

105TH CONGRESS
1ST SESSION

H. R. 1515

To amend title I of the Employee Retirement Income Security Act of 1974 to provide new portability, participation, solvency, and other health insurance protections and freedoms for workers in a mobile workforce, to increase the purchasing power of employees and employers by removing barriers to the voluntary formation of association health plans, to increase health plan competition providing more affordable choice of coverage, to expand access to health insurance coverage for employees of small employers through open markets, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 1, 1997

Mr. FAWELL (for himself, Mr. GOODLING, Mr. HASTERT, Mr. ARMEY, Mr. PICKETT, Mr. LIPINSKI, Mr. MORAN of Virginia, Mr. POSHARD, Mr. TRAFICANT, Mr. MCHALE, Mr. DAVIS of Illinois, Mr. COSTELLO, Mr. ACKERMAN, Mr. FROST, Mr. CONDIT, Mr. HALL of Texas, Mr. STENHOLM, Mr. BOSWELL, Mr. RUSH, Ms. MOLINARI, Mr. PETRI, Mrs. ROUKEMA, Mr. BALLENGER, Mr. HOEKSTRA, Mr. MCKEON, Mr. SAM JOHNSON, of Texas, Mr. TALENT, Mr. GREENWOOD, Mr. KNOLLENBERG, Mr. RIGGS, Mr. GRAHAM, Mr. SOUDER, Mr. MCINTOSH, Mr. PAUL, Mr. PETERSON of Pennsylvania, Mr. UPTON, Mr. DEAL of Georgia, Mr. HILLEARY, Mr. SCARBOROUGH, Mr. BAKER, Mr. BARTLETT of Maryland, Mr. BARTON of Texas, Mr. BATEMAN, Mr. BOEHLERT, Mr. BONILLA, Mr. BURTON of Indiana, Mr. CALVERT, Mr. CAMPBELL, Mr. CANADY of Florida, Mr. COLLINS, Mr. COOKSEY, Mr. COX of California, Mr. CRANE, Mr. CUNNINGHAM, Mr. DICKEY, Ms. DUNN, Mrs. EMERSON, Mr. ENGLISH of Pennsylvania, Mr. EWING, Mr. FOLEY, Mrs. FOWLER, Mr. FOX of Pennsylvania, Mr. GALLEGLY, Mr. GEKAS, Mr. GILCHREST, Mr. GILMAN, Mr. GOSS, Mr. HERGER, Mr. BEREUTER, Mr. HORN, Mr. HOSTETTLER, Mr. HOUGHTON, Mr. HUNTER, Mr. HYDE, Mr. KIM, Mr. KINGSTON, Mr. KOLBE, Mr. LAHOOD, Mr. LEACH, Mr. LEWIS of California, Mr. LINDER, Mr. MCCOLLUM, Mr. MCHUGH, Mr. MANZULLO, Mr. MILLER of Florida, Mrs. MORELLA, Mrs. MYRICK, Mr. NEUMANN, Mr. NEY, Mr. PACKARD, Mr. PORTER, Ms. PRYCE of Ohio, Mr. QUINN, Mr. REGULA, Mr. ROYCE, Mr. SAXTON, Mr. DAN SCHAEFER of Colorado, Mr. SCHIFF, Mr. SHAYS, Mr. SHIMKUS, Mr. SMITH of Texas, Mrs. LINDA SMITH of Washington, Mr. SNOWBARGER, Mr. SOLOMON, Mr. SPENCE, Mr. STEARNS, Mr. WALSH, Mr. WAMP, Mr. WATKINS, Mr. WATTS of Oklahoma, Mr. WELDON of Pennsylvania, Mr. WELDON of Florida, Mr.

WELLER, and Mr. WICKER) introduced the following bill; which was referred to the Committee on Education and the Workforce

A BILL

To amend title I of the Employee Retirement Income Security Act of 1974 to provide new portability, participation, solvency, and other health insurance protections and freedoms for workers in a mobile workforce, to increase the purchasing power of employees and employers by removing barriers to the voluntary formation of association health plans, to increase health plan competition providing more affordable choice of coverage, to expand access to health insurance coverage for employees of small employers through 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 “Expansion of Port-

5 ability and Health Insurance Coverage Act of 1997”.

6 **SEC. 2. RULES GOVERNING ASSOCIATION HEALTH PLANS.**

7 (a) IN GENERAL.—Subtitle B of title I of the Em-

8 ployee Retirement Income Security Act of 1974 is amend-

9 ed by adding after part 7 the following new part:

1 “PART 8—RULES GOVERNING ASSOCIATION HEALTH
2 PLANS

3 **“SEC. 801. ASSOCIATION HEALTH PLANS.**

4 “(a) IN GENERAL.—For purposes of this part, the
5 term ‘association health plan’ means a group health
6 plan—

7 “(1) whose sponsor is (or is deemed under this
8 part to be) described in subsection (b), and

9 “(2) under which at least one option of health
10 insurance coverage offered by a health insurance is-
11 suer (which may include, among other options, man-
12 aged care options, point of service options, and pre-
13 ferred provider options) is provided to participants
14 and beneficiaries.

15 “(b) SPONSORSHIP.—The sponsor of a group health
16 plan is described in this subsection if such sponsor—

17 “(1) is organized and maintained in good faith,
18 with a constitution and bylaws specifically stating its
19 purpose and providing for periodic meetings on at
20 least an annual basis, as a trade association, an in-
21 dustry association (including a rural electric cooper-
22 ative association or a rural telephone cooperative as-
23 sociation), a professional association, or a chamber
24 of commerce (or similar business group, including a
25 corporation or similar organization that operates on

1 a cooperative basis (within the meaning of section
2 1381 of the Internal Revenue Code of 1986)), for
3 substantial purposes other than that of obtaining or
4 providing medical care, and

5 “(2) is established as a permanent entity which
6 receives the active support of its members and col-
7 lects dues or contributions from its members (includ-
8 ing affiliated members) on a periodic basis, without
9 conditioning such dues or contributions on the basis
10 of health status-related factors with respect to the
11 employees of such members or the dependents of
12 such employees or on the basis of participation in a
13 group health plan.

14 Any sponsor consisting of an association of entities which
15 meet the requirements of paragraphs (1) and (2) shall be
16 deemed to be a sponsor described in this subsection.

17 **“SEC. 802. CERTIFICATION OF ASSOCIATION HEALTH**
18 **PLANS.**

19 “(a) IN GENERAL.—The Secretary shall prescribe by
20 regulation a procedure under which, subject to subsection
21 (b), the Secretary shall certify association health plans
22 which apply for certification as meeting the requirements
23 of this part.

24 “(b) STANDARDS.—Under the procedure prescribed
25 pursuant to subsection (a), the Secretary shall certify an

1 association health plan as meeting the requirements of
2 this part only if the Secretary is satisfied that—

3 “(1) such certification—

4 “(A) is administratively feasible,

5 “(B) is not adverse to the interests of the
6 individuals covered under the plan, and

7 “(C) is protective of the rights and benefits
8 of the individuals covered under the plan, and

9 “(2) the applicable requirements of this part
10 are met (or, upon the date on which the plan is to
11 commence operations, will be met) with respect to
12 the plan.

13 “(c) REQUIREMENTS APPLICABLE TO CERTIFIED
14 PLANS.—An association health plan with respect to which
15 certification under this part is in effect shall meet the ap-
16 plicable requirements of this part, effective on the date
17 of certification (or, if later, on the date on which the plan
18 is to commence operations).

19 “(d) REQUIREMENTS FOR CONTINUED CERTIFI-
20 CATION.—The Secretary may provide by regulation for
21 continued certification under this part, including require-
22 ments relating to any commencement, by an association
23 health plan which has been certified under this part, of
24 a benefit option which does not consist of health insurance
25 coverage.

