

108TH CONGRESS  
1ST SESSION

# H. R. 660

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IN THE SENATE OF THE UNITED STATES

JUNE 20, 2003

Received; read once and referred to the Committee on Health, Education,  
Labor, and Pensions

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## AN ACT

To amend title I of the Employee Retirement Income Security Act of 1974 to improve access and choice for entrepreneurs with small businesses with respect to medical care for their employees.

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

1 **SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the  
3 “Small Business Health Fairness Act of 2003”.

4 (b) TABLE OF CONTENTS.—The table of contents is  
5 as follows:

- Sec. 1. Short title and table of contents.
- Sec. 2. Rules governing association health plans.
- Sec. 3. Clarification of treatment of single employer arrangements.
- Sec. 4. Enforcement provisions relating to association health plans.
- Sec. 5. Cooperation between Federal and State authorities.
- Sec. 6. Effective date and transitional and other rules.

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:

10 “PART 8—RULES GOVERNING ASSOCIATION HEALTH  
11 PLANS

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

13 “(a) IN GENERAL.—For purposes of this part, the  
14 term ‘association health plan’ means a group health plan  
15 whose sponsor is (or is deemed under this part to be) de-  
16 scribed in subsection (b).

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

19 “(1) is organized and maintained in good faith,  
20 with a constitution and bylaws specifically stating its  
21 purpose and providing for periodic meetings on at  
22 least an annual basis, as a bona fide trade associa-

1       tion, a bona fide industry association (including a  
2       rural electric cooperative association or a rural tele-  
3       phone cooperative association), a bona fide profes-  
4       sional association, or a bona fide chamber of com-  
5       merce (or similar bona fide business association, in-  
6       cluding a corporation or similar organization that  
7       operates on a cooperative basis (within the meaning  
8       of section 1381 of the Internal Revenue Code of  
9       1986)), for substantial purposes other than that of  
10      obtaining or providing medical care;

11           “(2) is established as a permanent entity which  
12      receives the active support of its members and re-  
13      quires for membership payment on a periodic basis  
14      of dues or payments necessary to maintain eligibility  
15      for membership in the sponsor; and

16           “(3) does not condition membership, such dues  
17      or payments, or coverage under the plan on the  
18      basis of health status-related factors with respect to  
19      the employees of its members (or affiliated mem-  
20      bers), or the dependents of such employees, and does  
21      not condition such dues or payments on the basis of  
22      group health plan participation.

23   Any sponsor consisting of an association of entities which  
24   meet the requirements of paragraphs (1), (2), and (3)

1 shall be deemed to be a sponsor described in this sub-  
2 section.

3 **“SEC. 802. CERTIFICATION OF ASSOCIATION HEALTH**  
4 **PLANS.**

5 “(a) IN GENERAL.—The applicable authority shall  
6 prescribe by regulation a procedure under which, subject  
7 to subsection (b), the applicable authority shall certify as-  
8 sociation health plans which apply for certification as  
9 meeting the requirements of this part.

10 “(b) STANDARDS.—Under the procedure prescribed  
11 pursuant to subsection (a), in the case of an association  
12 health plan that provides at least one benefit option which  
13 does not consist of health insurance coverage, the applica-  
14 ble authority shall certify such plan as meeting the re-  
15 quirements of this part only if the applicable authority is  
16 satisfied that the applicable requirements of this part are  
17 met (or, upon the date on which the plan is to commence  
18 operations, will be met) with respect to the plan.

19 “(c) REQUIREMENTS APPLICABLE TO CERTIFIED  
20 PLANS.—An association health plan with respect to which  
21 certification under this part is in effect shall meet the ap-  
22 plicable requirements of this part, effective on the date  
23 of certification (or, if later, on the date on which the plan  
24 is to commence operations).

1       “(d) REQUIREMENTS FOR CONTINUED CERTIFI-  
2   CATION.—The applicable authority may provide by regula-  
3   tion for continued certification of association health plans  
4   under this part.

5       “(e) CLASS CERTIFICATION FOR FULLY INSURED  
6   PLANS.—The applicable authority shall establish a class  
7   certification procedure for association health plans under  
8   which all benefits consist of health insurance coverage.  
9   Under such procedure, the applicable authority shall pro-  
10   vide for the granting of certification under this part to  
11   the plans in each class of such association health plans  
12   upon appropriate filing under such procedure in connec-  
13   tion with plans in such class and payment of the pre-  
14   scribed fee under section 807(a).

15       “(f) CERTIFICATION OF SELF-INSURED ASSOCIATION  
16   HEALTH PLANS.—An association health plan which offers  
17   one or more benefit options which do not consist of health  
18   insurance coverage may be certified under this part only  
19   if such plan consists of any of the following:

20               “(1) a plan which offered such coverage on the  
21       date of the enactment of the Small Business Health  
22       Fairness Act of 2003,

23               “(2) a plan under which the sponsor does not  
24       restrict membership to one or more trades and busi-  
25       nesses or industries and whose eligible participating

1 employers represent a broad cross-section of trades  
2 and businesses or industries, or

3 “(3) a plan whose eligible participating employ-  
4 ers represent one or more trades or businesses, or  
5 one or more industries, consisting of any of the fol-  
6 lowing: agriculture; equipment and automobile deal-  
7 erships; barbering and cosmetology; certified public  
8 accounting practices; child care; construction; dance,  
9 theatrical and orchestra productions; disinfecting  
10 and pest control; financial services; fishing;  
11 foodservice establishments; hospitals; labor organiza-  
12 tions; logging; manufacturing (metals); mining; med-  
13 ical and dental practices; medical laboratories; pro-  
14 fessional consulting services; sanitary services; trans-  
15 portation (local and freight); warehousing; whole-  
16 saling/distributing; or any other trade or business or  
17 industry which has been indicated as having average  
18 or above-average risk or health claims experience by  
19 reason of State rate filings, denials of coverage, pro-  
20 posed premium rate levels, or other means dem-  
21 onstrated by such plan in accordance with regula-  
22 tions.

1 **“SEC. 803. REQUIREMENTS RELATING TO SPONSORS AND**  
2 **BOARDS OF TRUSTEES.**

3 “(a) SPONSOR.—The requirements of this subsection  
4 are met with respect to an association health plan if the  
5 sponsor has met (or is deemed under this part to have  
6 met) the requirements of section 801(b) for a continuous  
7 period of not less than 3 years ending with the date of  
8 the application for certification under this part.

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

12 “(1) FISCAL CONTROL.—The plan is operated,  
13 pursuant to a trust agreement, by a board of trust-  
14 ees which has complete fiscal control over the plan  
15 and which is responsible for all operations of the  
16 plan.

17 “(2) RULES OF OPERATION AND FINANCIAL  
18 CONTROLS.—The board of trustees has in effect  
19 rules of operation and financial controls, based on a  
20 3-year plan of operation, adequate to carry out the  
21 terms of the plan and to meet all requirements of  
22 this title applicable to the plan.

23 “(3) RULES GOVERNING RELATIONSHIP TO  
24 PARTICIPATING EMPLOYERS AND TO CONTRAC-  
25 TORS.—

26 “(A) BOARD MEMBERSHIP.—

1 “(i) IN GENERAL.—Except as pro-  
2 vided in clauses (ii) and (iii), the members  
3 of the board of trustees are individuals se-  
4 lected from individuals who are the owners,  
5 officers, directors, or employees of the par-  
6 ticipating employers or who are partners in  
7 the participating employers and actively  
8 participate in the business.

9 “(ii) LIMITATION.—

10 “(I) GENERAL RULE.—Except as  
11 provided in subclauses (II) and (III),  
12 no such member is an owner, officer,  
13 director, or employee of, or partner in,  
14 a contract administrator or other  
15 service provider to the plan.

16 “(II) LIMITED EXCEPTION FOR  
17 PROVIDERS OF SERVICES SOLELY ON  
18 BEHALF OF THE SPONSOR.—Officers  
19 or employees of a sponsor which is a  
20 service provider (other than a contract  
21 administrator) to the plan may be  
22 members of the board if they con-  
23 stitute not more than 25 percent of  
24 the membership of the board and they



1 do not provide services to the plan  
2 other than on behalf of the sponsor.

3 “(III) TREATMENT OF PRO-  
4 VIDERS OF MEDICAL CARE.—In the  
5 case of a sponsor which is an associa-  
6 tion whose membership consists pri-  
7 marily of providers of medical care,  
8 subclause (I) shall not apply in the  
9 case of any service provider described  
10 in subclause (I) who is a provider of  
11 medical care under the plan.

