

1984 WL 249699 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 10, 1984

***1 RE: H. 2229**

Louis P. HERNs
Research Assistant
House of Representatives
Labor, Commerce and Industry Committee
Post Office Box 11867
Columbia, South Carolina 29211

Dear Mr. HERNs:

Your letter to the Attorney General requesting an opinion as to the constitutionality of H. 2229 has been referred to me for reply. Please address any future correspondence in this matter directly to me.

As we have discussed by telephone, your concern appears to center upon Sections 7(d), 8(a) and 8(b) which purport to authorize the payment of certain specified fees to pharmacies which participate in an approved third-party prescription program in this state. Those sections of the bill address respectively the payment of interest or late charges on overdue accounts, reimbursement for pharmaceutical services at 'the usual and customary rates,' and reimbursement of an administrative fee covering the pharmacy's cost of participation in the program. Recent court decisions have cast doubt upon the constitutionality of such provisions, principally finding them to be impermissible state involvement in employee benefit plans, based essentially upon federal preemption of the field by the Employee Retirement Income Security Act of 1974 ('ERISA'), 29 U.S.C.S., § 1001, et seq. See, [Shaw v. Delta Airlines, Inc.](#), 463 U.S. 85, 77 L.Ed.2d 490, 103 S.Ct. 2890 (1983); [Blue Cross & Blue Shield of Alabama v. Peacock's Apothecary, Inc.](#), 567 F.Supp. 1258 (N.D. Ala. 1983); [Group Life & Health Insurance Co., et al. v. Royal Drug Co., et al.](#), 440 U.S. 205, 59 L.Ed.2d 261, 99 S.Ct. 1067, reh. den., 441 U.S. 917, 60 L.Ed.2d 389, 99 S.Ct. 2017 (1979). Although the cases are not directly on point with your concern, the rationales applied by the courts to the particular facts of each case provide more questions than answers about the validity of provisions such as those contained in Sections 7(d), 8(a), and 8(b). In the final analysis, such questions can only be answered by the courts.

However, I am now advised that a recent amendment to H. 2229 has deleted the aforementioned provisions thereby avoiding questions as to their constitutionality and obviating the need here for a more detailed discussion. It is my further understanding that the subject deleted provisions are very similar to provisions contained in Georgia's statute on the same subject, which I am advised is undergoing judicial review at this time. The outcome of that case may provide helpful guidance to the General Assembly later should such provisions again be deemed appropriate.

I have reviewed the remaining provisions of H. 2229 with other members of this Office and we have identified no apparent problems with their facial constitutionality under state or federal law.

I trust the preceding discussion adequately answers your question, however, if any further explanation or assistance is required, please do not hesitate to contact me.

With best regards, I am
Very truly yours,

*2 Richard P. Wilson
Assistant Attorney General

1984 WL 249699 (S.C.A.G.)

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.