1 “(e) CLASS CERTIFICATION FOR FULLY-INSURED
2 PLANS.—The Secretary shall establish a class certification
3 procedure for association health plans under which all ben-
4 efits consist of health insurance coverage. Under such pro-
5 cedure, the Secretary shall provide for the granting of cer-
6 tification under this part to the plans in each class of such
7 association health plans upon appropriate filing under
8 such procedure in connection with plans in such class and
9 payment of the prescribed fee under section 807(a).

10 **“SEC. 803. REQUIREMENTS RELATING TO SPONSORS AND**
11 **BOARDS OF TRUSTEES.**

12 “(a) SPONSOR.—The requirements of this subsection
13 are met with respect to an association health plan if—

14 “(1) the sponsor (together with its immediate
15 predecessor, if any) has met (or is deemed under
16 this part to have met) for a continuous period of not
17 less than 3 years ending with the date of the appli-
18 cation for certification under this part, the require-
19 ments of section 801(b)(1), and

20 “(2) the sponsor meets (or is deemed under this
21 part to meet) the requirements of section 801(b)(2).

22 “(b) BOARD OF TRUSTEES.—The requirements of
23 this subsection are met with respect to an association
24 health plan if the following requirements are met:

1 “(1) FISCAL CONTROL.—The plan is operated,
2 pursuant to a trust agreement, by a board of trust-
3 ees which has complete fiscal control over the plan
4 and which is responsible for all operations of the
5 plan.

6 “(2) RULES OF OPERATION AND FINANCIAL
7 CONTROLS.—The board of trustees has in effect
8 rules of operation and financial controls, based on a
9 3-year plan of operation, adequate to carry out the
10 terms of the plan and to meet all requirements of
11 this title applicable to the plan.

12 “(3) RULES GOVERNING RELATIONSHIP TO
13 PARTICIPATING EMPLOYERS AND TO CONTRAC-
14 TORS.—The members of the board of trustees are
15 individuals selected from individuals who are the
16 owners, officers, directors, or employees of the par-
17 ticipating employers or who are partners in the par-
18 ticipating employers and actively participate in the
19 business. No such member is an owner, officer, di-
20 rector, or employee of, or partner in, a contract ad-
21 ministrator or other service provider to the plan, ex-
22 cept that officers or employees of a sponsor which is
23 a service provider (other than a contract adminis-
24 trator) to the plan may be members of the board if
25 they constitute not more than 25 percent of the

1 membership of the board and they do not provide
2 services to the plan other than on behalf of the spon-
3 sor. The board has sole authority to approve applica-
4 tions for participation in the plan and to contract
5 with a service provider to administer the day-to-day
6 affairs of the plan.

7 “(c) TREATMENT OF FRANCHISE NETWORKS.—In
8 the case of a group health plan which is established and
9 maintained by a franchiser for a franchise network con-
10 sisting of its franchisees—

11 “(1) the requirements of subsection (a) and sec-
12 tion 801(a)(1) shall be deemed met if such require-
13 ments would otherwise be met if the franchiser were
14 deemed to be the sponsor referred to in section
15 801(b), such network were deemed to be an associa-
16 tion described in section 801(b), and each franchisee
17 were deemed to be a member (of the association and
18 the sponsor) referred to in section 801(b), and

19 “(2) the requirements of section 804(a)(1) shall
20 be deemed met.

21 “(d) CERTAIN COLLECTIVELY BARGAINED PLANS.—

22 “(1) IN GENERAL.—In the case of a group
23 health plan described in paragraph (2)—

24 “(A) the requirements of subsection (a)
25 and section 801(a)(1) shall be deemed met,

1 “(B) the joint board of trustees shall be
2 deemed a board of trustees with respect to
3 which the requirements of subsection (b) are
4 met, and

5 “(C) the requirements of section 804 shall
6 be deemed met.

7 “(2) REQUIREMENTS.—A group health plan is
8 described in this paragraph if—

9 “(A) the plan is a multiemployer plan,

10 “(B) the plan is in existence on April 1,
11 1997, and would be described in section
12 3(40)(A)(i) but solely for the failure to meet
13 the requirements of section 3(40)(C)(ii) or (to
14 the extent provided in regulations of the Sec-
15 retary) solely for the failure to meet the re-
16 quirements of subparagraph (D) of section
17 3(40), or

18 “(C)(i) the plan is in existence on April 1,
19 1997, has been in existence as of such date for
20 at least 3 years, meets the requirements of sec-
21 tion 801(b)(2), and would be described in sec-
22 tion 3(40)(A)(i) but solely for the failure to
23 meet the requirements of subparagraph (C)(i)
24 or (C)(ii), and

1 “(ii) individuals who are members of the
2 plan sponsor—

3 “(I) participate by elections in the or-
4 ganizational governance of the plan spon-
5 sor,

6 “(II) are eligible for appointment as
7 trustee of the plan or for participation in
8 the appointment of trustees of the plan,
9 and

10 “(III) if covered under the plan, have
11 full rights under the plan of a participant
12 in an employee welfare benefit plan.

13 “(e) CERTAIN PLANS NOT MEETING SINGLE EM-
14 PLOYER REQUIREMENT.—

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

22 “(A) the requirements of subsection (a)
23 and section 801(a)(1) shall not apply if such
24 single employer is the sponsor of the plan, and

1 “(B) the requirements of subsection (b)
2 shall be deemed met if the board of trustees is
3 the named fiduciary in connection with the
4 plan.

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

10 **“SEC. 804. PARTICIPATION AND COVERAGE REQUIRE-**
11 **MENTS.**

12 “(a) COVERED EMPLOYERS AND INDIVIDUALS.—The
13 requirements of this subsection are met with respect to
14 an association health plan if, under the terms of the
15 plan—

16 “(1) all participating employers must be mem-
17 bers or affiliated members of the sponsor, except
18 that, in the case of a sponsor which is a professional
19 association or other individual-based association, if
20 at least one of the officers, directors, or employees
21 of an employer, or at least one of the individuals
22 who are partners in an employer and who actively
23 participates in the business, is a member or affili-
24 ated member of the sponsor, participating employers
25 may also include such employer, and

1 “(2) all individuals commencing coverage under
2 the plan after certification under this part must
3 be—

4 “(A) active or retired owners (including
5 self-employed individuals), officers, directors, or
6 employees of, or partners in, participating em-
7 ployers, or

8 “(B) the beneficiaries of individuals de-
9 scribed in subparagraph (A).

10 “(b) COVERAGE OF PREVIOUSLY UNINSURED EM-
11 PLOYEES.—The requirements of this subsection are met
12 with respect to an association health plan if, under the
13 terms of the plan, no affiliated member of the sponsor may
14 be offered coverage under the plan as a participating em-
15 ployer unless—

16 “(1) the affiliated member was an affiliated
17 member on the date of certification under this part,
18 or

19 “(2) during the 12-month period preceding the
20 date of the offering of such coverage, the affiliated
21 member has not maintained or contributed to a
22 group health plan with respect to any of its employ-
23 ees who would otherwise be eligible to participate in
24 such association health plan.

1 “(c) INDIVIDUAL MARKET UNAFFECTED.—The re-
2 quirements of this subsection are met with respect to an
3 association health plan if, under the terms of the plan,
4 no participating employer may provide health insurance
5 coverage in the individual market for any employee not
6 covered under the plan which is similar to the coverage
7 contemporaneously provided to employees of the employer
8 under the plan, if such exclusion of the employee from cov-
9 erage under the plan is based on a health status-related
10 factor with respect to the employee and such employee
11 would, but for such exclusion on such basis, be eligible
12 for coverage under the plan.