12 “(iii) CERTAIN PLANS EXCLUDED.—  
13 Clause (i) shall not apply to an association  
14 health plan which is in existence on the  
15 date of the enactment of the Small Busi-  
16 ness Health Fairness Act of 2003.

17 “(B) SOLE AUTHORITY.—The board has  
18 sole authority under the plan to approve appli-  
19 cations for participation in the plan and to con-  
20 tract with a service provider to administer the  
21 day-to-day affairs of the plan.

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

1           “(1) the requirements of subsection (a) and sec-  
 2           tion 801(a) shall be deemed met if such require-  
 3           ments would otherwise be met if the franchiser were  
 4           deemed to be the sponsor referred to in section  
 5           801(b), such network were deemed to be an associa-  
 6           tion described in section 801(b), and each franchisee  
 7           were deemed to be a member (of the association and  
 8           the sponsor) referred to in section 801(b); and

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

11       The Secretary may by regulation define for purposes of  
 12       this subsection the terms ‘franchiser’, ‘franchise network’,  
 13       and ‘franchisee’.

14       **“SEC. 804. PARTICIPATION AND COVERAGE REQUIRE-**  
 15                               **MENTS.**

16       “(a) COVERED EMPLOYERS AND INDIVIDUALS.—The  
 17       requirements of this subsection are met with respect to  
 18       an association health plan if, under the terms of the  
 19       plan—

20               “(1) each participating employer must be—

21                       “(A) a member of the sponsor,

22                       “(B) the sponsor, or

23                       “(C) an affiliated member of the sponsor  
 24               with respect to which the requirements of sub-  
 25               section (b) are met,

1       except that, in the case of a sponsor which is a pro-  
2       fessional association or other individual-based asso-  
3       ciation, if at least one of the officers, directors, or  
4       employees of an employer, or at least one of the in-  
5       dividuals who are partners in an employer and who  
6       actively participates in the business, is a member or  
7       such an affiliated member of the sponsor, partici-  
8       pating employers may also include such employer;  
9       and

10           “(2) all individuals commencing coverage under  
11       the plan after certification under this part must  
12       be—

13           “(A) active or retired owners (including  
14       self-employed individuals), officers, directors, or  
15       employees of, or partners in, participating em-  
16       ployers; or

17           “(B) the beneficiaries of individuals de-  
18       scribed in subparagraph (A).

19       “(b) COVERAGE OF PREVIOUSLY UNINSURED EM-  
20       PLOYEES.—In the case of an association health plan in  
21       existence on the date of the enactment of the Small Busi-  
22       ness Health Fairness Act of 2003, an affiliated member  
23       of the sponsor of the plan may be offered coverage under  
24       the plan as a participating employer only if—

1           “(1) the affiliated member was an affiliated  
2           member on the date of certification under this part;  
3           or

4           “(2) during the 12-month period preceding the  
5           date of the offering of such coverage, the affiliated  
6           member has not maintained or contributed to a  
7           group health plan with respect to any of its employ-  
8           ees who would otherwise be eligible to participate in  
9           such association health plan.

10          “(c) INDIVIDUAL MARKET UNAFFECTED.—The re-  
11          quirements of this subsection are met with respect to an  
12          association health plan if, under the terms of the plan,  
13          no participating employer may provide health insurance  
14          coverage in the individual market for any employee not  
15          covered under the plan which is similar to the coverage  
16          contemporaneously provided to employees of the employer  
17          under the plan, if such exclusion of the employee from cov-  
18          erage under the plan is based on a health status-related  
19          factor with respect to the employee and such employee  
20          would, but for such exclusion on such basis, be eligible  
21          for coverage under the plan.

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

1 “(1) under the terms of the plan, all employers  
 2 meeting the preceding requirements of this section  
 3 are eligible to qualify as participating employers for  
 4 all geographically available coverage options, unless,  
 5 in the case of any such employer, participation or  
 6 contribution requirements of the type referred to in  
 7 section 2711 of the Public Health Service Act are  
 8 not met;

9 “(2) upon request, any employer eligible to par-  
 10 ticipate is furnished information regarding all cov-  
 11 erage options available under the plan; and

12 “(3) the applicable requirements of sections  
 13 701, 702, and 703 are met with respect to the plan.

14 **“SEC. 805. OTHER REQUIREMENTS RELATING TO PLAN**  
 15 **DOCUMENTS, CONTRIBUTION RATES, AND**  
 16 **BENEFIT OPTIONS.**

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

20 “(1) CONTENTS OF GOVERNING INSTRU-  
 21 MENTS.—The instruments governing the plan in-  
 22 clude a written instrument, meeting the require-  
 23 ments of an instrument required under section  
 24 402(a)(1), which—

1           “(A) provides that the board of trustees  
2 serves as the named fiduciary required for plans  
3 under section 402(a)(1) and serves in the ca-  
4 pacity of a plan administrator (referred to in  
5 section 3(16)(A));

6           “(B) provides that the sponsor of the plan  
7 is to serve as plan sponsor (referred to in sec-  
8 tion 3(16)(B)); and

9           “(C) incorporates the requirements of sec-  
10 tion 806.

11           “(2) CONTRIBUTION RATES MUST BE NON-  
12 DISCRIMINATORY.—

13           “(A) The contribution rates for any par-  
14 ticipating small employer do not vary on the  
15 basis of any health status-related factor in rela-  
16 tion to employees of such employer or their  
17 beneficiaries and do not vary on the basis of the  
18 type of business or industry in which such em-  
19 ployer is engaged.

20           “(B) Nothing in this title or any other pro-  
21 vision of law shall be construed to preclude an  
22 association health plan, or a health insurance  
23 issuer offering health insurance coverage in  
24 connection with an association health plan,  
25 from—

1 “(i) setting contribution rates based  
2 on the claims experience of the plan; or

3 “(ii) varying contribution rates for  
4 small employers in a State to the extent  
5 that such rates could vary using the same  
6 methodology employed in such State for  
7 regulating premium rates in the small  
8 group market with respect to health insur-  
9 ance coverage offered in connection with  
10 bona fide associations (within the meaning  
11 of section 2791(d)(3) of the Public Health  
12 Service Act),

13 subject to the requirements of section 702(b)  
14 relating to contribution rates.

15 “(3) FLOOR FOR NUMBER OF COVERED INDI-  
16 VIDUALS WITH RESPECT TO CERTAIN PLANS.—If  
17 any benefit option under the plan does not consist  
18 of health insurance coverage, the plan has as of the  
19 beginning of the plan year not fewer than 1,000 par-  
20 ticipants and beneficiaries.

21 “(4) MARKETING REQUIREMENTS.—

22 “(A) IN GENERAL.—If a benefit option  
23 which consists of health insurance coverage is  
24 offered under the plan, State-licensed insurance  
25 agents shall be used to distribute to small em-

1           employers coverage which does not consist of  
2           health insurance coverage in a manner com-  
3           parable to the manner in which such agents are  
4           used to distribute health insurance coverage.

5                   “(B)       STATE-LICENSED       INSURANCE  
6           AGENTS.—For purposes of subparagraph (A),  
7           the term ‘State-licensed insurance agents’  
8           means one or more agents who are licensed in  
9           a State and are subject to the laws of such  
10          State relating to licensure, qualification, test-  
11          ing, examination, and continuing education of  
12          persons authorized to offer, sell, or solicit  
13          health insurance coverage in such State.

14                   “(5)     REGULATORY     REQUIREMENTS.—Such  
15          other requirements as the applicable authority deter-  
16          mines are necessary to carry out the purposes of this  
17          part, which shall be prescribed by the applicable au-  
18          thority by regulation.

19                   “(b) ABILITY OF ASSOCIATION HEALTH PLANS TO  
20          DESIGN BENEFIT OPTIONS.—Subject to section 514(d),  
21          nothing in this part or any provision of State law (as de-  
22          fined in section 514(e)(1)) shall be construed to preclude  
23          an association health plan, or a health insurance issuer  
24          offering health insurance coverage in connection with an  
25          association health plan, from exercising its sole discretion



1 in selecting the specific items and services consisting of  
 2 medical care to be included as benefits under such plan  
 3 or coverage, except (subject to section 514) in the case  
 4 of (1) any law to the extent that it is not preempted under  
 5 section 731(a)(1) with respect to matters governed by sec-  
 6 tion 711, 712, or 713, or (2) any law of the State with  
 7 which filing and approval of a policy type offered by the  
 8 plan was initially obtained to the extent that such law pro-  
 9 hibits an exclusion of a specific disease from such cov-  
 10 erage.

