

Union Calendar No. 248

104TH CONGRESS
2^D SESSION

H. R. 995

[Report No. 104-498, Part I]

A BILL

To amend the Employee Retirement Income Security Act of 1974 to provide new portability, participation, solvency, claims, and other consumer protections and freedoms for workers in a mobile workforce; to increase purchasing power for employees and employees by removing barriers to the voluntary formation of multiple employer health plans and fully-insured multiple employer arrangements; to increase health plan competition providing more affordable choice of coverage by removing restrictive State laws relating to provider health networks, employer health coalitions, and insured plans and the offering of medisave plans; to expand access to fully-insured coverage for employees of small employers through fair rating standards and open markets, and for other purposes.

MARCH 29, 1996

Committee on Commerce discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 21, 1995

Mr. FAWELL (for himself, Mr. GOODLING, Mr. ARMEY, Mr. PETRI, Mrs. ROUKEMA, Mr. BALLENGER, Mr. HOEKSTRA, Mr. MCKEON, Mrs. MEYERS of Kansas, Mr. TALENT, Mr. GREENWOOD, Mr. HUTCHINSON, Mr. KNOLLENBERG, Mr. GRAHAM, Mr. WELDON of Florida, and Mr. MCINTOSH) introduced the following bill; which was referred to the Committee on Economic and Educational Opportunity and, in addition, to the Committee on Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

MARCH 21, 1995

Additional sponsors: Mr. CUNNINGHAM, Mr. WELLER, Mr. MCHUGH, and Mr. CALVERT

MARCH 25, 1996

Reported from the Committee on Economic and Educational Opportunities
with amendments

[Strike out all after the enacting clause and insert the part printed in *italic*]

MARCH 25, 1996

Referral to the Committee on Commerce extended for a period ending not later than March 29, 1996

MARCH 29, 1996

Additional sponsors: Mr. PICKETT, Mr. GALLEGLY, Mr. COOLEY of Oregon, Mr. ENGLISH of Pennsylvania, Mr. PORTER, Mr. SOUDER, Mr. RIGGS, Mr. SOLOMON, Mr. FLANAGAN, Mr. SHAYS, Mr. LEACH, Mr. SAXTON, Ms. LOFGREN, Mr. LIPINSKI, Mr. BARTON of Texas, Mr. CANADY of Florida, Mr. DEAL of Georgia, Mr. HYDE, Mr. WELDON of Pennsylvania, Mr. POSHARD, Mr. TRAFICANT, Mr. BOEHLERT, Mr. ROYCE, Mr. DICK-EY, Mr. PACKARD, Mr. NEY, Mr. UPTON, Mr. NORWOOD, Mr. GUNDERSON, Mr. SAM JOHNSON of Texas, and Mr. QUINN

Deleted sponsor: Mr. ALLARD (added March 22, 1995; deleted May 16, 1995)

MARCH 29, 1996

Committee on Commerce discharged; committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[For text of introduced bill, see copy of bill as introduced on February 21, 1995]

A BILL

To amend the Employee Retirement Income Security Act of 1974 to provide new portability, participation, solvency, claims, and other consumer protections and freedoms for workers in a mobile workforce; to increase purchasing power for employers and employees by removing barriers to the voluntary formation of multiple employer health plans and fully-insured multiple employer arrangements; to increase health plan competition providing more affordable choice of coverage by removing restrictive State laws relating to provider health networks, employer health coalitions, and insured plans and the offering of medisave plans; to expand access to fully-insured coverage for employees of small employers through fair rating standards and open markets, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “ERISA Targeted Health*
 5 *Insurance Reform Act of 1996”.*

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“SUBPART A—PREEXISTING CONDITION LIMITATIONS, PORTABILITY, AND
RENEWABILITY

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1 **TITLE I—INCREASED AVAILABIL-**
2 **ITY AND CONTINUITY OF**
3 **GROUP HEALTH PLAN COV-**
4 **ERAGE FOR EMPLOYEES AND**
5 **THEIR FAMILIES**

6 **SEC. 101. DEFINITION OF GROUP HEALTH PLAN.**

7 (a) *IN GENERAL.*—Section 3 of the Employee Retirement
8 *Income Security Act of 1974 (29 U.S.C. 1002) is*
9 *amended by adding at the end the following new paragraph:*

10 “(42) *Except as otherwise provided in this title, the*
11 *term ‘group health plan’ means an employee welfare benefit*
12 *plan to the extent that the plan provides medical care (with-*
13 *in the meaning of section 607(1)) to employees or their de-*
14 *pendents (as defined under the terms of the plan) directly*
15 *or through insurance, reimbursement, or otherwise.”.*

1 (b) *INCLUSION OF CERTAIN PARTNERS AND SELF-EM-*
2 *PLOYED SPONSORS IN DEFINITION OF PARTICIPANT.*—*Sec-*
3 *tion 3(7) of such Act (29 U.S.C. 1002(7)) is amended—*

4 (1) *by inserting “(A)” after “(7)”;* and

5 (2) *by adding at the end the following new para-*
6 *graph:*

7 “(B) *In the case of a group health plan, such term*
8 *includes—*

9 “(i) *in connection with a group health plan*
10 *maintained by a partnership, an individual who is*
11 *a partner in relation to the partnership, or*

12 “(ii) *in connection with a group health plan*
13 *maintained by a self-employed individual (under*
14 *which one or more employees are participants), the*
15 *self-employed individual,*

16 *if such individual is or may become eligible to receive a*
17 *benefit under the plan or such individual’s beneficiaries*
18 *may be eligible to receive any such benefit.”.*

19 **SEC. 102. ACCESS TO, AND CONTINUITY OF, GROUP HEALTH**
20 **PLAN COVERAGE.**

21 (a) *IN GENERAL.*—*Subtitle B of title I of the Employee*
22 *Retirement Income Security Act of 1974 is amended by*
23 *adding at the end the following:*

1 **“PART 8—ACCESS TO, AND CONTINUITY OF,**
2 **GROUP HEALTH PLAN COVERAGE**

3 **“SEC. 800. DEFINITIONS AND SPECIAL RULES.**

4 “(a) *IN GENERAL.*—*For purposes of this part:*

5 “(1) *EMPLOYER.*—*The term ‘employer’ shall*
6 *have the meaning applicable under section 3(5), ex-*
7 *cept that such term includes the partnership in rela-*
8 *tion to any partner.*

9 “(2) *FULLY INSURED.*—*The term ‘fully insured’*
10 *shall have the meaning applicable under section*
11 *701(1).*

12 “(3) *HEALTH INSURANCE COVERAGE.*—

13 “(A) *IN GENERAL.*—*Except as provided in*
14 *subparagraph (B), the term ‘health insurance*
15 *coverage’ means any hospital or medical service*
16 *policy or certificate, hospital or medical service*
17 *plan contract, or health maintenance organiza-*
18 *tion group contract offered by an insurer or a*
19 *health maintenance organization, to the extent of*
20 *the benefits under such policy, certificate, or con-*
21 *tract consisting of medical care, provided di-*
22 *rectly, through insurance or reimbursement, or*
23 *otherwise.*

24 “(B) *EXCEPTION.*—*Such term does not in-*
25 *clude coverage under any separate policy, certifi-*

1 *cate, or contract only for one or more of any of*
2 *the following:*

3 “(i) *Coverage for accident, dental, vi-*
4 *sion, disability income, on-site medical clin-*
5 *ics, employee assistance programs, or long-*
6 *term care insurance, or any combination*
7 *thereof.*

8 “(ii) *Medicare supplemental health in-*
9 *surance (within the meaning of section*
10 *1882(g)(1) of the Social Security Act (42*
11 *U.S.C. 1395ss(g)(1))) and similar supple-*
12 *mental coverage provided under a group*
13 *health plan.*

14 “(iii) *Coverage issued as a supplement*
15 *to liability insurance.*

16 “(iv) *Liability insurance, including*
17 *general liability insurance and automobile*
18 *liability insurance.*

19 “(v) *Worker’s compensation or similar*
20 *insurance.*

21 “(vi) *Automobile medical-payment in-*
22 *surance.*

23 “(vii) *Coverage consisting of benefit*
24 *payments made on a periodic basis for a*
25 *specified disease or illness or period of hos-*

1 *pitalization, without regard to the costs in-*
2 *curred or services rendered during the pe-*
3 *riod to which the payments relate.*

4 *“(viii) Such other purpose as the Sec-*
5 *retary may prescribe by regulation.*

6 *“(4) HEALTH MAINTENANCE ORGANIZATION.—*
7 *The term ‘health maintenance organization’ means a*
8 *Federally qualified health maintenance organization*
9 *(as defined in section 1301(a) of the Public Health*
10 *Service Act (42 U.S.C. 300e(a))), an organization rec-*
11 *ognized under State law as a health maintenance or-*
12 *ganization, or a similar organization regulated under*
13 *State law for solvency in the same manner and to the*
14 *same extent as such a health maintenance organiza-*
15 *tion.*

16 *“(5) INSURER.—The term ‘insurer’ means an in-*
17 *surance company, insurance service, or insurance or-*
18 *ganization licensed to engage in the business of insur-*
19 *ance in a State.*

20 *“(6) MEDICAL CARE.—The term ‘medical care’*
21 *means medical care within the meaning of section*
22 *607(1).*

23 *“(7) NETWORK PLAN.—The term ‘network plan’*
24 *means an arrangement of an insurer or a health*
25 *maintenance organization under which the financing*

1 *and delivery of medical care are provided, in whole*
2 *or in part, through a defined set of providers under*
3 *contract with the insurer or health maintenance orga-*
4 *nization.*

5 *“(b) COVERAGE.—This part shall apply in the case of*
6 *a group health plan for any plan year only if such group*
7 *health plan has two or more participants as current em-*
8 *ployees on the first day of such plan year.*

9 *“(c) SPECIAL RULES PROVIDING FOR TREATMENT AS*
10 *GROUP HEALTH PLAN.—*

11 *“(1) An employee welfare benefit plan shall be*
12 *treated as a group health plan under this part only*
13 *with respect to medical care (within the meaning of*
14 *section 607(1))) which is provided under the plan and*
15 *which does not consist of coverage excluded from the*
16 *definition of health insurance coverage under sub-*
17 *section (a)(3)(B).*

18 *“(2) Any plan, fund, or program which would*
19 *not be (but for this paragraph) an employee welfare*
20 *benefit plan and which is established or maintained*
21 *by a partnership, to the extent that such plan, fund,*
22 *or program provides medical care (within the mean-*
23 *ing of section 607(1)) to present or former partners*
24 *in the partnership or to their dependents (as defined*
25 *under the terms of the plan, fund, or program), di-*

1 *rectly or through insurance, reimbursement, or other-*
2 *wise, shall be treated (subject to paragraph (1)) as an*
3 *employee welfare benefit plan which is a group health*
4 *plan.*

5 ***“Subpart A—Preexisting Condition Limitations,***
6 ***Portability, and Renewability***

7 ***“SEC. 801. LIMITATIONS ON PREEXISTING CONDITION EX-***
8 ***CLUSIONS.***

9 *“(a) TIME CONSTRAINTS ON LIMITATIONS OR EXCLU-*
10 *SIONS BASED ON PREEXISTING CONDITIONS.—*

11 *“(1) IN GENERAL.—A group health plan, and an*
12 *insurer or health maintenance organization offering*
13 *health insurance coverage in connection with a group*
14 *health plan, may provide a limitation on, or exclu-*
15 *sion of, the benefits of a participant or beneficiary*
16 *otherwise available under the terms of the plan based*
17 *on a preexisting condition only if the limitation or*
18 *exclusion does not extend beyond—*

19 *“(A) in the case of a participant or bene-*
20 *ficiary whose initial coverage commences at the*
21 *time such participant or beneficiary first be-*
22 *comes eligible for coverage under the plan, 12*
23 *months after the effective date of such coverage,*
24 *or*

1 “(B) in the case of a participant or bene-
2 ficiary whose initial coverage commences pursu-
3 ant to an election made after the period in which
4 the election may first be made, 18 months after
5 the effective date of such coverage.

6 “(2) *PREEXISTING CONDITION.*—For purposes of
7 paragraph (1), the term ‘preexisting condition’ means
8 a medical condition which was diagnosed, or which
9 was treated—

10 “(A) in the case of a participant or bene-
11 ficiary described in paragraph (1)(A), within the
12 6-month period preceding the effective date of the
13 coverage of such participant or beneficiary (as
14 determined by disregarding any applicable wait-
15 ing period), or

16 “(B) in the case of a participant or bene-
17 ficiary described in paragraph (1)(B), within the
18 12-month period preceding the effective date of
19 the coverage of such participant or beneficiary
20 (as determined by disregarding any applicable
21 waiting period).”.