13 “(d) PROHIBITION OF DISCRIMINATION AGAINST
14 EMPLOYERS AND EMPLOYEES ELIGIBLE TO PARTICI-
15 PATE.—The requirements of this subsection are met with
16 respect to an association health plan if—

17 “(1) under the terms of the plan, no employer
18 meeting the preceding requirements of this section is
19 excluded as a participating employer, unless—

20 “(A) participation or contribution require-
21 ments of the type referred to in section 2711 of
22 the Public Health Service Act are not met with
23 respect to the excluded employer, or

1 “(B) the excluded employer does not sat-
2 isfy a required minimum level of employment
3 uniformly applicable to participating employers,

4 “(2) the applicable requirements of sections
5 701, 702, and 703 are met with respect to the plan,
6 and

7 “(3) applicable benefit options under the plan
8 are actively marketed to all eligible participating em-
9 ployers.

10 **“SEC. 805. OTHER REQUIREMENTS RELATING TO PLAN**
11 **DOCUMENTS, CONTRIBUTION RATES, AND**
12 **BENEFIT OPTIONS.**

13 “(a) IN GENERAL.—The requirements of this section
14 are met with respect to an association health plan if the
15 following requirements are met:

16 “(1) CONTENTS OF GOVERNING INSTRU-
17 MENTS.—The instruments governing the plan in-
18 clude a written instrument, meeting the require-
19 ments of an instrument required under section
20 402(a)(1), which—

21 “(A) provides that the board of trustees
22 serves as the named fiduciary required for plans
23 under section 402(a)(1) and serves in the ca-
24 pacity of a plan administrator (referred to in
25 section 3(16)(A)),

1 “(B) provides that the sponsor of the plan
2 is to serve as plan sponsor (referred to in sec-
3 tion 3(16)(B)), and

4 “(C) incorporates the requirements of sec-
5 tion 806.

6 “(2) CONTRIBUTION RATES MUST BE NON-
7 DISCRIMINATORY.—

8 “(A) The contribution rates for any par-
9 ticipating employer do not vary significantly on
10 the basis of the claims experience of such em-
11 ployer and do not vary on the basis of the type
12 of business or industry in which such employer
13 is engaged.

14 “(B) Nothing in this title or any other pro-
15 vision of law shall be construed to preclude an
16 association health plan, or a health insurance
17 issuer offering health insurance coverage in
18 connection with an association health plan,
19 from setting contribution rates based on the
20 claims experience of the plan, to the extent con-
21 tribution rates under the plan meet the require-
22 ments of section 702(b).

23 “(3) FLOOR FOR NUMBER OF COVERED INDI-
24 VIDUALS WITH RESPECT TO CERTAIN PLANS.—If
25 any benefit option under the plan does not consist

1 of health insurance coverage, the plan has not fewer
2 than 1,000 participants and beneficiaries.

3 “(4) REGULATORY REQUIREMENTS.—Such
4 other requirements as the Secretary may prescribe
5 by regulation as necessary to carry out the purposes
6 of this part.

7 “(b) ABILITY OF ASSOCIATION HEALTH PLANS TO
8 DESIGN BENEFIT OPTIONS.—Nothing in this part or any
9 provision of State law (as defined in section 514(c)(1))
10 shall be construed to preclude an association health plan,
11 or a health insurance issuer offering health insurance cov-
12 erage in connection with an association health plan, from
13 exercising its sole discretion in selecting the specific items
14 and services consisting of medical care to be included as
15 benefits under such plan or coverage, except in the case
16 of any law to the extent that it (1) prohibits an exclusion
17 of a specific disease from such coverage, or (2) is not pre-
18 empted under section 731(a)(1) with respect to matters
19 governed by section 711 or 712.

20 **“SEC. 806. MAINTENANCE OF RESERVES AND PROVISIONS**
21 **FOR SOLVENCY FOR PLANS PROVIDING**
22 **HEALTH BENEFITS IN ADDITION TO HEALTH**
23 **INSURANCE COVERAGE.**

24 “(a) IN GENERAL.—The requirements of this section
25 are met with respect to an association health plan if—

1 “(1) the benefits under the plan consist solely
2 of health insurance coverage, or

3 “(2) if the plan provides any additional benefit
4 options which do not consist of health insurance cov-
5 erage, the plan—

6 “(A) establishes and maintains reserves
7 with respect to such additional benefit options,
8 consisting of—

9 “(i) a reserve sufficient for unearned
10 contributions,

11 “(ii) a reserve sufficient for benefit li-
12 abilities which have been incurred, which
13 have not been satisfied, and for which risk
14 of loss has not yet been transferred, and
15 for expected administrative costs with re-
16 spect to such benefit liabilities, and

17 “(iii) a reserve, in an amount rec-
18 ommended by the qualified actuary, for
19 any other obligations of the plan,

20 and

21 “(B) establishes and maintains aggregate
22 excess/stop loss insurance and solvency indem-
23 nification as follows:

24 “(i) The plan shall secure aggregate
25 excess/stop loss insurance for the plan with

1 an attachment point which is not greater
2 than 125 percent of expected gross annual
3 claims. The Secretary may by regulation
4 define the incurred or paid basis and rel-
5 evant claims periods for purposes of deter-
6 mining expected claims under this clause
7 and provide for upward adjustments in the
8 amount of such percentage in specified cir-
9 cumstances in which the plan specifically
10 provides for and maintains reserves in ex-
11 cess of the amounts required under sub-
12 paragraph (A).

13 “(ii) The plan shall secure a means of
14 indemnification for any claims which the
15 plan is unable to satisfy by reason of a ter-
16 mination pursuant to section 809(b) (relat-
17 ing to mandatory termination).

18 Any regulations prescribed by the Secretary pursuant to
19 paragraph (2)(B)(i) may allow for such adjustments in the
20 required levels of excess/stop loss insurance as the quali-
21 fied actuary may recommend, taking into account the spe-
22 cific circumstances of the plan.

23 “(b) MINIMUM AMOUNT FOR CERTAIN RESERVES.—
24 The total of the reserves described in subsection (a)(2)(B)
25 shall not be less than an amount equal to the greater of—

1 “(1) 25 percent of expected incurred claims and
2 expenses for the plan year, or

3 “(2) \$400,000.

4 “(c) REQUIRED MARGIN.—In determining the
5 amounts of reserves required under this section in connec-
6 tion with any association health plan described in sub-
7 section (a)(2), the qualified actuary shall include a margin
8 for error and other fluctuations taking into account the
9 specific circumstances of such plan.

10 “(d) ADDITIONAL REQUIREMENTS.—In the case of
11 any association health plan described in subsection (a)(2),
12 the Secretary may provide such additional requirements
13 relating to reserves and excess/stop loss insurance as the
14 Secretary considers appropriate. Such requirements may
15 be provided, by regulation or otherwise, with respect to
16 any such plan or any class of such plans.

17 “(e) ADJUSTMENTS FOR EXCESS/STOP LOSS INSUR-
18 ANCE.—The Secretary may provide for adjustments to the
19 levels of reserves otherwise required under subsections (a)
20 and (b) with respect to any plan or class of plans to take
21 into account excess/stop loss insurance provided with re-
22 spect to such plan or plans.

23 “(f) ALTERNATIVE MEANS OF COMPLIANCE.—The
24 Secretary may permit an association health plan described
25 in subsection (a)(2) to substitute, for all or part of the

1 requirements of this section, such security, guarantee,
2 hold-harmless arrangement, or other financial arrange-
3 ment as the Secretary determines to be adequate to enable
4 the plan to fully meet all its financial obligations on a
5 timely basis. The Secretary may take into account, for
6 purposes of this subsection, evidence provided by the plan
7 or sponsor which demonstrates an assumption of liability
8 with respect to the plan. Such evidence may be in the form
9 of a contract of indemnification, lien, bonding, insurance,
10 letter of credit, recourse under applicable terms of the plan
11 in the form of assessments of participating employers, se-
12 curity, or other financial arrangement.