11 **“SEC. 806. MAINTENANCE OF RESERVES AND PROVISIONS**  
 12 **FOR SOLVENCY FOR PLANS PROVIDING**  
 13 **HEALTH BENEFITS IN ADDITION TO HEALTH**  
 14 **INSURANCE COVERAGE.**

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

17 “(1) the benefits under the plan consist solely  
 18 of health insurance coverage; or

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

22 “(A) establishes and maintains reserves  
 23 with respect to such additional benefit options,  
 24 in amounts recommended by the qualified actu-  
 25 ary, consisting of—

1 “(i) a reserve sufficient for unearned  
2 contributions;

3 “(ii) a reserve sufficient for benefit li-  
4 abilities which have been incurred, which  
5 have not been satisfied, and for which risk  
6 of loss has not yet been transferred, and  
7 for expected administrative costs with re-  
8 spect to such benefit liabilities;

9 “(iii) a reserve sufficient for any other  
10 obligations of the plan; and

11 “(iv) a reserve sufficient for a margin  
12 of error and other fluctuations, taking into  
13 account the specific circumstances of the  
14 plan; and

15 “(B) establishes and maintains aggregate  
16 and specific excess/stop loss insurance and sol-  
17 vency indemnification, with respect to such ad-  
18 ditional benefit options for which risk of loss  
19 has not yet been transferred, as follows:

20 “(i) The plan shall secure aggregate  
21 excess/stop loss insurance for the plan  
22 with an attachment point which is not  
23 greater than 125 percent of expected gross  
24 annual claims. The applicable authority  
25 may by regulation provide for upward ad-

1 justments in the amount of such percent-  
2 age in specified circumstances in which the  
3 plan specifically provides for and maintains  
4 reserves in excess of the amounts required  
5 under subparagraph (A).

6 “(ii) The plan shall secure specific ex-  
7 cess/stop loss insurance for the plan with  
8 an attachment point which is at least equal  
9 to an amount recommended by the plan’s  
10 qualified actuary. The applicable authority  
11 may by regulation provide for adjustments  
12 in the amount of such insurance in speci-  
13 fied circumstances in which the plan spe-  
14 cifically provides for and maintains re-  
15 serves in excess of the amounts required  
16 under subparagraph (A).

17 “(iii) The plan shall secure indem-  
18 nification insurance for any claims which  
19 the plan is unable to satisfy by reason of  
20 a plan termination.

21 Any person issuing to a plan insurance described in clause  
22 (i), (ii), or (iii) shall notify the Secretary of any failure  
23 of premium payment meriting cancellation of the policy  
24 prior to undertaking such a cancellation. Any regulations  
25 prescribed by the applicable authority pursuant to clause

1 (i) or (ii) of subparagraph (B) may allow for such adjust-  
2 ments in the required levels of excess/stop loss insurance  
3 as the qualified actuary may recommend, taking into ac-  
4 count the specific circumstances of the plan.

5 “(b) MINIMUM SURPLUS IN ADDITION TO CLAIMS  
6 RESERVES.—In the case of any association health plan de-  
7 scribed in subsection (a)(2), the requirements of this sub-  
8 section are met if the plan establishes and maintains sur-  
9 plus in an amount at least equal to—

10 “(1) \$500,000, or

11 “(2) such greater amount (but not greater than  
12 \$2,000,000) as may be set forth in regulations pre-  
13 scribed by the applicable authority, considering the  
14 level of aggregate and specific excess/stop loss insur-  
15 ance provided with respect to such plan and other  
16 factors related to solvency risk, such as the plan’s  
17 projected levels of participation or claims, the nature  
18 of the plan’s liabilities, and the types of assets avail-  
19 able to assure that such liabilities are met.

20 “(c) ADDITIONAL REQUIREMENTS.—In the case of  
21 any association health plan described in subsection (a)(2),  
22 the applicable authority may provide such additional re-  
23 quirements relating to reserves, excess/stop loss insur-  
24 ance, and indemnification insurance as the applicable au-  
25 thority considers appropriate. Such requirements may be

1 provided by regulation with respect to any such plan or  
2 any class of such plans.

3 “(d) ADJUSTMENTS FOR EXCESS/STOP LOSS INSUR-  
4 ANCE.—The applicable authority may provide for adjust-  
5 ments to the levels of reserves otherwise required under  
6 subsections (a) and (b) with respect to any plan or class  
7 of plans to take into account excess/stop loss insurance  
8 provided with respect to such plan or plans.

9 “(e) ALTERNATIVE MEANS OF COMPLIANCE.—The  
10 applicable authority may permit an association health plan  
11 described in subsection (a)(2) to substitute, for all or part  
12 of the requirements of this section (except subsection  
13 (a)(2)(B)(iii)), such security, guarantee, hold-harmless ar-  
14 rangement, or other financial arrangement as the applica-  
15 ble authority determines to be adequate to enable the plan  
16 to fully meet all its financial obligations on a timely basis  
17 and is otherwise no less protective of the interests of par-  
18 ticipants and beneficiaries than the requirements for  
19 which it is substituted. The applicable authority may take  
20 into account, for purposes of this subsection, evidence pro-  
21 vided by the plan or sponsor which demonstrates an as-  
22 sumption of liability with respect to the plan. Such evi-  
23 dence may be in the form of a contract of indemnification,  
24 lien, bonding, insurance, letter of credit, recourse under  
25 applicable terms of the plan in the form of assessments

1 of participating employers, security, or other financial ar-  
2 rangement.

3 “(f) MEASURES TO ENSURE CONTINUED PAYMENT  
4 OF BENEFITS BY CERTAIN PLANS IN DISTRESS.—

5 “(1) PAYMENTS BY CERTAIN PLANS TO ASSO-  
6 CIATION HEALTH PLAN FUND.—

7 “(A) IN GENERAL.—In the case of an as-  
8 sociation health plan described in subsection  
9 (a)(2), the requirements of this subsection are  
10 met if the plan makes payments into the Asso-  
11 ciation Health Plan Fund under this subpara-  
12 graph when they are due. Such payments shall  
13 consist of annual payments in the amount of  
14 \$5,000, and, in addition to such annual pay-  
15 ments, such supplemental payments as the Sec-  
16 retary may determine to be necessary under  
17 paragraph (2). Payments under this paragraph  
18 are payable to the Fund at the time determined  
19 by the Secretary. Initial payments are due in  
20 advance of certification under this part. Pay-  
21 ments shall continue to accrue until a plan’s as-  
22 sets are distributed pursuant to a termination  
23 procedure.

24 “(B) PENALTIES FOR FAILURE TO MAKE  
25 PAYMENTS.—If any payment is not made by a

1 plan when it is due, a late payment charge of  
2 not more than 100 percent of the payment  
3 which was not timely paid shall be payable by  
4 the plan to the Fund.

5 “(C) CONTINUED DUTY OF THE SEC-  
6 RETARY.—The Secretary shall not cease to  
7 carry out the provisions of paragraph (2) on ac-  
8 count of the failure of a plan to pay any pay-  
9 ment when due.

10 “(2) PAYMENTS BY SECRETARY TO CONTINUE  
11 EXCESS/STOP LOSS INSURANCE COVERAGE AND IN-  
12 DEMNIFICATION INSURANCE COVERAGE FOR CER-  
13 TAIN PLANS.—In any case in which the applicable  
14 authority determines that there is, or that there is  
15 reason to believe that there will be: (A) a failure to  
16 take necessary corrective actions under section  
17 809(a) with respect to an association health plan de-  
18 scribed in subsection (a)(2); or (B) a termination of  
19 such a plan under section 809(b) or 810(b)(8) (and,  
20 if the applicable authority is not the Secretary, cer-  
21 tifies such determination to the Secretary), the Sec-  
22 retary shall determine the amounts necessary to  
23 make payments to an insurer (designated by the  
24 Secretary) to maintain in force excess/stop loss in-  
25 surance coverage or indemnification insurance cov-

1        erage for such plan, if the Secretary determines that  
2        there is a reasonable expectation that, without such  
3        payments, claims would not be satisfied by reason of  
4        termination of such coverage. The Secretary shall, to  
5        the extent provided in advance in appropriation  
6        Acts, pay such amounts so determined to the insurer  
7        designated by the Secretary.