22 “(c) *NO COVERAGE OF SPECIFIC TREATMENT, PROCE-*
23 *DURES, OR CLASSES REQUIRED.*—Nothing in this part
24 may be construed to require the coverage of any specific
25 procedure, treatment, or service as part of a group health

1 *plan or health insurance coverage under this Act or through*
2 *regulation.*

3 “(d) *APPLICATION OF RULES BY CERTAIN HEALTH*
4 *MAINTENANCE ORGANIZATIONS.*—*A health maintenance or-*
5 *ganization that offers health insurance coverage shall not*
6 *be considered as failing to meet the requirements of section*
7 *1301 of the Public Health Service Act notwithstanding that*
8 *it provides for an exclusion of the coverage based on a pre-*
9 *existing condition consistent with the provisions of this sub-*
10 *part, so long as such exclusion is applied in a manner and*
11 *to an extent consistent with the provisions of this subpart.*

12 “(e) *ELIGIBILITY PERIOD IMPOSED BY HEALTH MAIN-*
13 *TENANCE ORGANIZATIONS AS ALTERNATIVE TO PREEXIST-*
14 *ING CONDITION LIMITATION.*—*A health maintenance orga-*
15 *nization which offers health insurance coverage in connec-*
16 *tion with a group health plan and which does not use the*
17 *preexisting condition limitations allowed under this section*
18 *and section 802 with respect to any particular coverage op-*
19 *tion may impose an eligibility period for such coverage op-*
20 *tion, but only if such period does not exceed—*

21 “(1) *90 days, in the case of a participant or ben-*
22 *eficiary whose initial coverage commences at the time*
23 *such participant or beneficiary first becomes eligible*
24 *for coverage under the plan, or*

1 “(2) 180 days, in the case of a participant or
2 beneficiary whose initial coverage commences after the
3 date on which such participant or beneficiary first be-
4 comes eligible for coverage.

5 For purposes of this subsection, the term ‘eligibility period’
6 means a period which, under the terms of the health insur-
7 ance coverage offered by the health maintenance organiza-
8 tion, must expire before the health insurance coverage be-
9 comes effective. Any such eligibility period shall be treated
10 for purposes of this subpart as a waiting period under the
11 plan and shall run concurrently with any other applicable
12 waiting period under the plan.

13 **“SEC. 802. PORTABILITY.**

14 “(a) IN GENERAL.—Each group health plan, and each
15 insurer or health maintenance organization offering health
16 insurance coverage in connection with a group health plan,
17 shall provide that if a participant or beneficiary is in a
18 period of continuous coverage (as defined in subsection (e))
19 as of a date upon which coverage takes effect under the plan,
20 any period of limitation on, or exclusion of, covered benefits
21 in connection with a preexisting condition (as permitted
22 under section 801) shall be reduced by 1 month for each
23 month in the period of continuous coverage.

24 “(b) CONSTRUCTION.—Nothing in this section shall be
25 construed to prohibit a limitation on, or exclusion of, any

1 benefit of a participant or beneficiary otherwise available
2 under the terms of the plan based on a preexisting condi-
3 tion, subject to the limits in section 801(a), if such benefit
4 was not previously provided under the group health plan
5 or health insurance coverage (or coverage consisting of med-
6 ical care under title XIX of the Social Security Act) under
7 which the individual was covered at the end of the period
8 of continuous coverage referred to in subsection (a).

9 “(c) *DOCUMENTATION.*—A participant or beneficiary
10 may be treated by a group health plan, or by an insurer
11 or health maintenance organization offering health insur-
12 ance coverage in connection with a group health plan, as
13 not being in a period of continuous coverage if, upon the
14 request of the plan or of the insurer or health maintenance
15 organization (as the case may be), the participant or bene-
16 ficiary does not present satisfactory documentation of such
17 period of continuous coverage. The Secretary may prescribe
18 regulations defining standards for satisfactory documenta-
19 tion for purposes of this subsection.

20 “(d) *NO PREEXISTING CONDITION FOR NEWBORNS*
21 *AND ADOPTED CHILDREN.*—For purposes of this subpart—

22 “(1) *NEWBORNS.*—A child who, within the 30-
23 day period beginning with the date of birth, becomes
24 covered under a group health plan or otherwise be-
25 comes covered under health insurance coverage (or

1 *coverage consisting of medical care under title XIX of*
2 *the Social Security Act) and remains thereafter in a*
3 *period of continuous coverage shall not be considered,*
4 *beginning at the time of birth, to have any preexist-*
5 *ing condition.*

6 “(2) *ADOPTED CHILDREN.*—*An adopted child or*
7 *a child placed for adoption (within the meaning of*
8 *section 609(c)(3)(B)) who, within the 30-day period*
9 *beginning on the date of adoption or placement, be-*
10 *comes covered under a group health plan or otherwise*
11 *becomes covered under health insurance coverage (or*
12 *coverage providing medical care under title XIX of*
13 *the Social Security Act) and remains thereafter in a*
14 *period of continuous coverage shall not be considered,*
15 *beginning at the time of adoption or placement, to*
16 *have any preexisting condition.*

17 “(e) *PERIOD OF CONTINUOUS COVERAGE.*—*For pur-*
18 *poses of this subpart, the term ‘period of continuous cov-*
19 *erage’ means the period—*

20 “(1) *beginning on the date an individual be-*
21 *comes covered under a group health plan or otherwise*
22 *becomes covered under health insurance coverage (or*
23 *coverage consisting of medical care under title XIX of*
24 *the Social Security Act), and*

1 “(2) ending on the date the individual does not
2 have such coverage for a continuous period of more
3 than 60 days.

4 **“SEC. 803. REQUIREMENTS FOR RENEWABILITY OF COV-**
5 **ERAGE.**

6 “(a) *MULTIEMPLOYER PLANS, MULTIPLE EMPLOYER*
7 *HEALTH PLANS, AND MULTIPLE EMPLOYER WELFARE AR-*
8 *RANGEMENTS.*—A group health plan which is a multiem-
9 ployer plan or a multiple employer health plan (as defined
10 in section 701(4)), and a multiple employer welfare ar-
11 rangement (to the extent to which benefits under the ar-
12 rangement consist of medical care and are fully insured),
13 may not deny an employer whose employees are covered
14 under such a plan or arrangement continued access to the
15 same or different coverage under the terms of such a plan
16 or arrangement, other than—

17 “(1) for nonpayment of contributions,

18 “(2) for fraud or other intentional misrepresen-
19 tation by the employer,

20 “(3) for noncompliance with material plan or
21 arrangement provisions,

22 “(4) because the plan or arrangement is ceasing
23 to offer any coverage in a geographic area,

24 “(5) for failure to meet the terms of an applica-
25 ble collective bargaining agreement, to renew a collec-

1 *tive bargaining or other agreement requiring or au-*
2 *thorizing contributions to the plan, or to employ em-*
3 *ployees covered by such an agreement,*

4 *“(6) in the case of a plan or arrangement to*
5 *which subparagraph (C), (D), or (E) of section 3(40)*
6 *applies, to the extent necessary to meet the require-*
7 *ments of such subparagraph, or*

8 *“(7) in the case of a multiple employer health*
9 *plan (as defined in section 701(4)), for failure to meet*
10 *the requirements under part 7 for exemption under*
11 *section 514(b)(6)(B).*

12 *Nothing in this subsection shall be construed to preclude*
13 *any such plan or arrangement from establishing employer*
14 *contribution requirements or group participation require-*
15 *ments not otherwise prohibited by this Act.*

16 *“(b) INSURERS AND HEALTH MAINTENANCE ORGANI-*
17 *ZATIONS.—*

18 *“(1) IN GENERAL.—In any case in which an in-*
19 *surer or a health maintenance organization is provid-*
20 *ing health insurance coverage in connection with a*
21 *group health plan, the insurer or health maintenance*
22 *organization may not deny an employer whose em-*
23 *ployees are covered under such plan continued access*
24 *to health insurance coverage provided by such insurer*
25 *or health maintenance organization, other than—*

1 “(A) for nonpayment of premiums or con-
2 tributions in accordance with the terms of the
3 health insurance coverage,

4 “(B) for any act or practice constituting
5 fraud or other intentional misrepresentation
6 under the terms of the health insurance coverage,

7 “(C) for noncompliance with material plan
8 provisions relating to participation or employer
9 contributions, or

10 “(D) subject to paragraph (3), because the
11 insurer or health maintenance organization is
12 ceasing to offer any such coverage in a State, or,
13 in the case of a network plan (as defined in sec-
14 tion 800(a)(7)), in a geographic area.

15 “(2) *DISCONTINUANCE OF OFFERED HEALTH IN-*
16 *SURANCE COVERAGE.*—In any case in which a policy,
17 certificate, or contract referred to in section 800(a)(3)
18 is no longer being offered in connection with group
19 health plans by an insurer or health maintenance or-
20 ganization, health insurance coverage as defined by
21 such policy, certificate, or contract may be discon-
22 tinued by the insurer or health maintenance organi-
23 zation in connection with any group health plan
24 upon the offer to the plan sponsor of an option to
25 purchase any other health insurance coverage cur-

1 rently being offered in connection with group health
2 plans, if the offer of such option is made uniformly
3 in connection with group health plans.

4 “(3) NOTICE REQUIREMENT FOR MARKET
5 EXIT.—Paragraph (1)(D) shall not apply to an in-
6 surer or health maintenance organization ceasing to
7 offer coverage unless the insurer provides notice of
8 such termination to employers and individuals cov-
9 ered at least 180 days before the date of termination
10 of coverage.

11 “(4) EXCEPTION TO REQUIREMENT FOR RENEW-
12 ABILITY OF COVERAGE BY REASON OF FAILURE BY
13 PLAN TO MEET CERTAIN MINIMUM PARTICIPATION
14 RULES.—

15 “(A) IN GENERAL.—Paragraph (1) shall
16 not apply in the case of any group health plan
17 with respect to which participation rules of an
18 insurer or health maintenance organization
19 which are described in subparagraph (B) are not
20 met.

21 “(B) PARTICIPATION RULES.—For purposes
22 of subparagraph (A), participation rules (if any)
23 of an insurer or health maintenance organiza-
24 tion shall be treated as met with respect to a
25 group health plan only if such rules are uni-

1 *formly applicable and in accordance with appli-*
2 *cable State law and the number or percentage of*
3 *eligible individuals who, under the plan, are*
4 *participants or beneficiaries equals or exceeds a*
5 *level which is determined in accordance with*
6 *such rules.*

7 ***“SEC. 804. GROUP HEALTH PLAN ENROLLMENT REQUIRE-***
8 ***MENTS.***

9 ***“(a) ENROLLMENT PERIODS.—***

10 ***“(1) ANNUAL PERIOD.—A group health plan***
11 ***shall provide for at least one annual open enrollment***
12 ***period (of not less than 30 days) each year during***
13 ***which—***

14 ***“(A) employees who are eligible for coverage***
15 ***under the terms of the plan who are not other-***
16 ***wise covered may elect to be covered under at***
17 ***least one benefit option, and***

18 ***“(B) if family coverage is available, em-***
19 ***ployees who are covered but who do not have***
20 ***family coverage may elect family coverage.***

21 ***“(2) ENROLLMENT OF ELIGIBLE INDIVIDUALS***
22 ***WHO LOSE OTHER COVERAGE.—A group health plan***
23 ***shall permit an uncovered employee who is otherwise***
24 ***eligible for coverage under the terms of the plan (or***
25 ***an uncovered dependent, as defined under the terms***

1 of the plan, of such an employee, if family coverage
2 is available) to enroll for coverage under the plan
3 under at least one benefit option if—

4 “(A) the employee or dependent was covered
5 under a group health plan or had health insur-
6 ance coverage at the time coverage was pre-
7 viously offered to the employee or individual,

8 “(B) the employee stated in writing at such
9 time that coverage under a group health plan or
10 health insurance coverage was the reason for de-
11 clining enrollment,

12 “(C) the employee or dependent lost cov-
13 erage under a group health plan or health insur-
14 ance coverage (as a result of loss of eligibility for
15 the coverage, termination of employment, or re-
16 duction in the number of hours of employment),
17 and

18 “(D) the employee requests such enrollment
19 within 30 days after termination of such cov-
20 erage.

