

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