13 “(g) **EXCESS/STOP LOSS INSURANCE.**—For purposes
14 of this section, the term ‘excess/stop loss insurance’
15 means, in connection with an association health plan, a
16 contract under which a health insurance issuer (or such
17 other insurer as may be determined under regulations of
18 the Secretary) provides for payment to the plan with re-
19 spect to claims under the plan in excess of an amount or
20 amounts specified in such contract.

21 **“SEC. 807. REQUIREMENTS FOR APPLICATION AND RELAT-**
22 **ED REQUIREMENTS.**

23 “(a) **FILING FEE.**—Under the procedure prescribed
24 pursuant to section 802(a), an association health plan
25 shall pay to the Secretary at the time of filing an applica-

1 tion for certification under this part a filing fee in the
2 amount of \$5,000, which shall be available, to the extent
3 provided in appropriation Acts, to the Secretary for the
4 sole purpose of administering the certification procedures
5 applicable with respect to association health plans.

6 “(b) INFORMATION TO BE INCLUDED IN APPLICA-
7 TION FOR CERTIFICATION.—An application for certifi-
8 cation under this part meets the requirements of this sec-
9 tion only if it includes, in a manner and form prescribed
10 in regulations of the Secretary, at least the following infor-
11 mation:

12 “(1) IDENTIFYING INFORMATION.—The names
13 and addresses of—

14 “(A) the sponsor, and

15 “(B) the members of the board of trustees
16 of the plan.

17 “(2) STATES IN WHICH PLAN INTENDS TO DO
18 BUSINESS.—The States in which participants and
19 beneficiaries under the plan are to be located and
20 the number of them expected to be located in each
21 such State.

22 “(3) BONDING REQUIREMENTS.—Evidence pro-
23 vided by the board of trustees that the bonding re-
24 quirements of section 412 will be met as of the date

1 of the application or (if later) commencement of op-
2 erations.

3 “(4) PLAN DOCUMENTS.—A copy of the docu-
4 ments governing the plan (including any bylaws and
5 trust agreements), the summary plan description,
6 and other material describing the benefits that will
7 be provided to participants and beneficiaries under
8 the plan.

9 “(5) AGREEMENTS WITH SERVICE PROVID-
10 ERS.—A copy of any agreements between the plan
11 and contract administrators and other service pro-
12 viders.

13 “(6) FUNDING REPORT.—In the case of asso-
14 ciation health plans providing benefits options in ad-
15 dition to health insurance coverage, a report setting
16 forth information with respect to such additional
17 benefit options determined as of a date within the
18 120-day period ending with the date of the applica-
19 tion, including the following:

20 “(A) RESERVES.—A statement, certified
21 by the board of trustees of the plan, and a
22 statement of actuarial opinion, signed by a
23 qualified actuary, that all applicable require-
24 ments of section 806 are or will be met in ac-

1 cordance with regulations which the Secretary
2 shall prescribe.

3 “(B) ADEQUACY OF CONTRIBUTION
4 RATES.—A statement of actuarial opinion,
5 signed by a qualified actuary, which sets forth
6 a description of the extent to which contribution
7 rates are adequate to provide for the payment
8 of all obligations and the maintenance of re-
9 quired reserves under the plan for the 12-
10 month period beginning with such date within
11 such 120-day period, taking into account the
12 expected coverage and experience of the plan. If
13 the contribution rates are not fully adequate,
14 the statement of actuarial opinion shall indicate
15 the extent to which the rates are inadequate
16 and the changes needed to ensure adequacy.

17 “(C) CURRENT AND PROJECTED VALUE OF
18 ASSETS AND LIABILITIES.—A statement of ac-
19 tuarial opinion signed by a qualified actuary,
20 which sets forth the current value of the assets
21 and liabilities accumulated under the plan and
22 a projection of the assets, liabilities, income,
23 and expenses of the plan for the 12-month pe-
24 riod referred to in subparagraph (B). The in-

1 come statement shall identify separately the
2 plan’s administrative expenses and claims.

3 “(D) COSTS OF COVERAGE TO BE
4 CHARGED AND OTHER EXPENSES.—A state-
5 ment of the costs of coverage to be charged, in-
6 cluding an itemization of amounts for adminis-
7 tration, reserves, and other expenses associated
8 with the operation of the plan.

9 “(E) OTHER INFORMATION.—Any other
10 information which may be prescribed in regula-
11 tions of the Secretary as necessary to carry out
12 the purposes of this part.

13 “(c) FILING NOTICE OF CERTIFICATION WITH
14 STATES.—A certification granted under this part to an
15 association health plan shall not be effective unless written
16 notice of such certification is filed with the applicable
17 State authority of each State in which at least 25 percent
18 of the participants and beneficiaries under the plan are
19 located. For purposes of this subsection, an individual
20 shall be considered to be located in the State in which a
21 known address of such individual is located or in which
22 such individual is employed.

23 “(d) NOTICE OF MATERIAL CHANGES.—In the case
24 of any association health plan certified under this part,
25 descriptions of material changes in any information which

1 was required to be submitted with the application for the
2 certification under this part shall be filed in such form
3 and manner as shall be prescribed in regulations of the
4 Secretary. The Secretary may require by regulation prior
5 notice of material changes with respect to specified mat-
6 ters which might serve as the basis for suspension or rev-
7 ocation of the certification.

8 “(e) REPORTING REQUIREMENTS FOR CERTAIN AS-
9 SOCIATION HEALTH PLANS.—An association health plan
10 certified under this part which provides benefit options in
11 addition to health insurance coverage for such plan year
12 shall meet the requirements of section 103 by filing an
13 annual report under such section which shall include infor-
14 mation described in subsection (b)(6) with respect to the
15 plan year and, notwithstanding section 104(a)(1)(A), shall
16 be filed not later than 90 days after the close of the plan
17 year (or on such later date as may be prescribed by the
18 Secretary).

19 “(f) ENGAGEMENT OF QUALIFIED ACTUARY.—The
20 board of trustees of each association health plan which
21 provides benefits options in addition to health insurance
22 coverage and which is applying for certification under this
23 part or is certified under this part shall engage, on behalf
24 of all participants and beneficiaries, a qualified actuary
25 who shall be responsible for the preparation of the mate-

1 rials comprising information necessary to be submitted by
2 a qualified actuary under this part. The qualified actuary
3 shall utilize such assumptions and techniques as are nec-
4 essary to enable such actuary to form an opinion as to
5 whether the contents of the matters reported under this
6 part—

7 “(1) are in the aggregate reasonably related to
8 the experience of the plan and to reasonable expecta-
9 tions, and

10 “(2) represent such actuary’s best estimate of
11 anticipated experience under the plan.

12 The opinion by the qualified actuary shall be made with
13 respect to, and shall be made a part of, the annual report.

14 **“SEC. 808. NOTICE REQUIREMENTS FOR VOLUNTARY TER-**
15 **MINATION.**

16 “Except as provided in section 809(b), an association
17 health plan which is or has been certified under this part
18 may terminate (upon or at any time after cessation of ac-
19 cruals in benefit liabilities) only if the board of trustees—

20 “(1) not less than 60 days before the proposed
21 termination date, provides to the participants and
22 beneficiaries a written notice of intent to terminate
23 stating that such termination is intended and the
24 proposed termination date,

1 “(2) develops a plan for winding up the affairs
2 of the plan in connection with such termination in
3 a manner which will result in timely payment of all
4 benefits for which the plan is obligated, and

5 “(3) submits such plan in writing to the Sec-
6 retary.

7 Actions required under this section shall be taken in such
8 form and manner as may be prescribed in regulations of
9 the Secretary.