21 “(b) *DEPENDENTS.*—

22 “(1) *IN GENERAL.*—If a group health plan makes
23 family coverage available, the plan may not require,
24 as a condition of coverage of a beneficiary of a partic-
25 ipant in the plan, a waiting period applicable to the

1 coverage of a beneficiary who is a newborn or an
2 adopted child or child placed for adoption (within the
3 meaning of section 609(c)(3)(B)), at the time of adop-
4 tion or placement, or a spouse, at the time of mar-
5 riage, if the participant has met any waiting period
6 applicable to that participant.

7 “(2) *TIMELY ENROLLMENT.*—

8 “(A) *IN GENERAL.*—Enrollment of a par-
9 ticipant’s beneficiary described in paragraph (1)
10 shall be considered to be timely if a request for
11 enrollment is made either—

12 “(i) within 30 days of the date of the
13 marriage with such a beneficiary who is the
14 spouse of the participant, or within 30 days
15 of the date of the birth, adoption, or place-
16 ment for adoption of such a beneficiary who
17 is a child of the participant, if family cov-
18 erage is available as of such date, or

19 “(ii) within 30 days of the date family
20 coverage is first made available.

21 “(B) *COVERAGE.*—If available coverage in-
22 cludes family coverage and enrollment is made
23 under such coverage on a timely basis under sub-
24 paragraph (A)(i), the coverage shall become effec-
25 tive not later than the first day of the first

1 month beginning 15 days after the date the com-
2 pleted request for enrollment is received.

3 “(c) *DENIAL OF ENROLLMENT BASED ON PREEXIST-*
4 *ING CONDITION PROHIBITED.*—A group health plan, and
5 *an insurer or health maintenance organization providing*
6 *health insurance coverage in connection with a group health*
7 *plan, may not exclude an employee or his or her beneficiary*
8 *from enrollment under the plan on the basis of a preexisting*
9 *condition (as defined in section 801(a)(2), but regardless*
10 *of the period within which the condition was diagnosed or*
11 *treated).*”.

12 (b) *TREATMENT OF GOVERNMENTAL PLANS.*—

13 (1) *COVERAGE.*—Section 4(b)(1) of such Act (29
14 *U.S.C. 1003(b)(1)) is amended by inserting “except*
15 *with respect to sections 801 and 802,” after “(1)”.*

16 (2) *VOLUNTARY ELECTION WITH RESPECT TO*
17 *GOVERNMENTAL PLANS.*—Section 4 of such Act is
18 *amended further by adding at the end the following*
19 *new subsection:*

20 “(c) *If the plan sponsor of a governmental plan which*
21 *is a group health plan to which sections 801 and 802 apply*
22 *makes an election under this paragraph for any specified*
23 *period (in such form and manner as the Secretary may*
24 *by regulations prescribe), then the provisions of sections 801*
25 *and 802 shall not apply to such governmental plans for*

1 *such period as if the exception in subsection (b)(1) relating*
2 *to sections 801 and 802 did not apply with respect to such*
3 *plan for such period.”.*

4 (3) *INAPPLICABILITY OF PORTABILITY TO PAR-*
5 *TICIPANTS OF NON-ELECTING PLANS.—Section 802 of*
6 *such Act (as added by subsection (a) of this section)*
7 *is amended by adding at the end the following new*
8 *subsection:*

9 “(f) *INAPPLICABILITY OF PORTABILITY TO PARTICI-*
10 *PANTS OF NON-ELECTING PLANS.—A group health plan*
11 *shall not be treated as failing to meet the requirements of*
12 *this section solely because, in determining whether there is*
13 *a period of continuous coverage, the plan disregards cov-*
14 *erage under any other group health plan that is a govern-*
15 *mental plan or church plan which is not subject to this sec-*
16 *tion or section 801.”.*

17 (c) *ENFORCEMENT WITH RESPECT TO INSURERS AND*
18 *HEALTH MAINTENANCE ORGANIZATIONS.—Section 502 of*
19 *such Act (29 U.S.C. 1132) is amended—*

20 (1) *in subsection (a)(6), by striking “subsection*
21 *(c)(2) or (i) or (l)” and inserting “paragraph (2) or*
22 *(5) of subsection (c) or subsection (i) or (l)”;* and

23 (2) *by adding at the end of subsection (c) the fol-*
24 *lowing new paragraph:*

1 “(5) *The Secretary shall enforce under this part the*
2 *requirements of section 801, 802, or 803 with respect to any*
3 *entity which is an insurer or health maintenance organiza-*
4 *tion and which is subject to regulation by any State per-*
5 *mitted under section 514 only if the Secretary determines—*

6 “(A)(i) *with respect to section 801 or 802, that*
7 *such State has not provided for effective enforcement*
8 *of State laws which govern the same matters as are*
9 *governed by such section 801 or 802, respectively (as*
10 *described in section 514(c)) and which are not*
11 *superseded by reason of section 514(c), or*

12 “(ii) *with respect to section 803, that such State*
13 *has not provided for effective enforcement of State*
14 *laws which govern the same matters as are governed*
15 *by such section 803, and which require compliance by*
16 *such entity with at least the same requirements as*
17 *those provided under such section 803, and*

18 “(B) *that such entity has failed to comply with*
19 *the requirements of such section which are applicable*
20 *to such entity.”.*

21 (d) *PREEMPTION OF DIFFERING STATE LAWS.—Sec-*
22 *tion 514 of such Act (29 U.S.C. 1144) is amended—*

23 (1) *in subsection (b)(2)(A), by inserting “and*
24 *subsection (c)” after “subparagraph (B)”;*

1 (2) *by redesignating subsections (c) and (d) as*
2 *subsections (d) and (e), respectively; and*

3 (3) *by inserting after subsection (b) the following*
4 *new subsection:*

5 “(c)(1) *The provisions of sections 801 and 802 shall*
6 *supersede any and all State laws in relation to any group*
7 *health plan to which such sections apply insofar as the re-*
8 *quirements of such laws may now or hereafter—*

9 “(A) *relate to insurers or health maintenance or-*
10 *ganizations offering health insurance coverage in con-*
11 *nection with group health plans,*

12 “(B) *govern the same matters as are governed by*
13 *such sections 801 and 802, and*

14 “(C) *provide requirements which differ from the*
15 *requirements of such sections 801 and 802.*

16 “(2) *Nothing in this subsection shall be construed to*
17 *supercede any law of any State to the extent that such law*
18 *provides for the enforcement of laws which are not*
19 *superceded under paragraph (1).*

20 “(3) *For purposes of this subsection, terms used in this*
21 *subsection which are defined in section 800 shall have the*
22 *meanings provided in such section.”.*

23 (e) *GOOD FAITH COMPLIANCE WITH REQUIREMENT.—*
24 *A group health plan (within the meaning of section 3(42)*
25 *of the Employee Retirement Income Security Act of 1974),*

1 *an insurer (within the meaning of section 800(a)(5) of such*
2 *Act), or a health maintenance organization (within the*
3 *meaning of section 800(a)(4) of such Act) that complies in*
4 *good faith with an applicable requirement of subpart A of*
5 *part 8 of title I of such Act before the date a regulation*
6 *has been published and becomes effective to carry out such*
7 *requirement shall be considered to be in compliance with*
8 *such regulation.*

9 (f) *CONFORMING AMENDMENT.*—Section 607(1) of such
10 *Act (29 U.S.C. 1167(1)) is amended—*

11 (1) *by striking “The term” and inserting the fol-*
12 *lowing:*

13 “(A) *IN GENERAL.*—*The term*”;

14 (2) *by striking “(as defined” and all that follows*
15 *through “1986)”*; and

16 (3) *by adding at the end the following new sub-*
17 *paragraph:*

18 “(B) *MEDICAL CARE.*—*For purposes of this*
19 *paragraph, the term ‘medical care’ means—*

20 “(i) *amounts paid for, or items or*
21 *services in the form of, the diagnosis, cure,*
22 *mitigation, treatment, or prevention of dis-*
23 *ease, or amounts paid for, or items or serv-*
24 *ices provided for, the purpose of affecting*
25 *any structure or function of the body,*

1 “(ii) amounts paid for, or services in
2 the form of, transportation primarily for
3 and essential to medical care referred to in
4 clause (i), and

5 “(iii) amounts paid for insurance cov-
6 ering medical care referred to in clauses (i)
7 and (ii).”.

8 (g) *CLERICAL AMENDMENT.*—*The table of contents in*
9 *section 1 of the Employee Retirement Income Security Act*
10 *of 1974 is amended by inserting after the item relating to*
11 *section 609 the following new items:*

 “PART 8—ACCESS TO, AND CONTINUITY OF, GROUP HEALTH PLAN COVERAGE

 “Sec. 800. Definitions and special rules.

 “SUBPART A—PREEXISTING CONDITION LIMITATIONS, PORTABILITY, AND
 RENEWABILITY

 “Sec. 801. Limitations on preexisting condition exclusions.

 “Sec. 802. Portability.

 “Sec. 803. Requirements for renewability of coverage.

 “Sec. 804. Group health plan enrollment requirements.”.

12 **SEC. 103. EFFECTIVE DATE.**

13 *The amendments made by this title shall apply with*
14 *respect to plan years beginning after 18 months after the*
15 *month in which this Act is enacted.*

1 **TITLE II—REQUIREMENTS FOR**
2 **INSURERS AND HEALTH**
3 **MAINTENANCE ORGANIZA-**
4 **TIONS OFFERING HEALTH IN-**
5 **SURANCE COVERAGE TO**
6 **GROUP HEALTH PLANS OF**
7 **SMALL EMPLOYERS**

8 **SEC. 201. ERISA REQUIREMENTS FOR INSURERS AND**
9 **HEALTH MAINTENANCE ORGANIZATIONS OF-**
10 **FERING HEALTH INSURANCE COVERAGE TO**
11 **GROUP HEALTH PLANS OF SMALL EMPLOY-**
12 **ERS**

13 (a) *IN GENERAL.*—Part 8 of subtitle B of title I of
14 the Employee Retirement Income Security Act of 1974 (as
15 added by the preceding provisions of this title) is amended
16 by adding at the end the following:

17 **“Subpart B—Requirements for Insurers and Health**
18 **Maintenance Organizations Offering Health In-**
19 **surance Coverage to Group Health Plans of**
20 **Small Employers**

21 **“SEC. 811. DEFINITIONS.**

22 *“Except as otherwise specifically provided, for pur-*
23 *poses of this subpart:*

24 (1) *ELIGIBLE INDIVIDUAL.*—The term ‘eligible
25 individual’ means, with respect to an insurer or

1 *health maintenance organization that offers general*
2 *coverage to any small employer in connection with a*
3 *group health plan, such an individual in relation to*
4 *the employer as shall be determined—*

5 *“(A) in accordance with the terms of such*
6 *plan,*

7 *“(B) as provided by the insurer or health*
8 *maintenance organization under rules of the in-*
9 *surer or health maintenance organization which*
10 *are uniformly applicable, and*

11 *“(C) in accordance with all applicable State*
12 *laws governing such insurer or health mainte-*
13 *nance organization.*

14 *“(2) GENERAL COVERAGE.—The term ‘general*
15 *coverage’ means health insurance coverage that—*

16 *“(A) is offered at a particular time in the*
17 *small group market, and*

18 *“(B) is not made available solely in connec-*
19 *tion with any trade, industry, or professional as-*
20 *sociation.*

21 *“(3) SMALL EMPLOYER.—The term ‘small em-*
22 *ployer’ means, in connection with a group health*
23 *plan with respect to a calendar year, an employer*
24 *who employs at least 2 but fewer than 51 employees*
25 *on a typical business day in the year. For purposes*

1 of this paragraph, two or more trades or businesses,
2 whether or not incorporated, shall be deemed a single
3 employer if such trades or businesses are within the
4 same control group (within the meaning of section
5 3(40)(B)(ii)).

6 “(4) *SMALL GROUP MARKET.*—The term ‘small
7 group market’ means the health insurance market
8 under which individuals obtain health insurance cov-
9 erage (directly or through any arrangement) on behalf
10 of themselves (and their dependents) on the basis of
11 employment or other relationship with respect to a
12 small employer.

13 “(5) *STATE.*—The term ‘State’ means any of the
14 50 States, the District of Columbia, the Common-
15 wealth of Puerto Rico, the Virgin Islands, Guam, and
16 American Samoa.