8            “(3) ASSOCIATION HEALTH PLAN FUND.—

9            “(A) IN GENERAL.—There is established  
10        on the books of the Treasury a fund to be  
11        known as the ‘Association Health Plan Fund’.  
12        The Fund shall be available for making pay-  
13        ments pursuant to paragraph (2). The Fund  
14        shall be credited with payments received pursu-  
15        ant to paragraph (1)(A), penalties received pur-  
16        suant to paragraph (1)(B); and earnings on in-  
17        vestments of amounts of the Fund under sub-  
18        paragraph (B).

19        “(B) INVESTMENT.—Whenever the Sec-  
20        retary determines that the moneys of the fund  
21        are in excess of current needs, the Secretary  
22        may request the investment of such amounts as  
23        the Secretary determines advisable by the Sec-  
24        retary of the Treasury in obligations issued or  
25        guaranteed by the United States.



1       “(g) EXCESS/STOP LOSS INSURANCE.—For pur-  
2 poses of this section—

3               “(1) AGGREGATE EXCESS/STOP LOSS INSUR-  
4 ANCE.—The term ‘aggregate excess/stop loss insur-  
5 ance’ means, in connection with an association  
6 health plan, a contract—

7                       “(A) under which an insurer (meeting such  
8 minimum standards as the applicable authority  
9 may prescribe by regulation) provides for pay-  
10 ment to the plan with respect to aggregate  
11 claims under the plan in excess of an amount  
12 or amounts specified in such contract;

13                      “(B) which is guaranteed renewable; and

14                      “(C) which allows for payment of pre-  
15 miums by any third party on behalf of the in-  
16 sured plan.

17               “(2) SPECIFIC EXCESS/STOP LOSS INSUR-  
18 ANCE.—The term ‘specific excess/stop loss insur-  
19 ance’ means, in connection with an association  
20 health plan, a contract—

21                      “(A) under which an insurer (meeting such  
22 minimum standards as the applicable authority  
23 may prescribe by regulation) provides for pay-  
24 ment to the plan with respect to claims under  
25 the plan in connection with a covered individual

1 in excess of an amount or amounts specified in  
2 such contract in connection with such covered  
3 individual;

4 “(B) which is guaranteed renewable; and

5 “(C) which allows for payment of pre-  
6 miums by any third party on behalf of the in-  
7 sured plan.

8 “(h) INDEMNIFICATION INSURANCE.—For purposes  
9 of this section, the term ‘indemnification insurance’  
10 means, in connection with an association health plan, a  
11 contract—

12 “(1) under which an insurer (meeting such min-  
13 imum standards as the applicable authority may pre-  
14 scribe by regulation) provides for payment to the  
15 plan with respect to claims under the plan which the  
16 plan is unable to satisfy by reason of a termination  
17 pursuant to section 809(b) (relating to mandatory  
18 termination);

19 “(2) which is guaranteed renewable and  
20 noncancellable for any reason (except as the applica-  
21 ble authority may prescribe by regulation); and

22 “(3) which allows for payment of premiums by  
23 any third party on behalf of the insured plan.

24 “(i) RESERVES.—For purposes of this section, the  
25 term ‘reserves’ means, in connection with an association

1 health plan, plan assets which meet the fiduciary stand-  
2 ards under part 4 and such additional requirements re-  
3 garding liquidity as the applicable authority may prescribe  
4 by regulation.

5 “(j) SOLVENCY STANDARDS WORKING GROUP.—

6 “(1) IN GENERAL.—Within 90 days after the  
7 date of the enactment of the Small Business Health  
8 Fairness Act of 2003, the applicable authority shall  
9 establish a Solvency Standards Working Group. In  
10 prescribing the initial regulations under this section,  
11 the applicable authority shall take into account the  
12 recommendations of such Working Group.

13 “(2) MEMBERSHIP.—The Working Group shall  
14 consist of not more than 15 members appointed by  
15 the applicable authority. The applicable authority  
16 shall include among persons invited to membership  
17 on the Working Group at least one of each of the  
18 following:

19 “(A) a representative of the National Asso-  
20 ciation of Insurance Commissioners;

21 “(B) a representative of the American  
22 Academy of Actuaries;

23 “(C) a representative of the State govern-  
24 ments, or their interests;

1           “(D) a representative of existing self-in-  
2           sured arrangements, or their interests;

3           “(E) a representative of associations of the  
4           type referred to in section 801(b)(1), or their  
5           interests; and

6           “(F) a representative of multiemployer  
7           plans that are group health plans, or their in-  
8           terests.

9   **“SEC. 807. REQUIREMENTS FOR APPLICATION AND RE-**  
10           **LATED REQUIREMENTS.**

11       “(a) **FILING FEE.**—Under the procedure prescribed  
12       pursuant to section 802(a), an association health plan  
13       shall pay to the applicable authority at the time of filing  
14       an application for certification under this part a filing fee  
15       in the amount of \$5,000, which shall be available in the  
16       case of the Secretary, to the extent provided in appropria-  
17       tion Acts, for the sole purpose of administering the certifi-  
18       cation procedures applicable with respect to association  
19       health plans.

20       “(b) **INFORMATION TO BE INCLUDED IN APPLICA-**  
21       **TION FOR CERTIFICATION.**—An application for certifi-  
22       cation under this part meets the requirements of this sec-  
23       tion only if it includes, in a manner and form which shall  
24       be prescribed by the applicable authority by regulation, at  
25       least the following information:

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

3                       “(A) the sponsor; and

4                       “(B) the members of the board of trustees  
5           of the plan.

6           “(2) STATES IN WHICH PLAN INTENDS TO DO  
7           BUSINESS.—The States in which participants and  
8           beneficiaries under the plan are to be located and  
9           the number of them expected to be located in each  
10          such State.

11          “(3) BONDING REQUIREMENTS.—Evidence pro-  
12          vided by the board of trustees that the bonding re-  
13          quirements of section 412 will be met as of the date  
14          of the application or (if later) commencement of op-  
15          erations.

16          “(4) PLAN DOCUMENTS.—A copy of the docu-  
17          ments governing the plan (including any bylaws and  
18          trust agreements), the summary plan description,  
19          and other material describing the benefits that will  
20          be provided to participants and beneficiaries under  
21          the plan.

22          “(5) AGREEMENTS WITH SERVICE PRO-  
23          VIDERS.—A copy of any agreements between the  
24          plan and contract administrators and other service  
25          providers.

1           “(6) FUNDING REPORT.—In the case of asso-  
2           ciation health plans providing benefits options in ad-  
3           dition to health insurance coverage, a report setting  
4           forth information with respect to such additional  
5           benefit options determined as of a date within the  
6           120-day period ending with the date of the applica-  
7           tion, including the following:

8                   “(A) RESERVES.—A statement, certified  
9                   by the board of trustees of the plan, and a  
10                  statement of actuarial opinion, signed by a  
11                  qualified actuary, that all applicable require-  
12                  ments of section 806 are or will be met in ac-  
13                  cordance with regulations which the applicable  
14                  authority shall prescribe.

15                  “(B) ADEQUACY OF CONTRIBUTION  
16                  RATES.—A statement of actuarial opinion,  
17                  signed by a qualified actuary, which sets forth  
18                  a description of the extent to which contribution  
19                  rates are adequate to provide for the payment  
20                  of all obligations and the maintenance of re-  
21                  quired reserves under the plan for the 12-  
22                  month period beginning with such date within  
23                  such 120-day period, taking into account the  
24                  expected coverage and experience of the plan. If  
25                  the contribution rates are not fully adequate,

1 the statement of actuarial opinion shall indicate  
2 the extent to which the rates are inadequate  
3 and the changes needed to ensure adequacy.

4 “(C) CURRENT AND PROJECTED VALUE OF  
5 ASSETS AND LIABILITIES.—A statement of ac-  
6 tuarial opinion signed by a qualified actuary,  
7 which sets forth the current value of the assets  
8 and liabilities accumulated under the plan and  
9 a projection of the assets, liabilities, income,  
10 and expenses of the plan for the 12-month pe-  
11 riod referred to in subparagraph (B). The in-  
12 come statement shall identify separately the  
13 plan’s administrative expenses and claims.