10 **“SEC. 809. CORRECTIVE ACTIONS AND MANDATORY TERMI-**
11 **NATION.**

12 “(a) ACTIONS TO AVOID DEPLETION OF RE-
13 SERVES.—An association health plan which is certified
14 under this part and which provides benefits other than
15 health insurance coverage shall continue to meet the re-
16 quirements of section 806, irrespective of whether such
17 certification continues in effect. The board of trustees of
18 such plan shall determine quarterly whether the require-
19 ments of section 806 are met. In any case in which the
20 board determines that there is reason to believe that there
21 is or will be a failure to meet such requirements, or the
22 Secretary makes such a determination and so notifies the
23 board, the board shall immediately notify the qualified ac-
24 tuary engaged by the plan, and such actuary shall, not
25 later than the end of the next following month, make such

1 recommendations to the board for corrective action as the
2 actuary determines necessary to ensure compliance with
3 section 806. Not later than 30 days after receiving from
4 the actuary recommendations for corrective actions, the
5 board shall notify the Secretary (in such form and manner
6 as the Secretary may prescribe by regulation) of such rec-
7 ommendations of the actuary for corrective action, to-
8 gether with a description of the actions (if any) that the
9 board has taken or plans to take in response to such rec-
10 ommendations. The board shall thereafter report to the
11 Secretary, in such form and frequency as the Secretary
12 may specify to the board, regarding corrective action taken
13 by the board until the requirements of section 806 are
14 met.

15 “(b) MANDATORY TERMINATION.—In any case in
16 which—

17 “(1) the Secretary has been notified under sub-
18 section (a) of a failure of an association health plan
19 which is or has been certified under this part and
20 is described in section 806(a)(2) to meet the require-
21 ments of section 806 and has not been notified by
22 the board of trustees of the plan that corrective ac-
23 tion has restored compliance with such require-
24 ments, and

1 “(2) the Secretary determines that there is a
2 reasonable expectation that the plan will continue to
3 fail to meet the requirements of section 806,
4 the board of trustees of the plan shall, at the direction
5 of the Secretary, terminate the plan and, in the course
6 of the termination, take such actions as the Secretary may
7 require, including satisfying any claims referred to in sec-
8 tion 806(a)(2)(B)(ii) and recovering for the plan any li-
9 ability under section 806(f), as necessary to ensure that
10 the affairs of the plan will be, to the maximum extent pos-
11 sible, wound up in a manner which will result in timely
12 provision of all benefits for which the plan is obligated.

13 **“SEC. 810. SPECIAL RULES FOR CHURCH PLANS.**

14 “(a) ELECTION FOR CHURCH PLANS.—Notwith-
15 standing section 4(b)(2), if a church, a convention or asso-
16 ciation of churches, or an organization described in section
17 3(33)(C)(i) maintains a church plan which is a group
18 health plan (as defined in section 733(a)(1)), and such
19 church, convention, association, or organization makes an
20 election with respect to such plan under this subsection
21 (in such form and manner as the Secretary may by regula-
22 tion prescribe), then the provisions of this section shall
23 apply to such plan, with respect to benefits provided under
24 such plan consisting of medical care, as if section 4(b)(2)
25 did not contain an exclusion for church plans. Nothing in

1 this paragraph shall be construed to render any other sec-
2 tion of this title applicable to church plans, except to the
3 extent that such other section is incorporated by reference
4 in this section.

5 “(b) EFFECT OF ELECTION.—

6 “(1) PREEMPTION OF STATE INSURANCE LAWS
7 REGULATING COVERED CHURCH PLANS.—Subject to
8 paragraphs (2) and (3), this section shall supersede
9 any and all State laws which regulate insurance in-
10 sofar as they may now or hereafter regulate church
11 plans to which this section applies or trusts estab-
12 lished under such church plans.

13 “(2) GENERAL STATE INSURANCE REGULATION
14 UNAFFECTED.—

15 “(A) IN GENERAL.—Except as provided in
16 subparagraph (B), nothing in this section shall
17 be construed to exempt or relieve any person
18 from any provision of State law which regulates
19 insurance.

20 “(B) CHURCH PLANS NOT TO BE DEEMED
21 INSURANCE COMPANIES OR INSURERS.—Neither
22 a church plan to which this section applies, nor
23 any trust established under such a church plan,
24 shall be deemed to be an insurance company or
25 other insurer or to be engaged in the business

1 of insurance for purposes of any State law pur-
2 porting to regulate insurance companies or in-
3 surance contracts.

4 “(3) PREEMPTION OF CERTAIN STATE LAWS
5 RELATING TO PREMIUM RATE REGULATION AND
6 BENEFIT MANDATES.—The provisions of subsections
7 (a)(2)(B) and (b) of section 805 shall apply with re-
8 spect to a church plan to which this section applies
9 in the same manner and to the same extent as such
10 provisions apply with respect to association health
11 plans.

12 “(4) DEFINITIONS.—For purposes of this sub-
13 section—

14 “(A) STATE LAW.—The term ‘State law’
15 includes all laws, decisions, rules, regulations,
16 or other State action having the effect of law,
17 of any State. A law of the United States appli-
18 cable only to the District of Columbia shall be
19 treated as a State law rather than a law of the
20 United States.

21 “(B) STATE.—The term ‘State’ includes a
22 State, any political subdivision thereof, or any
23 agency or instrumentality of either, which
24 purports to regulate, directly or indirectly, the

1 terms and conditions of church plans covered by
2 this section.

3 “(c) REQUIREMENTS FOR COVERED CHURCH
4 PLANS.—

5 “(1) FIDUCIARY RULES AND EXCLUSIVE PUR-
6 POSE.—A fiduciary shall discharge his duties with
7 respect to a church plan to which this section ap-
8 plies—

9 “(A) for the exclusive purpose of:

10 “(i) providing benefits to participants
11 and their beneficiaries; and

12 “(ii) defraying reasonable expenses of
13 administering the plan;

14 “(B) with the care, skill, prudence and dili-
15 gence under the circumstances then prevailing
16 that a prudent man acting in a like capacity
17 and familiar with such matters would use in the
18 conduct of an enterprise of a like character and
19 with like aims; and

20 “(C) in accordance with the documents
21 and instruments governing the plan.

22 The requirements of this paragraph shall not be
23 treated as not satisfied solely because the plan as-
24 sets are commingled with other church assets, to the

1 extent that such plan assets are separately ac-
2 counted for.

3 “(2) CLAIMS PROCEDURE.—In accordance with
4 regulations of the Secretary, every church plan to
5 which this section applies shall—

6 “(A) provide adequate notice in writing to
7 any participant or beneficiary whose claim for
8 benefits under the plan has been denied, setting
9 forth the specific reasons for such denial, writ-
10 ten in a manner calculated to be understood by
11 the participant;

12 “(B) afford a reasonable opportunity to
13 any participant whose claim for benefits has
14 been denied for a full and fair review by the ap-
15 propriate fiduciary of the decision denying the
16 claim; and

17 “(C) provide a written statement to each
18 participant describing the procedures estab-
19 lished pursuant to this paragraph.

20 “(3) ANNUAL STATEMENTS.—In accordance
21 with regulations of the Secretary, every church plan
22 to which this section applies shall file with the Sec-
23 retary an annual statement—

24 “(A) stating the names and addresses of
25 the plan and of the church, convention, or asso-

1 ciation maintaining the plan (and its principal
2 place of business);

3 “(B) certifying that it is a church plan to
4 which this section applies and that it complies
5 with the requirements of paragraphs (1) and
6 (2);

7 “(C) identifying the States in which par-
8 ticipants and beneficiaries under the plan are or
9 likely will be located during the 1-year period
10 covered by the statement; and

11 “(D) containing a copy of a statement of
12 actuarial opinion signed by a qualified actuary
13 that the plan maintains capital, reserves, insur-
14 ance, other financial arrangements, or any com-
15 bination thereof adequate to enable the plan to
16 fully meet all of its financial obligations on a
17 timely basis.