17 **“SEC. 812. REQUIREMENTS FOR INSURERS AND HEALTH**
18 **MAINTENANCE ORGANIZATIONS IN THE**
19 **SMALL GROUP MARKET WHO OFFER GENERAL**
20 **COVERAGE.**

21 “(a) *ISSUANCE OF COVERAGE.*—Subject to the succeed-
22 ing subsections of this section, each insurer or health main-
23 tenance organization that offers general coverage in connec-
24 tion with a group health plan in the small group market
25 in a State—

1 “(1) *must accept every small employer in the*
2 *State that applies for such coverage; and*

3 “(2) *must accept for enrollment under such cov-*
4 *erage every eligible individual (as defined in section*
5 *811(1)) who applies for enrollment on a timely basis*
6 *(consistent with section 804) and may not place any*
7 *restriction which is inconsistent with section 804 on*
8 *the eligibility of an individual to enroll so long as*
9 *such individual is an eligible individual.*

10 “(b) *TREATMENT OF CERTAIN PREVIOUSLY SELF-IN-*
11 *SURED EMPLOYERS.—*

12 “(1) *IN GENERAL.—An insurer or health mainte-*
13 *nance organization may elect not to make general*
14 *coverage available to group health plans of previously*
15 *self-insured small employers (described in paragraph*
16 *(2)), but only if such election is made in a uniform*
17 *manner for all such employers. The exclusion, pursu-*
18 *ant to such an election, of such a group health plan*
19 *from availability of general coverage shall not apply*
20 *after the end of the 1-year period (or such uniform,*
21 *shorter period as the insurer or organization may*
22 *specify) beginning on the last date no such coverage*
23 *was provided by such employer.*

24 “(2) *PREVIOUS SELF-INSURED EMPLOYER DE-*
25 *SCRIBED.—A previously self-insured small employer*

1 *described in this paragraph is a small employer that*
2 *has provided medical care (referred to in section*
3 *800(a)(6)) to employees other than through health in-*
4 *surance coverage to which this subpart applies.*

5 “(c) *CONSTRUCTION WITH RESPECT TO COVERAGE OF-*
6 *FERED IN CONNECTION WITH ASSOCIATIONS.—Nothing in*
7 *subsection (a) shall be construed as requiring that the gen-*
8 *eral coverage made available by an insurer or health main-*
9 *tenance organization in the small group market in a State*
10 *in connection with any trade, industry, or professional as-*
11 *sociation be the same as the general coverage offered in the*
12 *State in the small group market not in connection with*
13 *such an association.*

14 “(d) *SPECIAL RULES FOR NETWORK PLANS AND*
15 *HEALTH MAINTENANCE ORGANIZATIONS.—*

16 “(1) *IN GENERAL.—In the case of an insurer*
17 *that offers health insurance coverage in connection*
18 *with a group health plan in the small group market*
19 *through a network plan (as defined in section*
20 *800(a)(7)) and in the case of a health maintenance*
21 *organization that offers health insurance coverage in*
22 *connection with such a plan, the insurer or organiza-*
23 *tion may—*

24 “(A) *limit the employers that may apply*
25 *for such coverage to those with eligible individ-*

1 uals residing in the service area for such plan or
2 organization;

3 “(B) limit the individuals who may be en-
4 rolled under such coverage to those who reside in
5 the service area for such plan or organization;
6 and

7 “(C) within the service area of such plan or
8 organization, deny such coverage to such employ-
9 ers if the insurer or organization demonstrates
10 that—

11 “(i) it will not have the capacity to de-
12 liver services adequately to enrollees of any
13 additional groups because of its obligations
14 to existing group contract holders and en-
15 rollees, and

16 “(ii) it is applying this paragraph
17 uniformly to all employers without regard
18 to the claims experience or duration of cov-
19 erage of those employers and their employ-
20 ees or the health status of their employees.

21 “(2) 180-DAY SUSPENSION UPON DENIAL OF COV-
22 ERAGE.—An insurer or health maintenance organiza-
23 tion, upon denying health insurance coverage in con-
24 nection with group health plans in any service area
25 in accordance with paragraph (1)(C) may not offer

1 *coverage in connection with group health plans in the*
2 *small group market within such service area for a*
3 *period of 180 days after such coverage is denied.*

4 “(e) *SPECIAL RULE FOR FINANCIAL CAPACITY LIM-*
5 *ITS.—*

6 “(1) *IN GENERAL.—An insurer or health mainte-*
7 *nance organization may deny health insurance cov-*
8 *erage in connection with a group health plan in the*
9 *small group market if the insurer or organization*
10 *demonstrates to the appropriate enforcing authority*
11 *(subject to section 502(c)(5)) that—*

12 “(A) *it does not have the financial reserves*
13 *necessary to underwrite additional coverage, and*

14 “(B) *it is applying this paragraph uni-*
15 *formly to all employers without regard to the*
16 *claims experience or duration of coverage of those*
17 *employers and their employees or the health sta-*
18 *tus of their employees.*

19 “(2) *180-DAY SUSPENSION UPON DENIAL OF COV-*
20 *ERAGE.—An insurer or health maintenance organiza-*
21 *tion, upon denying health insurance coverage in con-*
22 *nection with group health plans in any service area*
23 *in accordance with paragraph (1) may not offer cov-*
24 *erage in connection with group health plans in the*

1 *small group market within such service area for a pe-*
2 *riod of 180 days after such coverage is denied.*

3 “(f) *EXCEPTION TO REQUIREMENT FOR ISSUANCE OF*
4 *COVERAGE BY REASON OF FAILURE BY PLAN TO MEET*
5 *CERTAIN MINIMUM PARTICIPATION RULES.—*

6 “(1) *IN GENERAL.—*Subsection (a) shall not
7 *apply in the case of any group health plan with re-*
8 *spect to which participation rules of an insurer or*
9 *health maintenance organization which are described*
10 *in paragraph (2) are not met.*

11 “(2) *PARTICIPATION RULES.—*For purposes of
12 *paragraph (1), participation rules (if any) of an in-*
13 *surer or health maintenance organization shall be*
14 *treated as met with respect to a group health plan*
15 *only if such rules are uniformly applicable and in ac-*
16 *cordance with applicable State law and the number*
17 *or percentage of eligible individuals who, under the*
18 *plan, are participants or beneficiaries equals or ex-*
19 *ceeds a level which is determined in accordance with*
20 *such rules.*

21 “(3) *SPECIAL RULE FOR COVERAGE IN CONNEC-*
22 *TION WITH CERTAIN ASSOCIATIONS.—*In the case of
23 *health insurance coverage in connection with any*
24 *trade, industry, or professional association, the in-*
25 *surer or health maintenance organization may not*

1 *provide for a minimum participation requirement*
2 *with respect to eligible individuals who are employees*
3 *of an employer.”.*

4 *(b) ENFORCEMENT WITH RESPECT TO INSURERS AND*
5 *HEALTH MAINTENANCE ORGANIZATIONS.—Section*
6 *502(c)(5) of such Act (as added by section 102(c)) is amend-*
7 *ed—*

8 *(1) by striking “or 803” and inserting “803, or*
9 *812”; and*

10 *(2) in subparagraph (A)(ii), by striking “section*
11 *803” each place it appears and inserting “section 803*
12 *or 812, respectively”.*

13 *(c) GOOD FAITH COMPLIANCE WITH REQUIREMENT.—*
14 *An insurer (within the meaning of section 800(a)(5) of the*
15 *Employee Retirement Income Security Act of 1974) or a*
16 *health maintenance organization (within the meaning of*
17 *section 800(a)(6) of such Act) that complies in good faith*
18 *with an applicable requirement of subpart B of part 8 of*
19 *title I of such Act before the date a regulation has been pub-*
20 *lished and becomes effective to carry out such requirement*
21 *shall be considered to be in compliance with such regula-*
22 *tion.*

23 *(d) CLERICAL AMENDMENT.—The table of contents in*
24 *section 1 of the Employee Retirement Income Security Act*
25 *of 1974 is amended by inserting after the items relating*

1 to part 8 (added by section 1001(b)) the following new
2 items:

“SUBPART B—REQUIREMENTS FOR INSURERS AND HEALTH MAINTENANCE ORGA-
NIZATIONS OFFERING HEALTH INSURANCE COVERAGE TO GROUP HEALTH
PLANS OF SMALL EMPLOYERS

“Sec. 811. Definitions.

“Sec. 812. Requirements for insurers and health maintenance organizations in
the small group market who offer general coverage.”.

3 **SEC. 202. EFFECTIVE DATE.**

4 *The requirements of section 812 of the Employee Re-*
5 *tirement Income Security Act of 1974 (added by this title)*
6 *shall apply with respect to insurers and health maintenance*
7 *organizations as of 18 months after the month in which*
8 *this Act is enacted.*

1 **TITLE III—ENCOURAGEMENT OF**
2 **MULTIPLE EMPLOYER**
3 **HEALTH PLANS, VOLUNTARY**
4 **HEALTH INSURANCE ASSO-**
5 **CIATIONS, AND OTHER FULLY**
6 **INSURED ARRANGEMENTS;**
7 **PREEMPTION**

8 **SEC. 301. SCOPE OF STATE REGULATION; CLARIFICATION**
9 **OF PREEMPTION RULES RELATING TO VOL-**
10 **UNTARY HEALTH INSURANCE ASSOCIATIONS**
11 **AND OTHER FULLY INSURED ARRANGE-**
12 **MENTS.**

13 *(a) SCOPE OF STATE REGULATION.—Section 514(c) of*
14 *the Employee Retirement Income Security Act of 1974 (29*
15 *U.S.C. 1144) (as added by section 102(d)) is amended—*

16 *(1) by redesignating paragraph (3) as para-*
17 *graph (4);*

18 *(2) by inserting after paragraph (2) the follow-*
19 *ing new paragraphs:*

20 *“(3)(A) The provisions of this title shall supersede any*
21 *and all State laws insofar as they may now or hereafter*
22 *require—*

23 *“(i) health insurance coverage in connection*
24 *with a group health plan to include specific items or*
25 *services consisting of medical care, or*

1 “(ii) an insurer or health maintenance organiza-
2 tion offering health insurance coverage in connection
3 with a group health plan to include in such health in-
4 surance coverage specific items or services consisting
5 of medical care;

6 except to the extent that such State laws prohibit an exclu-
7 sion for a specific disease in such health insurance coverage.

8 “(B) Notwithstanding subparagraph (A), a State may
9 require an insurer or health maintenance organization of-
10 fering health insurance coverage in the small group market
11 (as defined in section 811(4)) in connection with a group
12 health plan to offer under such coverage specific items or
13 services consisting of medical care, but only with respect
14 to not more than 2 different policies or contracts of health
15 insurance coverage.”.

16 (b) *PREEMPTION OF STATE FICTITIOUS GROUP*
17 *LAWS.*—Section 514(c) of such Act (as amended by sub-
18 section (a)) is further amended by redesignating paragraph
19 (4) as paragraph (5) and inserting after paragraph (3) the
20 following new paragraph:

21 “(4) The provisions of this title shall supercede any
22 and all State laws insofar as they may now or hereafter
23 prohibit—

24 “(A) two or more employers from obtaining or
25 offering coverage under a multiple employer welfare

1 *arrangement under which all benefits consist of medi-*
2 *cal care and are fully insured, or*

3 *“(B) an insurer or health maintenance organiza-*
4 *tion from offering coverage described in subparagraph*
5 *(A).”.*

6 *(c) CLARIFICATION OF PREEMPTION RULES RELATING*
7 *TO VOLUNTARY HEALTH INSURANCE ASSOCIATIONS.—Sec-*
8 *tion 514(b)(6) of such Act (29 U.S.C. 1144(b)(6)) is amend-*
9 *ed by adding at the end the following new subparagraphs:*

10 *“(E)(i) The provisions of this title shall supercede any*
11 *and all State laws which regulate insurance insofar as they*
12 *may now or hereafter preclude an insurer or health mainte-*
13 *nance organization offering health insurance coverage in*
14 *connection with employee welfare benefit plans which are*
15 *voluntary health insurance associations from setting pre-*
16 *mium rates based on the claims experience of each vol-*
17 *untary health insurance association, if such claims experi-*
18 *ence is defined as the claims experience of all employers*
19 *of each association taken as a whole (without varying the*
20 *premium rates of any particular employer on the basis of*
21 *the claims experience of such employer).*

22 *“(ii) Subsection (c)(3)(B) shall not apply in the case*
23 *of an employee welfare benefit plan which is a voluntary*
24 *health insurance association.*

1 “(iii) For purposes of this subparagraph, the term ‘vol-
2 untary health insurance association’ means a multiple em-
3 ployer welfare arrangement—

4 “(I) under which benefits include medical care
5 (within the meaning of section 607(1)),

6 “(II) under which all benefits consisting of such
7 medical care are fully insured, and

8 “(III) which is maintained by a qualified asso-
9 ciation.