14 “(D) COSTS OF COVERAGE TO BE  
15 CHARGED AND OTHER EXPENSES.—A state-  
16 ment of the costs of coverage to be charged, in-  
17 cluding an itemization of amounts for adminis-  
18 tration, reserves, and other expenses associated  
19 with the operation of the plan.

20 “(E) OTHER INFORMATION.—Any other  
21 information as may be determined by the appli-  
22 cable authority, by regulation, as necessary to  
23 carry out the purposes of this part.

24 “(c) FILING NOTICE OF CERTIFICATION WITH  
25 STATES.—A certification granted under this part to an

1 association health plan shall not be effective unless written  
2 notice of such certification is filed with the applicable  
3 State authority of each State in which at least 25 percent  
4 of the participants and beneficiaries under the plan are  
5 located. For purposes of this subsection, an individual  
6 shall be considered to be located in the State in which a  
7 known address of such individual is located or in which  
8 such individual is employed.

9 “(d) NOTICE OF MATERIAL CHANGES.—In the case  
10 of any association health plan certified under this part,  
11 descriptions of material changes in any information which  
12 was required to be submitted with the application for the  
13 certification under this part shall be filed in such form  
14 and manner as shall be prescribed by the applicable au-  
15 thority by regulation. The applicable authority may re-  
16 quire by regulation prior notice of material changes with  
17 respect to specified matters which might serve as the basis  
18 for suspension or revocation of the certification.

19 “(e) REPORTING REQUIREMENTS FOR CERTAIN AS-  
20 SOCIATION HEALTH PLANS.—An association health plan  
21 certified under this part which provides benefit options in  
22 addition to health insurance coverage for such plan year  
23 shall meet the requirements of section 103 by filing an  
24 annual report under such section which shall include infor-  
25 mation described in subsection (b)(6) with respect to the



1 plan year and, notwithstanding section 104(a)(1)(A), shall  
2 be filed with the applicable authority not later than 90  
3 days after the close of the plan year (or on such later date  
4 as may be prescribed by the applicable authority). The ap-  
5 plicable authority may require by regulation such interim  
6 reports as it considers appropriate.

7 “(f) ENGAGEMENT OF QUALIFIED ACTUARY.—The  
8 board of trustees of each association health plan which  
9 provides benefits options in addition to health insurance  
10 coverage and which is applying for certification under this  
11 part or is certified under this part shall engage, on behalf  
12 of all participants and beneficiaries, a qualified actuary  
13 who shall be responsible for the preparation of the mate-  
14 rials comprising information necessary to be submitted by  
15 a qualified actuary under this part. The qualified actuary  
16 shall utilize such assumptions and techniques as are nec-  
17 essary to enable such actuary to form an opinion as to  
18 whether the contents of the matters reported under this  
19 part—

20 “(1) are in the aggregate reasonably related to  
21 the experience of the plan and to reasonable expecta-  
22 tions; and

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

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

3 **“SEC. 808. NOTICE REQUIREMENTS FOR VOLUNTARY TER-**  
4 **MINATION.**

5 “Except as provided in section 809(b), an association  
6 health plan which is or has been certified under this part  
7 may terminate (upon or at any time after cessation of ac-  
8 cruals in benefit liabilities) only if the board of trustees,  
9 not less than 60 days before the proposed termination  
10 date—

11 “(1) provides to the participants and bene-  
12 ficiaries a written notice of intent to terminate stat-  
13 ing that such termination is intended and the pro-  
14 posed termination date;

15 “(2) develops a plan for winding up the affairs  
16 of the plan in connection with such termination in  
17 a manner which will result in timely payment of all  
18 benefits for which the plan is obligated; and

19 “(3) submits such plan in writing to the appli-  
20 cable authority.

21 Actions required under this section shall be taken in such  
22 form and manner as may be prescribed by the applicable  
23 authority by regulation.

1 **“SEC. 809. CORRECTIVE ACTIONS AND MANDATORY TERMI-**  
2 **NATION.**

3       “(a) ACTIONS TO AVOID DEPLETION OF RE-  
4 SERVES.—An association health plan which is certified  
5 under this part and which provides benefits other than  
6 health insurance coverage shall continue to meet the re-  
7 quirements of section 806, irrespective of whether such  
8 certification continues in effect. The board of trustees of  
9 such plan shall determine quarterly whether the require-  
10 ments of section 806 are met. In any case in which the  
11 board determines that there is reason to believe that there  
12 is or will be a failure to meet such requirements, or the  
13 applicable authority makes such a determination and so  
14 notifies the board, the board shall immediately notify the  
15 qualified actuary engaged by the plan, and such actuary  
16 shall, not later than the end of the next following month,  
17 make such recommendations to the board for corrective  
18 action as the actuary determines necessary to ensure com-  
19 pliance with section 806. Not later than 30 days after re-  
20 ceiving from the actuary recommendations for corrective  
21 actions, the board shall notify the applicable authority (in  
22 such form and manner as the applicable authority may  
23 prescribe by regulation) of such recommendations of the  
24 actuary for corrective action, together with a description  
25 of the actions (if any) that the board has taken or plans  
26 to take in response to such recommendations. The board

1 shall thereafter report to the applicable authority, in such  
2 form and frequency as the applicable authority may speci-  
3 fy to the board, regarding corrective action taken by the  
4 board until the requirements of section 806 are met.

5 “(b) MANDATORY TERMINATION.—In any case in  
6 which—

7 “(1) the applicable authority has been notified  
8 under subsection (a) (or by an issuer of excess/stop  
9 loss insurance or indemnity insurance pursuant to  
10 section 806(a)) of a failure of an association health  
11 plan which is or has been certified under this part  
12 and is described in section 806(a)(2) to meet the re-  
13 quirements of section 806 and has not been notified  
14 by the board of trustees of the plan that corrective  
15 action has restored compliance with such require-  
16 ments; and

17 “(2) the applicable authority determines that  
18 there is a reasonable expectation that the plan will  
19 continue to fail to meet the requirements of section  
20 806,

21 the board of trustees of the plan shall, at the direction  
22 of the applicable authority, terminate the plan and, in the  
23 course of the termination, take such actions as the appli-  
24 cable authority may require, including satisfying any  
25 claims referred to in section 806(a)(2)(B)(iii) and recov-

1 ering for the plan any liability under subsection  
 2 (a)(2)(B)(iii) or (e) of section 806, as necessary to ensure  
 3 that the affairs of the plan will be, to the maximum extent  
 4 possible, wound up in a manner which will result in timely  
 5 provision of all benefits for which the plan is obligated.

6 **“SEC. 810. TRUSTEESHIP BY THE SECRETARY OF INSOL-**  
 7 **VENT ASSOCIATION HEALTH PLANS PRO-**  
 8 **VIDING HEALTH BENEFITS IN ADDITION TO**  
 9 **HEALTH INSURANCE COVERAGE.**

10 “(a) APPOINTMENT OF SECRETARY AS TRUSTEE FOR  
 11 INSOLVENT PLANS.—Whenever the Secretary determines  
 12 that an association health plan which is or has been cer-  
 13 tified under this part and which is described in section  
 14 806(a)(2) will be unable to provide benefits when due or  
 15 is otherwise in a financially hazardous condition, as shall  
 16 be defined by the Secretary by regulation, the Secretary  
 17 shall, upon notice to the plan, apply to the appropriate  
 18 United States district court for appointment of the Sec-  
 19 retary as trustee to administer the plan for the duration  
 20 of the insolvency. The plan may appear as a party and  
 21 other interested persons may intervene in the proceedings  
 22 at the discretion of the court. The court shall appoint such  
 23 Secretary trustee if the court determines that the trustee-  
 24 ship is necessary to protect the interests of the partici-  
 25 pants and beneficiaries or providers of medical care or to

1 avoid any unreasonable deterioration of the financial con-  
2 dition of the plan. The trusteeship of such Secretary shall  
3 continue until the conditions described in the first sen-  
4 tence of this subsection are remedied or the plan is termi-  
5 nated.