18 “(4) DISCLOSURE.—At the time that the an-
19 nual statement is filed by a church plan with the
20 Secretary pursuant to paragraph (3), a copy of such
21 statement shall be made available by the Secretary
22 to the State insurance commissioner (or similar offi-
23 cial) of any State. The name of each church plan
24 and sponsoring organization filing an annual state-

1 ment in compliance with paragraph (3) shall be pub-
2 lished annually in the Federal Register.

3 “(c) ENFORCEMENT.—The Secretary may enforce
4 the provisions of this section in a manner consistent with
5 section 502, to the extent applicable with respect to ac-
6 tions under section 502(a)(5), and with section 3(33)(D),
7 except that, other than for the purpose of seeking a tem-
8 porary restraining order, a civil action may be brought
9 with respect to the plan’s failure to meet any requirement
10 of this section only if the plan fails to correct its failure
11 within the correction period described in section 3(33)(D).
12 The other provisions of part 5 (except sections 501(a),
13 503, 512, 514, and 515) shall apply with respect to the
14 enforcement and administration of this section.

15 “(d) DEFINITIONS AND OTHER RULES.—For pur-
16 poses of this section—

17 “(1) IN GENERAL.—Except as otherwise pro-
18 vided in this section, any term used in this section
19 which is defined in any provision of this title shall
20 have the definition provided such term by such pro-
21 vision.

22 “(2) SEMINARY STUDENTS.—Seminary students
23 who are enrolled in an institution of higher learning
24 described in section 3(33)(C)(iv) and who are treat-
25 ed as participants under the terms of a church plan

1 to which this section applies shall be deemed to be
2 employees as defined in section 3(6) if the number
3 of such students constitutes an insignificant portion
4 of the total number of individuals who are treated
5 as participants under the terms of the plan.”.

6 **“SEC. 811. DEFINITIONS AND RULES OF CONSTRUCTION.**

7 “(a) DEFINITIONS.—For purposes of this part—

8 “(1) GROUP HEALTH PLAN.—The term ‘group
9 health plan’ has the meaning provided in section
10 733(a)(1).

11 “(2) MEDICAL CARE.—The term ‘medical care’
12 has the meaning provided in section 733(a)(2).

13 “(3) HEALTH INSURANCE COVERAGE.—The
14 term ‘health insurance coverage’ has the meaning
15 provided in section 733(b)(1).

16 “(4) HEALTH INSURANCE ISSUER.—The term
17 ‘health insurance issuer’ has the meaning provided
18 in section 733(b)(2).

19 “(5) HEALTH STATUS-RELATED FACTOR.—The
20 term ‘health status-related factor’ has the meaning
21 provided in section 733(d)(2).

22 “(6) INDIVIDUAL MARKET.—

23 “(A) IN GENERAL.—The term ‘individual
24 market’ means the market for health insurance

1 coverage offered to individuals other than in
2 connection with a group health plan.

3 “(B) TREATMENT OF VERY SMALL
4 GROUPS.—

5 “(i) IN GENERAL.—Subject to clause
6 (ii), such term includes coverage offered in
7 connection with a group health plan that
8 has fewer than 2 participants as current
9 employees or participants described in sec-
10 tion 732(d)(3) on the first day of the plan
11 year.

12 “(ii) STATE EXCEPTION.—Clause (i)
13 shall not apply in the case of health insur-
14 ance coverage offered in a State if such
15 State regulates the coverage described in
16 such clause in the same manner and to the
17 same extent as coverage in the small group
18 market (as defined in section 2791(e)(5) of
19 the Public Health Service Act) is regulated
20 by such State.

21 “(7) PARTICIPATING EMPLOYER.—The term
22 ‘participating employer’ means, in connection with
23 an association health plan, any employer, if any indi-
24 vidual who is an employee of such employer, a part-
25 ner in such employer, or a self-employed individual

1 who is such employer (or any dependent, as defined
2 under the terms of the plan, of such individual) is
3 or was covered under such plan in connection with
4 the status of such individual as such an employee,
5 partner, or self-employed individual in relation to the
6 plan.

7 “(8) APPLICABLE STATE AUTHORITY.—The
8 term ‘applicable State authority’ means, with respect
9 to a health insurance issuer in a State, the State in-
10 surance commissioner or official or officials des-
11 ignated by the State to enforce the requirements of
12 title XXVII of the Public Health Service Act for the
13 State involved with respect to such issuer.

14 “(9) QUALIFIED ACTUARY.—The term ‘quali-
15 fied actuary’ means an individual who is a member
16 of the American Academy of Actuaries or meets
17 such reasonable standards and qualifications as the
18 Secretary may provide by regulation.

19 “(b) RULES OF CONSTRUCTION.—

20 “(1) EMPLOYERS AND EMPLOYEES.—For pur-
21 poses of determining whether a plan, fund, or pro-
22 gram is an employee welfare benefit plan which is an
23 association health plan, and for purposes of applying
24 this title in connection with such plan, fund, or pro-
25 gram so determined to be such an employee welfare

1 benefit plan, the term ‘employer’ (as defined in sec-
2 tion 3(5)) and the term ‘employee’ (as defined in
3 section 3(6)) shall include an individual who is a
4 partner or a self-employed individual.

5 “(2) PLANS, FUNDS, AND PROGRAMS TREATED
6 AS GROUP HEALTH PLANS.—In the case of any plan,
7 fund, or program which was established or is main-
8 tained for the purpose of providing medical care
9 (through the purchase of insurance or otherwise) for
10 individuals covered thereunder and which dem-
11 onstrates to the Secretary that all requirements for
12 certification under this part would be met with re-
13 spect to such plan, fund, or program if such plan,
14 fund, or program were a group health plan, such
15 plan, fund, or program shall be treated for purposes
16 of this title as an employee welfare benefit plan on
17 and after the date of such demonstration.”.

18 (b) CONFORMING AMENDMENTS TO PREEMPTION
19 RULES.—

20 (1) Section 514(b)(6) of such Act (29 U.S.C.
21 1144(b)(6)) is amended by adding at the end the
22 following new subparagraph:

23 “(E) The preceding subparagraphs of this paragraph
24 do not apply with respect to any State law in the case

1 of an association health plan which is certified under part
2 8.”.

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

5 (A) in subsection (b)(4), by striking “Sub-
6 section (a)” and inserting “Subsections (a) and
7 (d)”;

8 (B) in subsection (b)(5), by striking “sub-
9 section (a)” in subparagraph (A) and inserting
10 “subsection (a) of this section and subsections
11 (a)(2)(B) and (b) of section 805”, and by strik-
12 ing “subsection (a)” in subparagraph (B) and
13 inserting “subsection (a) of this section or sub-
14 section (a)(2)(B) or (b) of section 805”;

15 (C) by redesignating subsection (d) as sub-
16 section (e); and

17 (D) by inserting after subsection (c) the
18 following new subsection:

19 “(d)(1) Except as provided in subsection (b)(4), the
20 provisions of this title shall supersede any and all State
21 laws insofar as they may now or hereafter preclude a
22 health insurance issuer from offering health insurance cov-
23 erage in connection with an association health plan which
24 is certified under part 8.

1 “(2) Except as provided in paragraphs (4) and (5)
2 of subsection (b) of this section—

3 “(A) In any case in which health insurance cov-
4 erage of any policy type is offered under an associa-
5 tion health plan certified under part 8 to a partici-
6 pating employer operating in such State, the provi-
7 sions of this title shall supersede any and all laws
8 of such State insofar as they may preclude a health
9 insurance issuer from offering health insurance cov-
10 erage of the same policy type to other employers op-
11 erating in the State which are eligible for coverage
12 under such association health plan, whether or not
13 such other employers are participating employers in
14 such plan.