10 “(iv) For purposes of clause (iii)(III), the term ‘quali-
11 fied association’ means an association which consists of em-
12 ployers who together employ at least 200 employees who are
13 eligible individuals, but only if the sponsor of the associa-
14 tion—

15 “(I) is, and has been (together with its imme-
16 diate predecessor, if any) for a continuous period of
17 not less than 3 years, organized and maintained in
18 good faith, with a constitution and bylaws specifi-
19 cally stating its purpose, as a trade association, an
20 industry association, a professional association, or a
21 chamber of commerce (or similar business group), for
22 substantial purposes other than that of obtaining or
23 providing medical care (within the meaning of sec-
24 tion 607(1)), and

1 “(II) is established as a permanent entity which
2 receives the active support of its members.

3 “(F) For purposes of this paragraph, the terms ‘fully
4 insured’, ‘health insurance coverage’, ‘health maintenance
5 organization’, and ‘insurer’ have the meanings given such
6 terms in section 800(a).”.

7 **SEC. 302. CLARIFICATION OF DUTY OF THE SECRETARY OF**
8 **LABOR TO IMPLEMENT PROVISIONS OF CUR-**
9 **RENT LAW PROVIDING FOR EXEMPTIONS**
10 **FROM STATE REGULATION OF MULTIPLE EM-**
11 **PLOYER HEALTH PLANS.**

12 (a) RULES GOVERNING STATE REGULATION OF MUL-
13 TIPLE EMPLOYER HEALTH PLANS.—Subtitle B of title I
14 of the Employee Retirement Income Security Act of 1974
15 (as amended by the preceding provisions of this title) is
16 amended by inserting after part 6 the following new part:

17 **“PART 7—RULES GOVERNING STATE REGULA-**
18 **TION OF MULTIPLE EMPLOYER HEALTH**
19 **PLANS**

20 **“SEC. 701. DEFINITIONS.**

21 “For purposes of this part—

22 “(1) FULLY INSURED.—A particular benefit
23 under a group health plan or a multiple employer
24 welfare arrangement is ‘fully insured’ if such benefit
25 (irrespective of any recourse available against other

1 *parties) is provided in a manner so that such benefit*
2 *constitutes insurance regulated by the law of any*
3 *State (within the meaning of section 514(b)(2)).*

4 “(2) *INSURER.*—*The term ‘insurer’ means an in-*
5 *surance company, insurance service, or insurance or-*
6 *ganization, licensed to engage in the business of in-*
7 *surance by a State.*

8 “(3) *MEDICAL CARE.*—*The term ‘medical care’*
9 *means medical care within the meaning of section*
10 *607(1).*

11 “(4) *MULTIPLE EMPLOYER HEALTH PLAN.*—*The*
12 *term ‘multiple employer health plan’ means a mul-*
13 *tiple employer welfare arrangement which provides*
14 *medical care and which has been granted an exemp-*
15 *tion under section 514(b)(6)(B).*

16 “(5) *PARTICIPATING EMPLOYER.*—*The term ‘par-*
17 *ticipating employer’ means, in connection with a*
18 *multiple employer welfare arrangement, any employer*
19 *if any of its employees, or any of the individuals who*
20 *are dependents (as defined under the terms of the ar-*
21 *rangement) of its employees, are or were covered*
22 *under such arrangement in connection with the em-*
23 *ployment of the employees.*

24 “(6) *SPONSOR.*—*The term ‘sponsor’ means, in*
25 *connection with a multiple employer welfare arrange-*

1 *ment, the association or other entity which establishes*
2 *or maintains the arrangement.*

3 “(7) *STATE INSURANCE COMMISSIONER.*—*The*
4 *term ‘State insurance commissioner’ means the insur-*
5 *ance commissioner (or similar official) of a State.*

6 **“SEC. 702. MULTIPLE EMPLOYER HEALTH PLANS ELIGIBLE**
7 ***FOR RELIEF FROM CERTAIN RESTRICTIONS***
8 ***ON PREEMPTION OF STATE LAW.***

9 “(a) *TREATMENT AS EMPLOYEE WELFARE BENEFIT*
10 *PLAN WHICH IS A GROUP HEALTH PLAN.*—

11 “(1) *IN GENERAL.*—*A multiple employer welfare*
12 *arrangement—*

13 “(A) *under which the benefits consist solely*
14 *of medical care (disregarding such incidental*
15 *benefits as the Secretary shall specify by regula-*
16 *tion), and*

17 “(B) *under which some or all benefits are*
18 *not fully insured,*

19 *shall be treated for purposes of subtitle A and the*
20 *other parts of this subtitle as an employee welfare*
21 *benefit plan which is a group health plan if an excep-*
22 *tion is granted to the arrangement under section*
23 *514(b)(6)(B) in accordance with this part.*

24 “(2) *EXCEPTION.*—*In the case of a multiple em-*
25 *ployer welfare arrangement which would be described*

1 *in section 3(40)(A)(i) but solely for the failure to meet*
2 *the requirements of section 3(40)(C)(ii), paragraph*
3 *(1) shall apply with respect to such arrangement, but*
4 *only with respect to benefits provided thereunder*
5 *which constitute medical care.*

6 “(b) *TREATMENT UNDER PREEMPTION RULES.—*

7 “(1) *IN GENERAL.—The Secretary shall prescribe*
8 *regulations described in section 514(b)(6)(B)(i), ap-*
9 *plicable to multiple employer welfare arrangements*
10 *described in subparagraphs (A) and (B) of subsection*
11 *(a)(1), providing a procedure for granting exemptions*
12 *from section 514(b)(6)(A)(ii) with respect to such ar-*
13 *rangements. Under such regulations, any such ar-*
14 *rangement treated under subsection (a) as an em-*
15 *ployee welfare benefit plan shall be deemed to be an*
16 *arrangement described in section 514(b)(6)(B)(ii).*

17 “(2) *STANDARDS.—Under the procedure pre-*
18 *scribed pursuant to paragraph (1), the Secretary shall*
19 *grant an arrangement described in subsection (a) an*
20 *exemption described in subsection (a) only if the Sec-*
21 *retary finds that—*

22 “(A) *such exemption—*

23 “(i) *is administratively feasible,*

1 “(ii) is not adverse to the interests of
2 the individuals covered under the arrange-
3 ment,

4 “(iii) is protective of the rights and
5 benefits of the individuals covered under the
6 arrangement, and

7 “(B) under such arrangement—

8 “(i) the requirements of section 703(a)
9 are met,

10 “(ii) reserves are maintained in an
11 amount of not less than \$100,000 which
12 consist of at least a reserve sufficient—

13 “(I) for unearned contributions,

14 “(II) for benefit liabilities which
15 have been incurred, which have not
16 been satisfied, and for which risk of
17 loss has not yet been transferred (to the
18 extent that the arrangement does not
19 maintain such security, guarantee,
20 hold-harmless arrangement, or other fi-
21 nancial arrangement as the Secretary
22 determines to be adequate), and

23 “(III) for expected administrative
24 costs with respect to such benefit liabil-
25 ities,

1 “(iii) the arrangement will provide
2 such timely notice of material changes as
3 the Secretary shall specify in the regula-
4 tions referred to in paragraph (1), the ar-
5 rangement will meet such other financial,
6 actuarial, and other reporting requirements
7 as shall be specified in such regulations, the
8 arrangement is maintained by persons who
9 are not disqualified persons as defined in
10 such regulations, and the arrangement will
11 terminate upon failure to meet requirements
12 which shall be specified in such regulations.

13 “(3) *FILING FEE.*—Under the procedure pre-
14 scribed pursuant to paragraph (1), a multiple em-
15 ployer welfare arrangement shall pay to the Secretary
16 at the time of filing an application for an exemption
17 referred to in subsection (a) a filing fee in the amount
18 of \$5,000, which shall be available, to the extent pro-
19 vided in appropriation Acts, to the Secretary for the
20 sole purpose of administering the exemption proce-
21 dures applicable with respect to such arrangement.

22 “(4) *CLASS EXEMPTION TREATMENT FOR EXIST-*
23 *ING LARGE ARRANGEMENTS.*—Under the procedure
24 prescribed pursuant to paragraph (1), if—

1 “(A) at the time of application for an ex-
2 emption under section 514(b)(6)(B) with respect
3 to an arrangement which has been in existence
4 as of the date of the enactment of the ERISA
5 Targeted Health Insurance Reform Act of 1996
6 for at least 3 years, either (A) the arrangement
7 covers at least 1,000 participants and bene-
8 ficiaries, or (B) with respect to the arrangement
9 there are at least 2,000 employees of eligible par-
10 ticipating employers,

11 “(B) a complete application for the exemp-
12 tion with respect to the arrangement has been
13 filed and is pending, and

14 “(C) the application meets such require-
15 ments (if any) as the Secretary may provide
16 with respect to class exemptions under this sub-
17 section,

18 the exemption shall be treated as having been granted
19 with respect to the arrangement unless and until the
20 Secretary provides appropriate notice that the exemp-
21 tion has been denied.

22 “(c) FILING NOTICE OF EXEMPTION WITH STATES.—
23 An exemption granted under section 514(b)(6)(B) to a mul-
24 tiple employer welfare arrangement shall not be effective
25 unless written notice of such exemption is filed with the

1 *State insurance commissioner of each State in which at*
2 *least 5 percent of the individuals covered under the arrange-*
3 *ment are located. For purposes of this subsection, an indi-*
4 *vidual shall be considered to be located in the State in which*
5 *a known address of such individual is located or in which*
6 *such individual is employed. The Secretary may by regula-*
7 *tion provide in specified cases for the application of the pre-*
8 *ceding sentence with lesser percentages in lieu of such 5 per-*
9 *cent amount.”.*

10 **“SEC. 703. REQUIREMENTS RELATING TO SPONSORS,**
11 **BOARDS OF TRUSTEES, AND PLAN OPER-**
12 **ATIONS.**

13 *“(a) IN GENERAL.—A complete application for an ex-*
14 *emption under section 514(b)(6)(B) shall include informa-*
15 *tion which the Secretary determines to be complete and ac-*
16 *curate and sufficient to demonstrate that the following re-*
17 *quirements are met with respect to the arrangement:*

18 *“(1) SPONSOR.—The sponsor is, and has been*
19 *(together with its immediate predecessor, if any) for*
20 *a continuous period of not less than 3 years before the*
21 *date of the application, organized and maintained in*
22 *good faith, with a constitution and bylaws specifi-*
23 *cally stating its purpose, as a trade association, an*
24 *industry association, a professional association, or a*
25 *chamber of commerce (or similar business group, in-*

1 *cluding a corporation or similar organization that*
2 *operates on a cooperative basis (within the meaning*
3 *of section 1381 of the Internal Revenue Code of*
4 *1986)), for substantial purposes other than that of ob-*
5 *taining or providing medical care (referred to in sec-*
6 *tion 3(42)), and the applicant demonstrates to the*
7 *satisfaction of the Secretary that the sponsor is estab-*
8 *lished as a permanent entity which receives the active*
9 *support of its members.*

10 *“(2) BOARD OF TRUSTEES.—The arrangement is*
11 *operated, pursuant to a trust agreement, by a board*
12 *of trustees which has complete fiscal control over the*
13 *arrangement and which is responsible for all oper-*
14 *ations of the arrangement, and the board of trustees*
15 *has in effect rules of operation and financial controls,*
16 *based on a 3-year plan of operation, adequate to*
17 *carry out the terms of the arrangement and to meet*
18 *all requirements of this title applicable to the ar-*
19 *rangement. The members of the board of trustees are*
20 *individuals selected from individuals who are the*
21 *owners, officers, directors, or employees of the partici-*
22 *parting employers or who are partners in the partici-*
23 *parting employers and actively participate in the busi-*
24 *ness. No such member is an owner, officer, director,*
25 *or employee of, or partner in, a contract adminis-*