6 “(b) POWERS AS TRUSTEE.—The Secretary, upon  
7 appointment as trustee under subsection (a), shall have  
8 the power—

9 “(1) to do any act authorized by the plan, this  
10 title, or other applicable provisions of law to be done  
11 by the plan administrator or any trustee of the plan;

12 “(2) to require the transfer of all (or any part)  
13 of the assets and records of the plan to the Sec-  
14 retary as trustee;

15 “(3) to invest any assets of the plan which the  
16 Secretary holds in accordance with the provisions of  
17 the plan, regulations prescribed by the Secretary,  
18 and applicable provisions of law;

19 “(4) to require the sponsor, the plan adminis-  
20 trator, any participating employer, and any employee  
21 organization representing plan participants to fur-  
22 nish any information with respect to the plan which  
23 the Secretary as trustee may reasonably need in  
24 order to administer the plan;

1           “(5) to collect for the plan any amounts due the  
2           plan and to recover reasonable expenses of the trust-  
3           eeship;

4           “(6) to commence, prosecute, or defend on be-  
5           half of the plan any suit or proceeding involving the  
6           plan;

7           “(7) to issue, publish, or file such notices, state-  
8           ments, and reports as may be required by the Sec-  
9           retary by regulation or required by any order of the  
10          court;

11          “(8) to terminate the plan (or provide for its  
12          termination in accordance with section 809(b)) and  
13          liquidate the plan assets, to restore the plan to the  
14          responsibility of the sponsor, or to continue the  
15          trusteeship;

16          “(9) to provide for the enrollment of plan par-  
17          ticipants and beneficiaries under appropriate cov-  
18          erage options; and

19          “(10) to do such other acts as may be nec-  
20          essary to comply with this title or any order of the  
21          court and to protect the interests of plan partici-  
22          pants and beneficiaries and providers of medical  
23          care.

1       “(c) NOTICE OF APPOINTMENT.—As soon as prac-  
2 ticable after the Secretary’s appointment as trustee, the  
3 Secretary shall give notice of such appointment to—

4               “(1) the sponsor and plan administrator;

5               “(2) each participant;

6               “(3) each participating employer; and

7               “(4) if applicable, each employee organization  
8 which, for purposes of collective bargaining, rep-  
9 resents plan participants.

10       “(d) ADDITIONAL DUTIES.—Except to the extent in-  
11 consistent with the provisions of this title, or as may be  
12 otherwise ordered by the court, the Secretary, upon ap-  
13 pointment as trustee under this section, shall be subject  
14 to the same duties as those of a trustee under section 704  
15 of title 11, United States Code, and shall have the duties  
16 of a fiduciary for purposes of this title.

17       “(e) OTHER PROCEEDINGS.—An application by the  
18 Secretary under this subsection may be filed notwith-  
19 standing the pendency in the same or any other court of  
20 any bankruptcy, mortgage foreclosure, or equity receiver-  
21 ship proceeding, or any proceeding to reorganize, conserve,  
22 or liquidate such plan or its property, or any proceeding  
23 to enforce a lien against property of the plan.

24       “(f) JURISDICTION OF COURT.—



1           “(1) IN GENERAL.—Upon the filing of an appli-  
2           cation for the appointment as trustee or the issuance  
3           of a decree under this section, the court to which the  
4           application is made shall have exclusive jurisdiction  
5           of the plan involved and its property wherever lo-  
6           cated with the powers, to the extent consistent with  
7           the purposes of this section, of a court of the United  
8           States having jurisdiction over cases under chapter  
9           11 of title 11, United States Code. Pending an adju-  
10          dication under this section such court shall stay, and  
11          upon appointment by it of the Secretary as trustee,  
12          such court shall continue the stay of, any pending  
13          mortgage foreclosure, equity receivership, or other  
14          proceeding to reorganize, conserve, or liquidate the  
15          plan, the sponsor, or property of such plan or spon-  
16          sor, and any other suit against any receiver, conser-  
17          vator, or trustee of the plan, the sponsor, or prop-  
18          erty of the plan or sponsor. Pending such adjudica-  
19          tion and upon the appointment by it of the Sec-  
20          retary as trustee, the court may stay any proceeding  
21          to enforce a lien against property of the plan or the  
22          sponsor or any other suit against the plan or the  
23          sponsor.

24           “(2) VENUE.—An action under this section  
25          may be brought in the judicial district where the

1 sponsor or the plan administrator resides or does  
2 business or where any asset of the plan is situated.  
3 A district court in which such action is brought may  
4 issue process with respect to such action in any  
5 other judicial district.

6 “(g) PERSONNEL.—In accordance with regulations  
7 which shall be prescribed by the Secretary, the Secretary  
8 shall appoint, retain, and compensate accountants, actu-  
9 aries, and other professional service personnel as may be  
10 necessary in connection with the Secretary’s service as  
11 trustee under this section.

12 **“SEC. 811. STATE ASSESSMENT AUTHORITY.**

13 “(a) IN GENERAL.—Notwithstanding section 514, a  
14 State may impose by law a contribution tax on an associa-  
15 tion health plan described in section 806(a)(2), if the plan  
16 commenced operations in such State after the date of the  
17 enactment of the Small Business Health Fairness Act of  
18 2003.

19 “(b) CONTRIBUTION TAX.—For purposes of this sec-  
20 tion, the term ‘contribution tax’ imposed by a State on  
21 an association health plan means any tax imposed by such  
22 State if—

23 “(1) such tax is computed by applying a rate to  
24 the amount of premiums or contributions, with re-  
25 spect to individuals covered under the plan who are

1 residents of such State, which are received by the  
2 plan from participating employers located in such  
3 State or from such individuals;

4 “(2) the rate of such tax does not exceed the  
5 rate of any tax imposed by such State on premiums  
6 or contributions received by insurers or health main-  
7 tenance organizations for health insurance coverage  
8 offered in such State in connection with a group  
9 health plan;

10 “(3) such tax is otherwise nondiscriminatory;  
11 and

12 “(4) the amount of any such tax assessed on  
13 the plan is reduced by the amount of any tax or as-  
14 sessment otherwise imposed by the State on pre-  
15 miums, contributions, or both received by insurers or  
16 health maintenance organizations for health insur-  
17 ance coverage, aggregate excess/stop loss insurance  
18 (as defined in section 806(g)(1)), specific excess/  
19 stop loss insurance (as defined in section 806(g)(2)),  
20 other insurance related to the provision of medical  
21 care under the plan, or any combination thereof pro-  
22 vided by such insurers or health maintenance organi-  
23 zations in such State in connection with such plan.

24 **“SEC. 812. DEFINITIONS AND RULES OF CONSTRUCTION.**

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

1           “(1) GROUP HEALTH PLAN.—The term ‘group  
2       health plan’ has the meaning provided in section  
3       733(a)(1) (after applying subsection (b) of this sec-  
4       tion).

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

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

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

13          “(5) APPLICABLE AUTHORITY.—The term ‘ap-  
14       plicable authority’ means the Secretary, except that,  
15       in connection with any exercise of the Secretary’s  
16       authority regarding which the Secretary is required  
17       under section 506(d) to consult with a State, such  
18       term means the Secretary, in consultation with such  
19       State.

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

23          “(7) INDIVIDUAL MARKET.—

24               “(A) IN GENERAL.—The term ‘individual  
25       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 “(8) 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               “(9) 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              “(10) QUALIFIED ACTUARY.—The term ‘quali-  
15      fied actuary’ means an individual who is a member  
16      of the American Academy of Actuaries.

17              “(11) AFFILIATED MEMBER.—The term ‘affili-  
18      ated member’ means, in connection with a sponsor—

19                      “(A) a person who is otherwise eligible to  
20                      be a member of the sponsor but who elects an  
21                      affiliated status with the sponsor,

22                      “(B) in the case of a sponsor with mem-  
23                      bers which consist of associations, a person who  
24                      is a member of any such association and elects  
25                      an affiliated status with the sponsor, or

1           “(C) in the case of an association health  
2           plan in existence on the date of the enactment  
3           of the Small Business Health Fairness Act of  
4           2003, a person eligible to be a member of the  
5           sponsor or one of its member associations.

6           “(12) LARGE EMPLOYER.—The term ‘large em-  
7           ployer’ means, in connection with a group health  
8           plan with respect to a plan year, an employer who  
9           employed an average of at least 51 employees on  
10          business days during the preceding calendar year  
11          and who employs at least 2 employees on the first  
12          day of the plan year.

13          “(13) SMALL EMPLOYER.—The term ‘small em-  
14          ployer’ means, in connection with a group health  
15          plan with respect to a plan year, an employer who  
16          is not a large employer.