15 “(B) In any case in which health insurance cov-
16 erage of any policy type is offered under an associa-
17 tion health plan in a State and the filing, with the
18 applicable State authority, of the policy form in con-
19 nection with such policy type is approved by such
20 State authority, the provisions of this title shall su-
21 persede any and all laws of any other State in which
22 health insurance coverage of such type is offered, in-
23 sofar as they may preclude, upon the filing in the
24 same form and manner of such policy form with the

1 applicable State authority in such other State, the
2 approval of the filing in such other State.

3 “(3) For additional provisions relating to association
4 health plans, see subsections (a)(2)(B) and (b) of section
5 805.

6 “(4) For purposes of this subsection, the term ‘asso-
7 ciation health plan’ has the meaning provided in section
8 801(a), and the terms ‘health insurance coverage’, ‘par-
9 ticipating employer’, and ‘health insurance issuer’ have
10 the meanings provided such terms in section 811, respec-
11 tively.”.

12 (3) Section 514(b)(6)(A) of such Act (29
13 U.S.C. 1144(b)(6)(A)) is amended—

14 (A) in clause (i)(II), by striking “and” at
15 the end;

16 (B) in clause (ii), by inserting “and which
17 does not provide medical care (within the mean-
18 ing of section 733(a)(2)),” after “arrange-
19 ment”, and by striking “title.” and inserting
20 “title, and”; and

21 (C) by adding at the end the following new
22 clause:

23 “(iii) subject to subparagraph (E), in the
24 case of any other employee welfare benefit plan
25 which is a multiple employer welfare arrange-

1 ment and which provides medical care (within
2 the meaning of section 733(a)(2)), any law of
3 any State which regulates insurance may
4 apply.”.

5 (c) PLAN SPONSOR.—Section 3(16)(B) of such Act
6 (29 U.S.C. 102(16)(B)) is amended by adding at the end
7 the following new sentence: “Such term also includes a
8 person serving as the sponsor of an association health plan
9 under part 8.”.

10 (d) SAVINGS CLAUSE.—Section 731(e) of such Act
11 is amended by inserting “or part 8” after “this part”.

12 (e) CLERICAL AMENDMENT.—The table of contents
13 in section 1 of the Employee Retirement Income Security
14 Act of 1974 is amended by inserting after the item relat-
15 ing to section 734 the following new items:

“PART 8—RULES GOVERNING ASSOCIATION HEALTH PLANS

“Sec. 801. Association health plans.

“Sec. 802. Certification of association health plans.

“Sec. 803. Requirements relating to sponsors and boards of trustees.

“Sec. 804. Participation and coverage requirements.

“Sec. 805. Other requirements relating to plan documents, contribution rates,
and benefit options.

“Sec. 806. Maintenance of reserves and provisions for solvency for plans pro-
viding health benefits in addition to health insurance coverage.

“Sec. 807. Requirements for application and related requirements.

“Sec. 808. Notice requirements for voluntary termination.

“Sec. 809. Corrective actions and mandatory termination.

“Sec. 810. Special rules for church plans.

“Sec. 811. Definitions and rules of construction.”

1 **SEC. 3. CLARIFICATION OF TREATMENT OF SINGLE EM-**
2 **PLOYER ARRANGEMENTS.**

3 Section 3(40)(B) of the Employee Retirement Income
4 Security Act of 1974 (29 U.S.C. 1002(40)(B)) is amend-
5 ed—

6 (1) in clause (i), by inserting “for any plan year
7 of any such plan, or any fiscal year of any such
8 other arrangement;” after “single employer”, and by
9 inserting “during such year or at any time during
10 the preceding 1-year period” after “control group”;

11 (2) in clause (iii)—

12 (A) by striking “common control shall not
13 be based on an interest of less than 25 percent”
14 and inserting “an interest of greater than 25
15 percent may not be required as the minimum
16 interest necessary for common control”; and

17 (B) by striking “similar to” and inserting
18 “consistent and coextensive with”;

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

21 (4) by inserting after clause (iii) the following
22 new clause:

23 “(iv) in determining, after the application of
24 clause (i), whether benefits are provided to employ-
25 ees of two or more employers, the arrangement shall
26 be treated as having only 1 participating employer

1 if, after the application of clause (i), the number of
2 individuals who are employees and former employees
3 of any one participating employer and who are cov-
4 ered under the arrangement is greater than 75 per-
5 cent of the aggregate number of all individuals who
6 are employees or former employees of participating
7 employers and who are covered under the arrange-
8 ment,”.

9 **SEC. 4. CLARIFICATION OF TREATMENT OF CERTAIN COL-**
10 **LECTIVELY BARGAINED ARRANGEMENTS.**

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

14 “(i)(I) under or pursuant to one or more collec-
15 tive bargaining agreements which are reached pursu-
16 ant to collective bargaining described in section 8(d)
17 of the National Labor Relations Act (29 U.S.C.
18 158(d)) or paragraph Fourth of section 2 of the
19 Railway Labor Act (45 U.S.C. 152, paragraph
20 Fourth) or which are reached pursuant to labor-
21 management negotiations under similar provisions of
22 State public employee relations laws, and (II) in ac-
23 cordance with subparagraphs (C), (D), and (E),”.

1 (b) LIMITATIONS.—Section 3(40) of such Act (29
2 U.S.C. 1002(40)) is amended by adding at the end the
3 following new subparagraphs:

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

7 “(i) The plan or other arrangement, and the
8 employee organization or any other entity sponsoring
9 the plan or other arrangement, do not—

10 “(I) utilize the services of any licensed in-
11 surance agent or broker for soliciting or enroll-
12 ing employers or individuals as participating
13 employers or covered individuals under the plan
14 or other arrangement; or

15 “(II) pay a commission or any other type
16 of compensation to a person, other than a full
17 time employee of the employee organization (or
18 a member of the organization to the extent pro-
19 vided in regulations of the Secretary), that is
20 related either to the volume or number of em-
21 ployers or individuals solicited or enrolled as
22 participating employers or covered individuals
23 under the plan or other arrangement, or to the
24 dollar amount or size of the contributions made

1 by participating employers or covered individ-
2 uals to the plan or other arrangement;
3 except to the extent that the services used by the
4 plan, arrangement, organization, or other entity con-
5 sist solely of preparation of documents necessary for
6 compliance with the reporting and disclosure re-
7 quirements of part 1 or administrative, investment,
8 or consulting services unrelated to solicitation or en-
9 rollment of covered individuals.

10 “(ii) As of the end of the preceding plan year,
11 the number of covered individuals under the plan or
12 other arrangement who are identified to the plan or
13 arrangement and who are neither—

14 “(I) employed within a bargaining unit
15 covered by any of the collective bargaining
16 agreements with a participating employer (nor
17 covered on the basis of an individual’s employ-
18 ment in such a bargaining unit); nor

19 “(II) present employees (or former employ-
20 ees who were covered while employed) of the
21 sponsoring employee organization, of an em-
22 ployer who is or was a party to any of the col-
23 lective bargaining agreements, or of the plan or
24 other arrangement or a related plan or arrange-

1 ment (nor covered on the basis of such present
2 or former employment);
3 does not exceed 15 percent of the total number of
4 individuals who are covered under the plan or ar-
5 rangement and who are present or former employees
6 who are or were covered under the plan or arrange-
7 ment pursuant to a collective bargaining agreement
8 with a participating employer. The requirements of
9 the preceding provisions of this clause shall be treat-
10 ed as satisfied if, as of the end of the preceding plan
11 year, such covered individuals are comprised solely
12 of individuals who were covered individuals under
13 the plan or other arrangement as of the date of the
14 enactment of the Expansion of Portability and
15 Health Insurance Coverage Act of 1997 and, as of
16 the end of the preceding plan year, the number of
17 such covered individuals does not exceed 25 percent
18 of the total number of present and former employees
19 enrolled under the plan or other arrangement.