1 *trator or other service provider to the arrangement,*
2 *except that officers or employees of a sponsor which*
3 *is a service provider (other than a contract adminis-*
4 *trator) to the arrangement may be members of the*
5 *board if they constitute not more than 25 percent of*
6 *the membership of the board and they do not provide*
7 *services to the arrangement other than on behalf of the*
8 *sponsor. The board has sole authority to approve ap-*
9 *plications for participation in the arrangement and*
10 *to contract with a service provider to administer the*
11 *day-to-day affairs of the arrangement.*

12 *“(3) COVERED PERSONS.—The instruments gov-*
13 *erning the arrangement include a written instrument*
14 *which provides that, effective upon the granting of the*
15 *exemption to the arrangement—*

16 *“(A) all participating employers must be*
17 *members or affiliated members of the sponsor, ex-*
18 *cept that, in the case of a sponsor which is a*
19 *professional association or other individual-based*
20 *association, if at least one of the officers, direc-*
21 *tors, or employees of an employer, or at least one*
22 *of the individuals who are partners in an em-*
23 *ployer and who actively participates in the busi-*
24 *ness, is a member or affiliated member of the*

1 *sponsor, participating employers may also in-*
2 *clude such employer,*

3 “(B) *all individuals thereafter commencing*
4 *coverage under the arrangement must be—*

5 “(i) *active or retired owners (including*
6 *self-employed individuals), officers, direc-*
7 *tors, or employees of, or partners in, par-*
8 *ticipating employers, or*

9 “(ii) *the beneficiaries of individuals*
10 *described in clause (i), and*

11 “(C) *no participating employer may pro-*
12 *vide health insurance coverage in the individual*
13 *market for any employee not covered under the*
14 *arrangement which is similar to the coverage*
15 *contemporaneously provided to employees of the*
16 *employer under the arrangement, if such exclu-*
17 *sion of the employee from coverage under the ar-*
18 *rangement is based in whole or in part on the*
19 *health status of the employee and such employee*
20 *would, but for such exclusion on such basis, be*
21 *eligible for coverage under the arrangement.*

22 “(4) *INCLUSION OF ELIGIBLE EMPLOYERS AND*
23 *EMPLOYEES.—No employer described in paragraph*
24 *(3) is excluded as a participating employer, no em-*
25 *ployee of a participating employer is ineligible for*

1 *coverage offered under the plan in a geographic area*
2 *with respect to the employee, and no individual who*
3 *would otherwise be eligible for coverage under the ar-*
4 *rangement in connection with such an employer is ex-*
5 *cluded as a plan participant, based on—*

6 “(A) *enrollment criteria more restrictive*
7 *than those required under section 804 with re-*
8 *spect to group health plans, or*

9 “(B) *a minimum participation requirement*
10 *of the type referred to in section 812(f)(3).*

11 “(5) *RESTRICTION ON VARIATIONS OF PREMIUM*
12 *RATES.—Premium rates under the arrangement with*
13 *respect any particular employer do not vary on the*
14 *basis of the claims experience of such employer.*

15 “(b) *TREATMENT OF FRANCHISE NETWORKS.—In the*
16 *case of a multiple employer welfare arrangement which is*
17 *established and maintained by a franchisor for a franchise*
18 *network consisting of its franchisees, the requirements of*
19 *subsection (a)(1) shall be treated as met with respect to such*
20 *network in any case in which such requirements would be*
21 *met if the franchisor were deemed to be the sponsor referred*
22 *to in subsection (a)(1), such network were deemed to be an*
23 *association described in subsection (a)(1), and each*
24 *franchisee were deemed to be a member (of the association*
25 *and the sponsor) referred to in subsection (a)(1).*

1 “(c) *CERTAIN COLLECTIVELY BARGAINED ARRANGE-*
2 *MENTS.—In the case of a multiple employer welfare ar-*
3 *angement in existence on February 1, 1995, which would*
4 *be described in section 3(40)(A)(i) but solely for the failure*
5 *to meet the requirements of section 3(40)(C)(ii) or (to the*
6 *extent provided in regulations of the Secretary) solely for*
7 *the failure to meet the requirements of subparagraph (D)*
8 *or (F) of section 3(40)—*

9 “(1) *subsection (a)(1) shall not apply, and*
10 “(2) *the joint board of trustees shall be consid-*
11 *ered the board of trustees required under subsection*
12 *(a)(2).*

13 “(d) *CERTAIN ARRANGEMENTS NOT MEETING SINGLE*
14 *EMPLOYER REQUIREMENT.—*

15 “(1) *IN GENERAL.—In any case in which the*
16 *majority of the employees covered under a multiple*
17 *employer welfare arrangement are employees of a sin-*
18 *gle employer (within the meaning of clauses (i) and*
19 *(ii) of section 3(40)(B)), if all other employees covered*
20 *under the arrangement are employed by employers*
21 *who are related to such single employer—*

22 “(A) *subsection (a)(1) shall be treated as*
23 *satisfied if the sponsor of the arrangement is the*
24 *person who would be the plan sponsor if the re-*
25 *lated employers were disregarded in determining*

1 *whether the requirements of section 3(40)(B) are*
2 *met, and*

3 *“(B) subsection (a)(2) shall be treated as*
4 *satisfied if the board of trustees is the named fi-*
5 *duciary in connection with the arrangement.*

6 *“(2) RELATED EMPLOYERS.—For purposes of*
7 *paragraph (1), employers are ‘related’ if there is*
8 *among all such employers a common ownership inter-*
9 *est or a substantial commonality of business oper-*
10 *ations based on common suppliers or customers.”.*

11 *(b) CONFORMING AMENDMENTS TO PREEMPTION*
12 *RULES.—*

13 *(1) Section 514(b)(6)(A)(i) of such Act (29*
14 *U.S.C. 1144(b)(6)(A)(i)) is amended by striking “is*
15 *fully insured” and inserting “under which all benefits*
16 *are fully insured”, and by inserting “and which is*
17 *not described in section 702(a)(1)” after “subpara-*
18 *graph (B)”.*

19 *(2) Section 514(b)(6)(B) of such Act (29 U.S.C.*
20 *1144(b)(6)(B)) is amended—*

21 *(A) by inserting “(i)” after “(B)”;*

22 *(B) by striking “which are not fully in-*
23 *sured” and inserting “under which any benefit*
24 *is not fully insured”; and*

1 (C) by striking “Any such exemption” and
2 inserting:

3 “(ii) Subject to part 7, any exemption under clause
4 (i)”.

5 (c) *CONFORMING AMENDMENT TO DEFINITION OF*
6 *PLAN SPONSOR.*—Section 3(16)(B) of such Act (29 U.S.C.
7 1002(16)(B)) is amended by adding at the end the following
8 new sentence: “Such term also includes the sponsor (as de-
9 fined in section 701(6)) of a multiple employer welfare ar-
10 rangement which is or has been a multiple employer health
11 plan (as defined in section 701(4)).”.

12 (d) *CLERICAL AMENDMENT.*—The table of contents in
13 section 1 of the Employee Retirement Income Security Act
14 of 1974 (as amended by section 102(g)) is amended by in-
15 serting after the item relating to section 609 the following
16 new items:

“PART 7—RULES GOVERNING STATE REGULATION OF MULTIPLE EMPLOYER
HEALTH PLANS

“Sec. 701. Definitions.

“Sec. 702. Multiple employer health plans eligible for relief from certain restric-
tions on preemption of State law

“Sec. 703. Requirements relating to sponsors, boards of trustees, and plan oper-
ations.”.

17 **SEC. 303. CLARIFICATION OF SCOPE OF PREEMPTION**

18 **RULES.**

19 (a) *IN GENERAL.*—Section 514(b)(6)(A)(ii) of the Em-
20 ployee Retirement Income Security Act of 1974 (29 U.S.C.
21 1144(b)(6)(A)(ii)) is amended by inserting “, but only, in
22 the case of an arrangement which does not provide medical

1 *care (within the meaning of section 607(1)),” before “to the*
2 *extent not inconsistent with the preceding sections of this*
3 *title”.*

4 (b) *CROSS-REFERENCE.—Section 514(b)(6) of such*
5 *Act (29 U.S.C. 1144(b)(6)) (as amended by section 301) is*
6 *amended by adding at the end the following new subpara-*
7 *graph:*

8 “(G) *For additional rules relating to exemption from*
9 *subparagraph (A)(ii) of multiple employer health plans, see*
10 *part 7.”.*

11 **SEC. 304. CLARIFICATION OF TREATMENT OF SINGLE EM-**
12 **PLOYER ARRANGEMENTS.**

13 *Section 3(40)(B) of the Employee Retirement Income*
14 *Security Act of 1974 (29 U.S.C. 1002(40)(B)) is amended—*

15 (1) *in clause (i), by inserting “for any plan year*
16 *of any such plan, or any fiscal year of any such other*
17 *arrangement,” after “single employer”, and by insert-*
18 *ing “during such year or at any time during the pre-*
19 *ceding 1-year period” after “control group”;*

20 (2) *in clause (iii)—*

21 (A) *by striking “common control shall not*
22 *be based on an interest of less than 25 percent”*
23 *and inserting “an interest of greater than 25*
24 *percent may not be required as the minimum in-*
25 *terest necessary for common control”; and*

1 (B) by striking “similar to” and inserting
2 “consistent and coextensive with”;

3 (3) by redesignating clauses (iv) and (v) as
4 clauses (v) and (vi), respectively; and

5 (4) by inserting after clause (iii) the following
6 new clause:

7 “(iv) in determining, after the application of
8 clause (i), whether benefits are provided to employees
9 of two or more employers, the arrangement shall be
10 treated as having only 1 participating employer if,
11 after the application of clause (i), the number of indi-
12 viduals who are employees and former employees of
13 any one participating employer and who are covered
14 under the arrangement is greater than 75 percent of
15 the aggregate number of all individuals who are em-
16 ployees or former employees of participating employ-
17 ers and who are covered under the arrangement.”.

18 **SEC. 305. CLARIFICATION OF TREATMENT OF CERTAIN COL-**

19 **LECTIVELY BARGAINED ARRANGEMENTS.**

20 (a) *IN GENERAL.*—Section 3(40)(A)(i) of the Em-
21 ployee Retirement Income Security Act of 1974 (29 U.S.C.
22 1002(40)(A)(i)) is amended to read as follows:

23 “(i)(I) under or pursuant to one or more collec-
24 tive bargaining agreements which are reached pursu-
25 ant to collective bargaining described in section 8(d)

1 of the National Labor Relations Act (29 U.S.C.
2 158(d)) or paragraph Fourth of section 2 of the Rail-
3 way Labor Act (45 U.S.C. 152, paragraph Fourth) or
4 which are reached pursuant to labor-management ne-
5 gotiations under similar provisions of State public
6 employee relations laws, and (II) in accordance with
7 subparagraphs (C), (D), and (E),”.

8 (b) LIMITATIONS.—Section 3(40) of such Act (29
9 U.S.C. 1002(40)) is amended by adding at the end the fol-
10 lowing new subparagraphs:

11 “(C) A plan or other arrangement is established or
12 maintained in accordance with this subparagraph only if
13 the following requirements are met:

14 “(i) The plan or other arrangement, and the em-
15 ployee organization or any other entity sponsoring
16 the plan or other arrangement, do not—

17 “(I) utilize the services of any licensed in-
18 surance agent or broker for soliciting or enrolling
19 employers or individuals as participating em-
20 ployers or covered individuals under the plan or
21 other arrangement, or

22 “(II) pay a commission or any other type
23 of compensation to a person, other than a full
24 time employee of the employee organization (or
25 a member of the organization to the extent pro-

1 *vided in regulations of the Secretary), that is re-*
2 *lated either to the volume or number of employ-*
3 *ers or individuals solicited or enrolled as partici-*
4 *pating employers or covered individuals under*
5 *the plan or other arrangement, or to the dollar*
6 *amount or size of the contributions made by par-*
7 *ticipating employers or covered individuals to*
8 *the plan or other arrangement,*
9 *except to the extent that the services used by the plan,*
10 *arrangement, organization, or other entity consist*
11 *solely of preparation of documents necessary for com-*
12 *pliance with the reporting and disclosure require-*
13 *ments of part 1 or administrative, investment, or con-*
14 *sulting services unrelated to solicitation or enrollment*
15 *of covered individuals.*

16 *“(ii) As of the end of the preceding plan year,*
17 *the number of covered individuals under the plan or*
18 *other arrangement who are identified to the plan or*
19 *arrangement and who are neither—*

20 *“(I) employed within a bargaining unit*
21 *covered by any of the collective bargaining agree-*
22 *ments with a participating employer (nor cov-*
23 *ered on the basis of an individual’s employment*
24 *in such a bargaining unit), nor*

1 “(II) present employees (or former employ-
2 ees who were covered while employed) of the
3 sponsoring employee organization, of an em-
4 ployer who is or was a party to any of the collec-
5 tive bargaining agreements, or of the plan or
6 other arrangement or a related plan or arrange-
7 ment (nor covered on the basis of such present or
8 former employment),
9 does not exceed 15 percent of the total number of indi-
10 viduals who are covered under the plan or arrange-
11 ment and who are present or former employees who
12 are or were covered under the plan or arrangement
13 pursuant to a collective bargaining agreement with a
14 participating employer. The requirements of the pre-
15 ceding provisions of this clause shall be treated as sat-
16 isfied if, as of the end of the preceding plan year, such
17 covered individuals are comprised solely of individ-
18 uals who were covered individuals under the plan or
19 other arrangement as of the date of the enactment of
20 the *ERISA Targeted Health Insurance Reform Act of*
21 *1996* and, as of the end of the preceding plan year,
22 the number of such covered individuals does not ex-
23 ceed 25 percent of the total number of present and
24 former employees enrolled under the plan or other ar-
25 rangement.