17          “(b) RULES OF CONSTRUCTION.—

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

1           “(A) in the case of a partnership, the term  
2           ‘employer’ (as defined in section 3(5)) includes  
3           the partnership in relation to the partners, and  
4           the term ‘employee’ (as defined in section 3(6))  
5           includes any partner in relation to the partner-  
6           ship; and

7           “(B) in the case of a self-employed indi-  
8           vidual, the term ‘employer’ (as defined in sec-  
9           tion 3(5)) and the term ‘employee’ (as defined  
10          in section 3(6)) shall include such individual.

11          “(2) PLANS, FUNDS, AND PROGRAMS TREATED  
12          AS EMPLOYEE WELFARE BENEFIT PLANS.—In the  
13          case of any plan, fund, or program which was estab-  
14          lished or is maintained for the purpose of providing  
15          medical care (through the purchase of insurance or  
16          otherwise) for employees (or their dependents) cov-  
17          ered thereunder and which demonstrates to the Sec-  
18          retary that all requirements for certification under  
19          this part would be met with respect to such plan,  
20          fund, or program if such plan, fund, or program  
21          were a group health plan, such plan, fund, or pro-  
22          gram shall be treated for purposes of this title as an  
23          employee welfare benefit plan on and after the date  
24          of such demonstration.”.



1 (b) CONFORMING AMENDMENTS TO PREEMPTION  
2 RULES.—

3 (1) Section 514(b)(6) of such Act (29 U.S.C.  
4 1144(b)(6)) is amended by adding at the end the  
5 following new subparagraph:

6 “(E) The preceding subparagraphs of this paragraph  
7 do not apply with respect to any State law in the case  
8 of an association health plan which is certified under part  
9 8.”.

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

12 (A) in subsection (b)(4), by striking “Sub-  
13 section (a)” and inserting “Subsections (a) and  
14 (d)”;

15 (B) in subsection (b)(5), by striking “sub-  
16 section (a)” in subparagraph (A) and inserting  
17 “subsection (a) of this section and subsections  
18 (a)(2)(B) and (b) of section 805”, and by strik-  
19 ing “subsection (a)” in subparagraph (B) and  
20 inserting “subsection (a) of this section or sub-  
21 section (a)(2)(B) or (b) of section 805”;

22 (C) by redesignating subsection (d) as sub-  
23 section (e); and

24 (D) by inserting after subsection (c) the  
25 following new subsection:

1       “(d)(1) Except as provided in subsection (b)(4), the  
2 provisions of this title shall supersede any and all State  
3 laws insofar as they may now or hereafter preclude, or  
4 have the effect of precluding, a health insurance issuer  
5 from offering health insurance coverage in connection with  
6 an association health plan which is certified under part  
7 8.

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

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

22           “(B) In any case in which health insurance cov-  
23 erage of any policy type is offered in a State under  
24 an association health plan certified under part 8 and  
25 the filing, with the applicable State authority (as de-

1        fined in section 812(a)(9)), of the policy form in  
2        connection with such policy type is approved by such  
3        State authority, the provisions of this title shall su-  
4        persede any and all laws of any other State in which  
5        health insurance coverage of such type is offered, in-  
6        sofar as they may preclude, upon the filing in the  
7        same form and manner of such policy form with the  
8        applicable State authority in such other State, the  
9        approval of the filing in such other State.

10       “(3) Nothing in subsection (b)(6)(E) or the preceding  
11       provisions of this subsection shall be construed, with re-  
12       spect to health insurance issuers or health insurance cov-  
13       erage, to supersede or impair the law of any State—

14                “(A) providing solvency standards or similar  
15       standards regarding the adequacy of insurer capital,  
16       surplus, reserves, or contributions, or

17                “(B) relating to prompt payment of claims.

18       “(4) For additional provisions relating to association  
19       health plans, see subsections (a)(2)(B) and (b) of section  
20       805.

21       “(5) For purposes of this subsection, the term ‘asso-  
22       ciation health plan’ has the meaning provided in section  
23       801(a), and the terms ‘health insurance coverage’, ‘par-  
24       ticipating employer’, and ‘health insurance issuer’ have

1 the meanings provided such terms in section 812, respec-  
2 tively.”.

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

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

7 (B) in clause (ii), by inserting “and which  
8 does not provide medical care (within the mean-  
9 ing of section 733(a)(2)),” after “arrange-  
10 ment,” and by striking “title.” and inserting  
11 “title, and”; and

12 (C) by adding at the end the following new  
13 clause:

14 “(iii) subject to subparagraph (E), in the case  
15 of any other employee welfare benefit plan which is  
16 a multiple employer welfare arrangement and which  
17 provides medical care (within the meaning of section  
18 733(a)(2)), any law of any State which regulates in-  
19 surance may apply.”.

20 (4) Section 514(e) of such Act (as redesignated  
21 by paragraph (2)(C)) is amended—

22 (A) by striking “Nothing” and inserting  
23 “(1) Except as provided in paragraph (2), noth-  
24 ing”; and

1 (B) by adding at the end the following new  
2 paragraph:

3 “(2) Nothing in any other provision of law enacted  
4 on or after the date of the enactment of the Small Busi-  
5 ness Health Fairness Act of 2003 shall be construed to  
6 alter, amend, modify, invalidate, impair, or supersede any  
7 provision of this title, except by specific cross-reference to  
8 the affected section.”.

9 (c) PLAN SPONSOR.—Section 3(16)(B) of such Act  
10 (29 U.S.C. 102(16)(B)) is amended by adding at the end  
11 the following new sentence: “Such term also includes a  
12 person serving as the sponsor of an association health plan  
13 under part 8.”.

14 (d) DISCLOSURE OF SOLVENCY PROTECTIONS RE-  
15 LATED TO SELF-INSURED AND FULLY INSURED OPTIONS  
16 UNDER ASSOCIATION HEALTH PLANS.—Section 102(b)  
17 of such Act (29 U.S.C. 102(b)) is amended by adding at  
18 the end the following: “An association health plan shall  
19 include in its summary plan description, in connection  
20 with each benefit option, a description of the form of sol-  
21 vency or guarantee fund protection secured pursuant to  
22 this Act or applicable State law, if any.”.

23 (e) SAVINGS CLAUSE.—Section 731(c) of such Act is  
24 amended by inserting “or part 8” after “this part”.

1 (f) REPORT TO THE CONGRESS REGARDING CERTIFI-  
 2 CATION OF SELF-INSURED ASSOCIATION HEALTH  
 3 PLANS.—Not later than January 1, 2008, the Secretary  
 4 of Labor shall report to the Committee on Education and  
 5 the Workforce of the House of Representatives and the  
 6 Committee on Health, Education, Labor, and Pensions of  
 7 the Senate the effect association health plans have had,  
 8 if any, on reducing the number of uninsured individuals.

9 (g) CLERICAL AMENDMENT.—The table of contents  
 10 in section 1 of the Employee Retirement Income Security  
 11 Act of 1974 is amended by inserting after the item relat-  
 12 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. Trusteeship by the Secretary of insolvent association health plans  
providing health benefits in addition to health insurance cov-  
erage.

“Sec. 811. State assessment authority.

“Sec. 812. Definitions and rules of construction.”.

13 **SEC. 3. CLARIFICATION OF TREATMENT OF SINGLE EM-**  
 14 **PLOYER ARRANGEMENTS.**

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

1           (1) in clause (i), by inserting after “control  
2       group,” the following: “except that, in any case in  
3       which the benefit referred to in subparagraph (A)  
4       consists of medical care (as defined in section  
5       812(a)(2)), two or more trades or businesses, wheth-  
6       er or not incorporated, shall be deemed a single em-  
7       ployer for any plan year of such plan, or any fiscal  
8       year of such other arrangement, if such trades or  
9       businesses are within the same control group during  
10      such year or at any time during the preceding 1-year  
11      period,”;

12           (2) in clause (iii), by striking “(iii) the deter-  
13      mination” and inserting the following:

14           “(iii)(I) in any case in which the benefit re-  
15      ferred to in subparagraph (A) consists of medical  
16      care (as defined in section 812(a)(2)), the deter-  
17      mination of whether a trade or business is under  
18      ‘common control’ with another trade or business  
19      shall be determined under regulations of the Sec-  
20      retary applying principles consistent and coextensive  
21      with the principles applied in determining whether  
22      employees of two or more trades or businesses are  
23      treated as employed by a single employer under sec-  
24      tion 4001(b), except that, for purposes of this para-  
25      graph, an interest of greater than 25 percent may

1 not be required as the minimum interest necessary  
 2 for common control, or

3 “(II) in any other case, the determination”;

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

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

8 “(iv) in any case in which the benefit referred  
 9 to in subparagraph (A) consists of medical care (as  
 10 defined in section 812(a)(2)), in determining, after  
 11 the application of clause (i), whether benefits are  
 12 provided to employees of two or more employers, the  
 13 arrangement shall be treated as having only one par-  
 14 ticipating employer if, after the application of clause  
 15 (i), the number of individuals who are employees and  
 16 former employees of any one participating employer  
 17 and who are covered under the arrangement is  
 18 greater than 75 percent of the aggregate number of  
 19 all individuals who are employees or former employ-  
 20 ees of participating employers and who are covered  
 21 under the arrangement,”.