20 “(iii) The employee organization or other entity
21 sponsoring the plan or other arrangement certifies
22 to the Secretary each year, in a form and manner
23 which shall be prescribed in regulations of the Sec-
24 retary that the plan or other arrangement meets the
25 requirements of clauses (i) and (ii).

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

3 “(i) all of the benefits provided under the plan
4 or arrangement consist of health insurance coverage;
5 or

6 “(ii)(I) the plan or arrangement is a multiem-
7 ployer plan; and

8 “(II) the requirements of clause (B) of the pro-
9 viso to clause (5) of section 302(c) of the Labor
10 Management Relations Act, 1947 (29 U.S.C.
11 186(c)) are met with respect to such plan or other
12 arrangement.

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

15 “(i) the plan or arrangement is in effect as of
16 the date of the enactment of the Expansion of Port-
17 ability and Health Insurance Coverage Act of 1997,
18 or

19 “(ii) the employee organization or other entity
20 sponsoring the plan or arrangement—

21 “(I) has been in existence for at least 3
22 years or is affiliated with another employee or-
23 ganization which has been in existence for at
24 least 3 years, or

1 “(II) demonstrates to the satisfaction of
2 the Secretary that the requirements of subpara-
3 graphs (C) and (D) are met with respect to the
4 plan or other arrangement.”.

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

11 **SEC. 5. ENFORCEMENT PROVISIONS RELATING TO ASSO-**
12 **CIATION HEALTH PLANS.**

13 (a) CRIMINAL PENALTIES FOR CERTAIN WILLFUL
14 MISREPRESENTATIONS.—Section 501 of the Employee
15 Retirement Income Security Act of 1974 (29 U.S.C. 1131)
16 is amended—

17 (1) by inserting “(a)” after “SEC. 501.”; and
18 (2) by adding at the end the following new sub-
19 section:

20 “(b) Any person who, either willfully or with willful
21 blindness, falsely represents, to any employee, any employ-
22 ee’s beneficiary, any employer, the Secretary, or any State,
23 a plan or other arrangement established or maintained for
24 the purpose of offering or providing any benefit described
25 in section 3(1) to employees or their beneficiaries as—

1 “(1) being an association health plan which has
2 been certified under part 8;

3 “(2) having been established or maintained
4 under or pursuant to one or more collective bargain-
5 ing agreements which are reached pursuant to col-
6 lective bargaining described in section 8(d) of the
7 National Labor Relations Act (29 U.S.C. 158(d)) or
8 paragraph Fourth of section 2 of the Railway Labor
9 Act (45 U.S.C. 152, paragraph Fourth) or which are
10 reached pursuant to labor-management negotiations
11 under similar provisions of State public employee re-
12 lations laws; or

13 “(3) being a plan or arrangement with respect
14 to which the requirements of subparagraph (C), (D),
15 or (E) of section 3(40) are met;

16 shall, upon conviction, be imprisoned not more than five
17 years, be fined under title 18, United States Code, or
18 both.”.

19 (b) CEASE ACTIVITIES ORDERS.—Section 502 of
20 such Act (29 U.S.C. 1132) is amended by adding at the
21 end the following new subsection:

22 “(n)(1) Subject to paragraph (2), upon application
23 by the Secretary showing the operation, promotion, or
24 marketing of an association health plan (or similar ar-

1 rangement providing benefits consisting of medical care
2 (as defined in section 733(a)(2))) that—

3 “(A) is not certified under part 8, is subject
4 under section 514(b)(6) to the insurance laws of any
5 State in which the plan or arrangement offers or
6 provides benefits, and is not licensed, registered, or
7 otherwise approved under the insurance laws of such
8 State; or

9 “(B) is an association health plan certified
10 under part 8 and is not operating in accordance with
11 the requirements under part 8 for such certification,
12 a district court of the United States shall enter an order
13 requiring that the plan or arrangement cease activities.

14 “(2) Paragraph (1) shall not apply in the case of an
15 association health plan or other arrangement if the plan
16 or arrangement shows that—

17 “(A) all benefits under it referred to in para-
18 graph (1) consist of health insurance coverage; and

19 “(B) with respect to each State in which the
20 plan or arrangement offers or provides benefits, the
21 plan or arrangement is operating in accordance with
22 applicable State laws that are not superseded under
23 section 514.

24 “(3) The court may grant such additional equitable
25 relief, including any relief available under this title, as it

1 deems necessary to protect the interests of the public and
2 of persons having claims for benefits against the plan.”.

3 (c) **RESPONSIBILITY FOR CLAIMS PROCEDURE.**—

4 Section 503 of such Act (29 U.S.C. 1133) is amended by
5 adding at the end (after and below paragraph (2)) the fol-
6 lowing new sentence: “The terms of each association
7 health plan which is or has been certified under part 8
8 shall require the board of trustees or the named fiduciary
9 (as applicable) to ensure that the requirements of this sec-
10 tion are met in connection with claims filed under the
11 plan.”.

12 **SEC. 6. COOPERATION BETWEEN FEDERAL AND STATE AU-**
13 **THORITIES.**

14 Section 506 of the Employee Retirement Income Se-
15 curity Act of 1974 (29 U.S.C. 1136) is amended by adding
16 at the end the following new subsection:

17 “(c) **RESPONSIBILITY OF STATES WITH RESPECT TO**
18 **ASSOCIATION HEALTH PLANS.**—

19 “(1) **AGREEMENTS WITH STATES.**—A State
20 may enter into an agreement with the Secretary for
21 delegation to the State of some or all of the Sec-
22 retary’s authority under sections 502 and 504 to en-
23 force the requirements for certification under part 8.

24 The Secretary shall enter into the agreement if the
25 Secretary determines that the delegation provided

1 for therein would not result in a lower level or qual-
2 ity of enforcement of the provisions of this title.

3 “(2) DELEGATIONS.—Any department, agency,
4 or instrumentality of a State to which authority is
5 delegated pursuant to an agreement entered into
6 under this paragraph may, if authorized under State
7 law and to the extent consistent with such agree-
8 ment, exercise the powers of the Secretary under
9 this title which relate to such authority.

10 “(3) RECOGNITION OF PRIMARY DOMICILE
11 STATE.—In entering into any agreement with a
12 State under subparagraph (A), the Secretary shall
13 ensure that, as a result of such agreement and all
14 other agreements entered into under subparagraph
15 (A), only one State will be recognized, with respect
16 to any particular association health plan, as the pri-
17 mary domicile State to which authority has been del-
18 egated pursuant to such agreements.”.

19 **SEC. 7. EFFECTIVE DATE AND TRANSITIONAL RULES.**

20 (a) EFFECTIVE DATE.—The amendments made by
21 sections 2, 5, and 6 of this Act shall take effect on Janu-
22 ary 1, 1999. The amendments made by sections 3 and
23 4 of this Act shall take effect on the date of the enactment
24 of this Act. The Secretary shall issue all regulations nec-

1 essary to carry out the amendments made by this Act be-
2 fore January 1, 1999.

3 (b) EXCEPTION.—Section 801(a)(2) of the Employee
4 Retirement Income Security Act of 1974 (added by section
5 2) does not apply with respect to group health plans (as
6 defined in section 733(a)(1) of such Act) existing on April
7 1, 1997, which do not provide health insurance coverage
8 (as defined in section 733(b)(1) of such Act) on such date.

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