1 “(iii) *The employee organization or other entity*
2 *sponsoring the plan or other arrangement certifies to*
3 *the Secretary each year, in a form and manner which*
4 *shall be prescribed in regulations of the Secretary that*
5 *the plan or other arrangement meets the requirements*
6 *of clauses (i) and (ii).*

7 “(D) *A plan or arrangement is established or main-*
8 *tained in accordance with this subparagraph only if—*

9 “(i) *all of the benefits provided under the plan*
10 *or arrangement are fully insured (as defined in sec-*
11 *tion 701(2)), or*

12 “(ii)(I) *the plan or arrangement is a multiem-*
13 *ployer plan, and*

14 “(II) *the requirements of clause (B) of the pro-*
15 *viso to clause (5) of section 302(c) of the Labor Man-*
16 *agement Relations Act, 1947 (29 U.S.C. 186(c)) are*
17 *met with respect to such plan or other arrangement.*

18 “(E) *A plan or arrangement is established or main-*
19 *tained in accordance with this subparagraph only if—*

20 “(i) *the plan or arrangement is in effect as of the*
21 *date of the enactment of the ERISA Targeted Health*
22 *Insurance Reform Act of 1996, or*

23 “(ii) *the employee organization or other entity*
24 *sponsoring the plan or arrangement—*

1 “(I) has been in existence for at least 3
2 years or is affiliated with another employee or-
3 ganization which has been in existence for at
4 least 3 years, or

5 “(II) demonstrates to the satisfaction of the
6 Secretary that the requirements of subpara-
7 graphs (C) and (D) are met with respect to the
8 plan or other arrangement.”.

9 (c) **CONFORMING AMENDMENTS TO DEFINITIONS OF**
10 **PARTICIPANT AND BENEFICIARY.**—Section 3(7) of such Act
11 (29 U.S.C. 1002(7)) is amended by adding at the end the
12 following new sentence: “Such term includes an individual
13 who is a covered individual described in paragraph
14 (40)(C)(ii).”.

15 **SEC. 306. TREATMENT OF CHURCH PLANS.**

16 (a) **SPECIAL RULES FOR CHURCH PLANS.**—

17 (1) **IN GENERAL.**—Part 7 of subtitle B of title I
18 of such Act (as added and amended by the preceding
19 provisions of this Act) is amended by adding at the
20 end the following new section:

21 **“SEC. 704. SPECIAL RULES FOR CHURCH PLANS.**

22 “(a) **ELECTION FOR CHURCH PLANS.**—

23 “(1) **IN GENERAL.**—Notwithstanding section
24 4(b)(2), if the church or convention or association of
25 churches which maintains a church plan covered

1 *under this section makes an election with respect to*
2 *such plan under this subsection (in such form and*
3 *manner as the Secretary may by regulations pre-*
4 *scribe), then, subject to this section, the provisions of*
5 *this part (and other provisions of this title to the ex-*
6 *tent that they apply to group health plans which are*
7 *multiple employer welfare arrangements) shall apply*
8 *to such church plan, with respect to benefits provided*
9 *under such plan consisting of medical care, as if—*

10 *“(A) section 4(b)(2) did not contain an ex-*
11 *clusion for church plans, and*

12 *“(B) such plan were an arrangement eligi-*
13 *ble to apply for an exemption under this part.*

14 *“(2) ELECTION IRREVOCABLE.—An election*
15 *under this subsection with respect to any church plan*
16 *shall be binding with respect to such plan, and, once*
17 *made, shall be irrevocable.*

18 *“(b) COVERED CHURCH PLANS.—A church plan is*
19 *covered under this section if such plan provides benefits*
20 *which include medical care and some or all of such benefits*
21 *are not fully insured.*

22 *“(c) SPONSOR AND BOARD OF TRUSTEES.—For pur-*
23 *poses of this part, in the case of a church plan to which*
24 *this part applies pursuant to an election under subsection*

1 (a), in treating such plan as if it were a multiple employer
2 welfare arrangement under this part—

3 “(1) the church, convention or association of
4 churches, or other organization described in section
5 3(33)(C)(i) which is the entity maintaining the plan
6 shall be treated as the sponsor referred to in section
7 703(a)(1), and the requirements of section 703(a)(1)
8 shall be deemed satisfied with respect to the sponsor,
9 and

10 “(2) the board of trustees, board of directors, or
11 other similar governing body of such sponsor shall be
12 treated as the board of trustees referred to in section
13 703(a)(2), and the requirements of section 703(a)(2)
14 shall be deemed satisfied with respect to the board of
15 trustees.

16 “(d) *DEEMED SATISFACTION OF TRUST REQUIRE-*
17 *MENTS.*—The requirements of section 403 shall not be treat-
18 ed as not satisfied with respect to a church plan to which
19 this part applies pursuant to an election under subsection
20 (a) solely because assets of the plan are held by an organiza-
21 tion described in section 3(33)(C)(i), if—

22 “(1) such organization is incorporated separately
23 from the church or convention or association of
24 churches involved, and

1 “(2) such assets with respect to medical care are
2 separately accounted for.

3 “(e) *DEEMED SATISFACTION OF EXCLUSIVE BENEFIT*
4 *REQUIREMENTS.*—The requirements of section 404 shall not
5 be treated as not satisfied with respect to a church plan
6 to which this part applies pursuant to an election under
7 subsection (a) solely because assets of the plan which are
8 in excess of reserves required for exemption under section
9 514(b)(6)(B) are held in a fund in which such assets are
10 pooled with assets of other church plans, if the assets held
11 by such fund may not, under the terms of the plan and
12 the terms governing such fund, be used for, or diverted to,
13 any purpose other than for the exclusive benefit of the par-
14 ticipants and beneficiaries of the church plans whose assets
15 are pooled in such fund.

16 “(f) *INAPPLICABILITY OF CERTAIN PROVISIONS.*—

17 “(1) *PROHIBITED TRANSACTIONS.*—Section 406
18 shall not apply to a church plan by reason of an elec-
19 tion under subsection (a).

20 “(2) *CONTINUATION COVERAGE.*—Section 601
21 shall not apply to a church plan by reason of an elec-
22 tion under subsection (a).”.

23 “(b) *CONFORMING AMENDMENTS.*—

24 “(1) Section 4(b)(2) of such Act (29 U.S.C.
25 1003(b)(2)) is amended by inserting before the semi-

1 colon the following: “, except with respect to provi-
2 sions made applicable under any election made under
3 section 704(a) of this Act”.

4 (2) Section 514 of such Act (29 U.S.C. 1144) is
5 amended—

6 (A) in subsection (a), by inserting “(includ-
7 ing a church plan which is not exempt under
8 section 4(b)(2) by reason of an election under
9 section 704)” before the period in the first sen-
10 tence; and

11 (B) in subsection (b)(2)(B), by inserting
12 “and including a church plan which is not ex-
13 empt under section 4(b)(2) by reason of an elec-
14 tion under section 704” after “death benefits”.

15 (c) *CLERICAL AMENDMENT.*—The table of contents in
16 section 1 of such Act (as amended by the preceding provi-
17 sions of this title) is further amended by inserting after the
18 item relating to section 703 the following new item:

 “Sec. 704. Special rules for church plans.”.

19 **SEC. 307. ENFORCEMENT PROVISIONS RELATING TO MUL-**
20 **TIPLE EMPLOYER WELFARE ARRANGEMENTS.**

21 (a) *ENFORCEMENT OF FILING REQUIREMENTS.*—Sec-
22 tion 502 of the Employee Retirement Income Security Act
23 of 1974 (29 U.S.C. 1132) (as amended by sections 102(c))
24 is further amended—

1 (1) *in subsection (a)(6), by striking “paragraph*
2 *(2) or (5)” and inserting “paragraph (2), (5), or*
3 *(6)”;* and

4 (2) *by adding at the end of subsection (c) the fol-*
5 *lowing new paragraph:*

6 “(6) *The Secretary may assess a civil penalty against*
7 *any person of up to \$1,000 a day from the date of such*
8 *person’s failure or refusal to file the information required*
9 *to be filed with the Secretary under section 101(g).”.*

10 (b) *ACTIONS BY STATES IN FEDERAL COURT.—Section*
11 *502(a) of such Act (29 U.S.C. 1132(a)) is amended—*

12 (1) *in paragraph (8), by striking “or” at the*
13 *end;*

14 (2) *in paragraph (9), by striking the period and*
15 *inserting “, or”;* and

16 (3) *by adding at the end the following:*

17 “(10) *by a State official having authority under*
18 *the law of such State to enforce the laws of such State*
19 *regulating insurance, to enjoin any act or practice*
20 *which violates any requirement under part 7 for an*
21 *exemption under section 514(b)(6)(B) which such*
22 *State has the power to enforce pursuant to section*
23 *506(c)(1).”.*

1 (c) *CRIMINAL PENALTIES FOR CERTAIN WILLFUL MIS-*
2 *REPRESENTATIONS.*—Section 501 of such Act (29 U.S.C.
3 1131) is amended—

4 (1) by inserting “(a)” after “SEC. 501.”; and

5 (2) by adding at the end the following new sub-
6 section:

7 “(b) Any person who, either willfully or with willful
8 blindness, falsely represents, to any employee, any employ-
9 ee’s beneficiary, any employer, the Secretary, or any State,
10 an arrangement established or maintained for the purpose
11 of offering or providing any benefit described in section 3(1)
12 to employees or their beneficiaries as—

13 “(1) being a multiple employer welfare arrange-
14 ment to which an exemption has been granted under
15 section 514(b)(6)(B),

16 “(2) having been established or maintained
17 under or pursuant to one or more collective bargain-
18 ing agreements which are reached pursuant to collec-
19 tive bargaining described in section 8(d) of the Na-
20 tional Labor Relations Act (29 U.S.C. 158(d)) or
21 paragraph Fourth of section 2 of the Railway Labor
22 Act (45 U.S.C. 152, paragraph Fourth) or which are
23 reached pursuant to labor-management negotiations
24 under similar provisions of State public employee re-
25 lations laws, or

1 “(3) being a plan or arrangement with respect to
2 which the requirements of subparagraph (C), (D), or
3 (E) of section 3(40) are met,
4 shall, upon conviction, be imprisoned not more than five
5 years, be fined under title 18, United States Code, or both.”.

6 (d) *CEASE ACTIVITIES ORDERS*.—Section 502 of such
7 Act (29 U.S.C. 1132) is amended by adding at the end the
8 following new subsection:

9 “(n)(1) Subject to paragraph (2), upon application by
10 the Secretary showing the operation, promotion, or market-
11 ing of a multiple employer welfare arrangement providing
12 benefits consisting of medical care (within the meaning of
13 section 607(1)) that—

14 “(A) is not licensed, registered, or otherwise ap-
15 proved under the insurance laws of the States in
16 which the arrangement offers or provides benefits, and

17 “(B) if there is in effect with respect to such ar-
18 rangement an exemption under section 514(b)(6)(B),
19 is not operating in accordance with the requirements
20 under part 7 for such an exemption,

21 a district court of the United States shall enter an order
22 requiring that the arrangement cease activities.