22 **SEC. 4. ENFORCEMENT PROVISIONS RELATING TO ASSO-**  
 23 **CIATION HEALTH PLANS.**

24 (a) **CRIMINAL PENALTIES FOR CERTAIN WILLFUL**  
 25 **MISREPRESENTATIONS.**—Section 501 of the Employee



1 Retirement Income Security Act of 1974 (29 U.S.C. 1131)

2 is amended—

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

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

6 “(b) Any person who willfully falsely represents, to  
7 any employee, any employee’s beneficiary, any employer,  
8 the Secretary, or any State, a plan or other arrangement  
9 established or maintained for the purpose of offering or  
10 providing any benefit described in section 3(1) to employ-  
11 ees or their beneficiaries as—

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

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

24 “(3) being a plan or arrangement described in  
25 section 3(40)(A)(i),

1 shall, upon conviction, be imprisoned not more than 5  
2 years, be fined under title 18, United States Code, or  
3 both.”.

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

7 “(n) ASSOCIATION HEALTH PLAN CEASE AND DE-  
8 SIST ORDERS.—

9 “(1) IN GENERAL.—Subject to paragraph (2),  
10 upon application by the Secretary showing the oper-  
11 ation, promotion, or marketing of an association  
12 health plan (or similar arrangement providing bene-  
13 fits consisting of medical care (as defined in section  
14 733(a)(2))) that—

15 “(A) is not certified under part 8, is sub-  
16 ject under section 514(b)(6) to the insurance  
17 laws of any State in which the plan or arrange-  
18 ment offers or provides benefits, and is not li-  
19 censed, registered, or otherwise approved under  
20 the insurance laws of such State; or

21 “(B) is an association health plan certified  
22 under part 8 and is not operating in accordance  
23 with the requirements under part 8 for such  
24 certification,

1 a district court of the United States shall enter an  
2 order requiring that the plan or arrangement cease  
3 activities.

4 “(2) EXCEPTION.—Paragraph (1) shall not  
5 apply in the case of an association health plan or  
6 other arrangement if the plan or arrangement shows  
7 that—

8 “(A) all benefits under it referred to in  
9 paragraph (1) consist of health insurance cov-  
10 erage; and

11 “(B) with respect to each State in which  
12 the plan or arrangement offers or provides ben-  
13 efits, the plan or arrangement is operating in  
14 accordance with applicable State laws that are  
15 not superseded under section 514.

16 “(3) ADDITIONAL EQUITABLE RELIEF.—The  
17 court may grant such additional equitable relief, in-  
18 cluding any relief available under this title, as it  
19 deems necessary to protect the interests of the pub-  
20 lic and of persons having claims for benefits against  
21 the plan.”.

22 (c) RESPONSIBILITY FOR CLAIMS PROCEDURE.—  
23 Section 503 of such Act (29 U.S.C. 1133) is amended by  
24 inserting “(a) IN GENERAL.—” before “In accordance”,  
25 and by adding at the end the following new subsection:

1       “(b) ASSOCIATION HEALTH PLANS.—The terms of  
2 each association health plan which is or has been certified  
3 under part 8 shall require the board of trustees or the  
4 named fiduciary (as applicable) to ensure that the require-  
5 ments of this section are met in connection with claims  
6 filed under the plan.”.

7       **SEC. 5. COOPERATION BETWEEN FEDERAL AND STATE AU-**  
8                               **THORITIES.**

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

12       “(d) CONSULTATION WITH STATES WITH RESPECT  
13 TO ASSOCIATION HEALTH PLANS.—

14               “(1) AGREEMENTS WITH STATES.—The Sec-  
15 retary shall consult with the State recognized under  
16 paragraph (2) with respect to an association health  
17 plan regarding the exercise of—

18                       “(A) the Secretary’s authority under sec-  
19 tions 502 and 504 to enforce the requirements  
20 for certification under part 8; and

21                       “(B) the Secretary’s authority to certify  
22 association health plans under part 8 in accord-  
23 ance with regulations of the Secretary applica-  
24 ble to certification under part 8.

1           “(2) RECOGNITION OF PRIMARY DOMICILE  
2       STATE.—In carrying out paragraph (1), the Sec-  
3       retary shall ensure that only one State will be recog-  
4       nized, with respect to any particular association  
5       health plan, as the State to with which consultation  
6       is required. In carrying out this paragraph—

7           “(A) in the case of a plan which provides  
8       health insurance coverage (as defined in section  
9       812(a)(3)), such State shall be the State with  
10      which filing and approval of a policy type of-  
11      fered by the plan was initially obtained, and

12          “(B) in any other case, the Secretary shall  
13      take into account the places of residence of the  
14      participants and beneficiaries under the plan  
15      and the State in which the trust is main-  
16      tained.”.

17 **SEC. 6. EFFECTIVE DATE AND TRANSITIONAL AND OTHER**  
18 **RULES.**

19      (a) EFFECTIVE DATE.—The amendments made by  
20      this Act shall take effect one year from the date of the  
21      enactment. The Secretary of Labor shall first issue all reg-  
22      ulations necessary to carry out the amendments made by  
23      this Act within one year after the date of the enactment  
24      of this Act.

1       (b) TREATMENT OF CERTAIN EXISTING HEALTH  
2 BENEFITS PROGRAMS.—

3           (1) IN GENERAL.—In any case in which, as of  
4 the date of the enactment of this Act, an arrange-  
5 ment is maintained in a State for the purpose of  
6 providing benefits consisting of medical care for the  
7 employees and beneficiaries of its participating em-  
8 ployers, at least 200 participating employers make  
9 contributions to such arrangement, such arrange-  
10 ment has been in existence for at least 10 years, and  
11 such arrangement is licensed under the laws of one  
12 or more States to provide such benefits to its par-  
13 ticipating employers, upon the filing with the appli-  
14 cable authority (as defined in section 812(a)(5) of  
15 the Employee Retirement Income Security Act of  
16 1974 (as amended by this subtitle)) by the arrange-  
17 ment of an application for certification of the ar-  
18 rangement under part 8 of subtitle B of title I of  
19 such Act—

20           (A) such arrangement shall be deemed to  
21 be a group health plan for purposes of title I  
22 of such Act;

23           (B) the requirements of sections 801(a)  
24 and 803(a) of the Employee Retirement Income

1 Security Act of 1974 shall be deemed met with  
2 respect to such arrangement;

3 (C) the requirements of section 803(b) of  
4 such Act shall be deemed met, if the arrange-  
5 ment is operated by a board of directors  
6 which—

7 (i) is elected by the participating em-  
8 ployers, with each employer having one  
9 vote; and

10 (ii) has complete fiscal control over  
11 the arrangement and which is responsible  
12 for all operations of the arrangement;

13 (D) the requirements of section 804(a) of  
14 such Act shall be deemed met with respect to  
15 such arrangement; and

16 (E) the arrangement may be certified by  
17 any applicable authority with respect to its op-  
18 erations in any State only if it operates in such  
19 State on the date of certification.

20 The provisions of this subsection shall cease to apply  
21 with respect to any such arrangement at such time  
22 after the date of the enactment of this Act as the  
23 applicable requirements of this subsection are not  
24 met with respect to such arrangement.

1           (2) DEFINITIONS.—For purposes of this sub-  
2       section, the terms “group health plan”, “medical  
3       care”, and “participating employer” shall have the  
4       meanings provided in section 812 of the Employee  
5       Retirement Income Security Act of 1974, except  
6       that the reference in paragraph (7) of such section  
7       to an “association health plan” shall be deemed a  
8       reference to an arrangement referred to in this sub-  
9       section.

Passed the House of Representatives June 19, 2003.

Attest:

JEFF TRANDAHL,

*Clerk.*

By MARTHA C. MORRISON,

*Deputy Clerk.*