctions provided by law including those found in Section 31A-2-308.~~

**~~R590-88-6. Inquiries.~~**

~~\_\_\_\_\_ In the event any person wishes to determine if a particular entity is a licensed insurer in the State of Utah, an inquiry should be made to the Insurance Department. Inquiries should be addressed as follows: Commissioner of Insurance, Utah State Insurance Department, State Office Building, 450 North State Street, Room 3110, Salt Lake City, Utah 84114, Attention: Producer Licensing Division. Inquiries may also be made by telephone to the Insurance Department at (801) 538-3800.~~

**~~R590-88-7. Severability.~~**

~~\_\_\_\_\_ If any provision or clause of this rule or the application thereof to any person or situation is held invalid, such invalidity shall not affect any other provision or application of the rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.~~

**~~KEY: insurance law~~**

**~~Date of Enactment or Last Substantive Amendment: 1989~~**

**~~Notice of Continuation: December 16, 2019~~**

**~~Authorizing, and Implemented or Interpreted Law: 31A-2-101; 31A-2-201; 31A-2-211~~**