23 “(2) Paragraph (1) shall not apply in the case of a
24 multiple employer welfare arrangement if the arrangement
25 shows that—

1 “(A) all benefits under it referred to in para-
2 graph (1) are fully insured, within the meaning of
3 section 701(1), and

4 “(B) with respect to each State in which the ar-
5 rangement offers or provides benefits, the arrangement
6 is operating in accordance with applicable State in-
7 surance laws that are not superseded under section
8 514.

9 “(3) The court may grant such additional equitable
10 relief, including any relief available under this title, as it
11 deems necessary to protect the interests of the public and
12 of persons having claims for benefits against the arrange-
13 ment.”.

14 (e) *RESPONSIBILITY FOR CLAIMS PROCEDURE.*—Sec-
15 tion 503 of such Act (29 U.S.C. 1133) is amended by adding
16 at the end (after and below paragraph (2)) the following
17 new sentence: “The terms of each multiple employer health
18 plan (within the meaning of section 701(4)) shall require
19 the board of trustees or the named fiduciary (as applicable)
20 to ensure that the requirements of this section are met in
21 connection with claims filed under the plan.”.

1 **SEC. 308. COOPERATION BETWEEN FEDERAL AND STATE**
2 **AUTHORITIES.**

3 *Section 506 of the Employee Retirement Income Secu-*
4 *rity Act of 1974 (29 U.S.C. 1136) is amended by adding*
5 *at the end the following new subsection:*

6 *“(c) RESPONSIBILITY WITH RESPECT TO MULTIPLE*
7 *EMPLOYER WELFARE ARRANGEMENTS.—*

8 *“(1) STATE ENFORCEMENT.—*

9 *“(A) AGREEMENTS WITH STATES.—A State*
10 *may enter into an agreement with the Secretary*
11 *for delegation to the State of some or all of the*
12 *Secretary’s authority under sections 502 and 504*
13 *to enforce the requirements under part 7 for an*
14 *exemption under section 514(b)(6)(B). The Sec-*
15 *retary shall enter into the agreement if the Sec-*
16 *retary determines that the delegation provided*
17 *for therein would not result in a lower level or*
18 *quality of enforcement of the provisions of this*
19 *title.*

20 *“(B) DELEGATIONS.—Any department,*
21 *agency, or instrumentality of a State to which*
22 *authority is delegated pursuant to an agreement*
23 *entered into under this paragraph may, if au-*
24 *thorized under State law and to the extent con-*
25 *sistent with such agreement, exercise the powers*

1 *of the Secretary under this title which relate to*
2 *such authority.*

3 “(C) *CONCURRENT AUTHORITY OF THE SEC-*
4 *RETARY.—If the Secretary delegates authority to*
5 *a State in an agreement entered into under sub-*
6 *paragraph (A), the Secretary may continue to*
7 *exercise such authority concurrently with the*
8 *State.*

9 “(D) *RECOGNITION OF PRIMARY DOMICILE*
10 *STATE.—In entering into any agreement with a*
11 *State under subparagraph (A), the Secretary*
12 *shall ensure that, as a result of such agreement*
13 *and all other agreements entered into under sub-*
14 *paragraph (A), only one State will be recognized,*
15 *with respect to any particular multiple employer*
16 *welfare arrangement, as the primary domicile*
17 *State to which authority has been delegated pur-*
18 *suant to such agreements.*

19 “(2) *ASSISTANCE TO STATES.—The Secretary*
20 *shall—*

21 “(A) *provide enforcement assistance to the*
22 *States with respect to multiple employer welfare*
23 *arrangements, including, but not limited to, co-*
24 *ordinating Federal and State efforts through the*
25 *establishment of cooperative agreements with ap-*

1 *appropriate State agencies under which the Pen-*
2 *sion and Welfare Benefits Administration keeps*
3 *the States informed of the status of its cases and*
4 *makes available to the States information ob-*
5 *tained by it,*

6 “(B) *provide continuing technical assist-*
7 *ance to the States with respect to issues involv-*
8 *ing multiple employer welfare arrangements and*
9 *this Act,*

10 “(C) *make readily available to the States*
11 *timely and complete responses to requests for ad-*
12 *visory opinions on issues described in subpara-*
13 *graph (B), and*

14 “(D) *distribute copies of all advisory opin-*
15 *ions described in subparagraph (C) to the State*
16 *insurance commissioner of each State.”.*

17 **SEC. 309. FILING AND DISCLOSURE REQUIREMENTS FOR**

18 **MULTIPLE EMPLOYER WELFARE ARRANGE-**

19 **MENTS OFFERING HEALTH BENEFITS.**

20 *Section 101 of the Employee Retirement Income Secu-*
21 *rity Act of 1974 (29 U.S.C. 1021) is amended—*

22 (1) *by redesignating subsection (g) as subsection*
23 *(i); and*

24 (2) *by inserting after subsection (f) the following*
25 *new subsections:*

1 “(g) *REGISTRATION OF MULTIPLE EMPLOYER WEL-*
2 *FARE ARRANGEMENTS.—(1) Each multiple employer wel-*
3 *fare arrangement shall file with the Secretary a registration*
4 *statement described in paragraph (2) within 60 days before*
5 *commencing operations (in the case of an arrangement com-*
6 *mencing operations on or after January 1, 1997) and no*
7 *later than February 15 of each year (in the case of an ar-*
8 *angement in operation since the beginning of such year),*
9 *unless, as of the date by which such filing otherwise must*
10 *be made, such arrangement provides no benefits consisting*
11 *of medical care (within the meaning of section 607(1)).*

12 “(2) *Each registration statement—*

13 “(A) *shall be filed in such form, and contain*
14 *such information concerning the multiple employer*
15 *welfare arrangement and any persons involved in its*
16 *operation (including whether coverage under the ar-*
17 *angement is fully insured), as shall be provided in*
18 *regulations which shall be prescribed by the Secretary,*
19 *and*

20 “(B) *if any benefits under the arrangement con-*
21 *sisting of medical care (within the meaning of section*
22 *607(1)) are not fully insured, shall contain a certifi-*
23 *cation that copies of such registration statement have*
24 *been transmitted by certified mail to—*

1 “(i) in the case of an arrangement which is
2 a multiple employer health plan (as defined in
3 section 701(4)), the State insurance commis-
4 sioner of the domicile State of such arrangement,
5 or

6 “(ii) in the case of an arrangement which
7 is not a multiple employer health plan, the State
8 insurance commissioner of each State in which
9 the arrangement is located.

10 “(3) The person or persons responsible for filing the
11 annual registration statement are—

12 “(A) the trustee or trustees so designated by the
13 terms of the instrument under which the multiple em-
14 ployer welfare arrangement is established or main-
15 tained, or

16 “(B) in the case of a multiple employer welfare
17 arrangement for which the trustee or trustees cannot
18 be identified, or upon the failure of the trustee or
19 trustees of an arrangement to file, the person or per-
20 sons actually responsible for the acquisition, disposi-
21 tion, control, or management of the cash or property
22 of the arrangement, irrespective of whether such ac-
23 quisition, disposition, control, or management is exer-
24 cised directly by such person or persons or through an
25 agent designated by such person or persons.

1 “(4) Any agreement entered into under section 506(c)
2 with a State as the primary domicile State with respect
3 to any multiple employer welfare arrangement shall provide
4 for simultaneous filings of reports required under this sub-
5 section with the Secretary and with the State insurance
6 commissioner of such State.

7 “(5) For purposes of this subsection, the term ‘domicile
8 State’ means, in connection with a multiple employer wel-
9 fare arrangement, the State in which, according to the ap-
10 plication for an exemption under this 514(b)(6)(B), most
11 individuals to be covered under the arrangement are lo-
12 cated, except that, in any case in which information con-
13 tained in the latest annual report of the arrangement filed
14 under this part indicates that most individuals covered
15 under the arrangement are located in a different State, such
16 term means such different State.

17 “(6) The Secretary may exempt from the requirements
18 of this subsection such class of multiple employer welfare
19 arrangements as the Secretary deems appropriate.

20 “(h) *FILING REQUIREMENTS FOR MULTIPLE EM-*
21 *PLOYER WELFARE ARRANGEMENTS.—*

22 “(1) *IN GENERAL.—*A multiple employer welfare
23 arrangement which provides benefits consisting of
24 medical care (within the meaning of section 607(1))
25 shall issue to each participating employer—

1 “(A) a document equivalent to the summary
2 plan description required of plans under this
3 part,

4 “(B) information describing the contribu-
5 tion rates applicable to participating employers,
6 and

7 “(C) a statement indicating—

8 “(i) that the arrangement is not a li-
9 censed insurer under the laws of any State,

10 “(ii) the extent to which any benefits
11 under the arrangement are fully insured,

12 “(iii) if any benefits under the ar-
13 rangement are not fully insured, whether
14 the arrangement has been granted an ex-
15 emption under section 514(b)(6)(B) (or
16 whether such an exemption has ceased to be
17 effective).

18 “(2) *TIME FOR DISCLOSURE.*—Such information
19 shall be issued to employers within such reasonable
20 period of time before becoming participating employ-
21 ers as may be prescribed in regulations of the Sec-
22 retary.”.

1 **SEC. 310. SINGLE ANNUAL FILING FOR ALL PARTICIPATING**
2 **EMPLOYERS.**

3 (a) *IN GENERAL.*—Section 110 of the *Employee Re-*
4 *irement Income Security Act of 1974 (29 U.S.C. 1030)* is
5 *amended by adding at the end the following new subsection:*

6 “(c) *The Secretary shall prescribe by regulation or oth-*
7 *erwise an alternative method providing for the filing of a*
8 *single annual report (as referred to in section 104(a)(1)(A))*
9 *with respect to all employers who are participating employ-*
10 *ers under a multiple employer welfare arrangement under*
11 *which all coverage consists of medical care (within the*
12 *meaning of section 607(1)) and is fully insured (as defined*
13 *in section 701(1)).”.*

14 (b) *EFFECTIVE DATE.*—*The amendment made by sub-*
15 *section (a) shall take effect on the date of the enactment*
16 *of this Act. The Secretary of Labor shall prescribe the alter-*
17 *native method referred to in section 110(c) of the Employee*
18 *Retirement Income Security Act of 1974, as added by such*
19 *amendment, within 90 days after the date of the enactment*
20 *of this Act.*

21 **SEC. 311. EFFECTIVE DATE; TRANSITIONAL RULE.**

22 (a) *EFFECTIVE DATE.*—*The amendments made by this*
23 *title shall take effect on the earlier of—*

24 (1) *the date on which the Secretary of Labor is-*
25 *ssues all regulations necessary to carry out the amend-*
26 *ments made by this title, or*

1 (2) *July 1, 1997.*

2 *The Secretary shall issue all regulations necessary to carry*
3 *out the amendments made by this title before July 1, 1997.*

4 (b) *TRANSITIONAL RULE.—If the sponsor of a multiple*
5 *employer welfare arrangement which, as of the effective date*
6 *specified in subsection (a), provides benefits consisting of*
7 *medical care (within the meaning of section 607(1) of the*
8 *Employee Retirement Income Security Act of 1974) files*
9 *with the Secretary of Labor an application for an exemp-*
10 *tion under section 514(b)(6)(B) of such Act within 180 days*
11 *after such date and the Secretary has not, as of 90 days*
12 *after receipt of such application, found such application to*
13 *be materially deficient, section 514(b)(6)(A) of such Act (29*
14 *U.S.C. 1144(b)(6)(A)) shall not apply with respect to such*
15 *arrangement during the period following such date and*
16 *ending on the earlier of—*

17 (1) *the date on which the Secretary denies the*
18 *application under the amendments made by this title*
19 *or determines, in the Secretary's sole discretion, that*
20 *such exclusion from coverage under the provisions of*
21 *such section 514(b)(6)(A) of such arrangement would*
22 *be detrimental to the interests of individuals covered*
23 *under such arrangement, or*

24 (2) *18 months after such effective date.*

1 **SEC. 312. RULE OF CONSTRUCTION.**

2 *Nothing in this Act or any amendment made thereby*
3 *may be construed to require the coverage of any specific*
4 *procedure, treatment, or service as part of a group health*
5 *plan or health insurance coverage under this Act or through*
6 *regulation.*

Amend the title so as to read: “A bill to amend the Employee Retirement Income Security Act of 1974 to provide new portability, enrollment, and other consumer protections and freedoms for workers in a mobile workforce, to increase purchasing power for employers and employees by removing barriers to the voluntary formation of multiple employer health plans and fully-insured multiple employer arrangements, and to expand access to fully-insured coverage for employees of small employers through open markets, and for other purposes.”.