

108TH CONGRESS
2D SESSION

S. 2282

To amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to temporarily replace the 30-year Treasury rate with a rate based on long-term corporate bonds for certain pension plan funding requirements and other provisions, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 5, 2004

Mr. KENNEDY (for himself, Mr. BAUCUS, and Mr. DASCHLE) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to temporarily replace the 30-year Treasury rate with a rate based on long-term corporate bonds for certain pension plan funding requirements and other provisions, 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 “Fairness in Pension
5 Stability Act”.

1 **TITLE I—PENSION FUNDING**

2 **SEC. 101. TEMPORARY REPLACEMENT OF 30-YEAR TREAS-**
 3 **URY RATE.**

4 (a) EMPLOYEE RETIREMENT INCOME SECURITY ACT
 5 OF 1974.—

6 (1) DETERMINATION OF PERMISSIBLE
 7 RANGE.—

8 (A) IN GENERAL.—Clause (ii) of section
 9 302(b)(5)(B) of the Employee Retirement In-
 10 come Security Act of 1974 is amended by re-
 11 designating subclause (II) as subclause (III)
 12 and by inserting after subclause (I) the fol-
 13 lowing new subclause:

14 “(II) SPECIAL RULE FOR YEARS 2004
 15 AND 2005.—In the case of plan years be-
 16 ginning after December 31, 2003, and be-
 17 fore January 1, 2006, the term ‘permissible
 18 range’ means a rate of interest which is not
 19 above, and not more than 10 percent below,
 20 the weighted average of the rates of interest
 21 on amounts invested conservatively in long-
 22 term corporate bonds during the 4-year pe-
 23 riod ending on the last day before the begin-
 24 ning of the plan year. Such rates shall be
 25 determined by the Secretary of the Treas-

1 ury on the basis of 2 or more indices that
2 are selected periodically by the Secretary of
3 the Treasury and that are in the top 3 qual-
4 ity levels available. The Secretary of the
5 Treasury shall make the permissible range,
6 and the indices and methodology used to
7 determine the average rate, publicly avail-
8 able.”.

9 (B) SECRETARIAL AUTHORITY.—Subclause
10 (III) of section 302(b)(5)(B)(ii) of such Act, as
11 redesignated by subparagraph (A), is amend-
12 ed—

13 (i) by inserting “or (II)” after “sub-
14 clause (I)” the first place it appears, and

15 (ii) by striking “subclause (I)” the
16 second place it appears and inserting
17 “such subclause”.

18 (C) CONFORMING AMENDMENT.—Sub-
19 clause (I) of section 302(b)(5)(B)(ii) of such
20 Act is amended by inserting “or (III)” after
21 “subclause (II)”.

22 (2) DETERMINATION OF CURRENT LIABILITY.—
23 Clause (i) of section 302(d)(7)(C) of such Act is
24 amended by adding at the end the following new
25 subclause:

1 “(IV) SPECIAL RULE FOR 2004
2 AND 2005.—For plan years beginning
3 in 2004 or 2005, notwithstanding
4 subclause (I), the rate of interest used
5 to determine current liability under
6 this subsection shall be the rate of in-
7 terest under subsection (b)(5).”.

8 (3) CONFORMING AMENDMENT.—Paragraph (7)
9 of section 302(e) of such Act is amended to read as
10 follows:

11 “(7) SPECIAL RULE FOR 2002.—In any case in
12 which the interest rate used to determine current li-
13 ability is determined under subsection
14 (d)(7)(C)(i)(III), for purposes of applying para-
15 graphs (1) and (4)(B)(ii) for plan years beginning in
16 2002, the current liability for the preceding plan
17 year shall be redetermined using 120 percent as the
18 specified percentage determined under subsection
19 (d)(7)(C)(i)(II).”.

20 (4) PBGC.—Clause (iii) of section
21 4006(a)(3)(E) of such Act is amended by adding at
22 the end the following new subclause:

23 “(V) In the case of plan years beginning after
24 December 31, 2003, and before January 1, 2006,
25 the annual yield taken into account under subclause

1 (II) shall be the annual rate of interest determined
2 by the Secretary of the Treasury on amounts in-
3 vested conservatively in long-term corporate bonds
4 for the month preceding the month in which the
5 plan year begins. For purposes of the preceding sen-
6 tence, the Secretary of the Treasury shall determine
7 such rate of interest on the basis of 2 or more indi-
8 ces that are selected periodically by the Secretary of
9 the Treasury and that are in the top 3 quality levels
10 available. The Secretary of the Treasury shall make
11 the permissible range, and the indices and method-
12 ology used to determine the rate, publicly avail-
13 able.”.

14 (b) INTERNAL REVENUE CODE OF 1986.—

15 (1) DETERMINATION OF PERMISSIBLE
16 RANGE.—

17 (A) IN GENERAL.—Clause (ii) of section
18 412(b)(5)(B) of the Internal Revenue Code of
19 1986 is amended by redesignating subclause
20 (II) as subclause (III) and by inserting after
21 subclause (I) the following new subclause:

22 “(II) SPECIAL RULE FOR YEARS
23 2004 AND 2005.—In the case of plan
24 years beginning after December 31,
25 2003, and before January 1, 2006,

1 the term ‘permissible range’ means a
2 rate of interest which is not above,
3 and not more than 10 percent below,
4 the weighted average of the rates of
5 interest on amounts invested conserv-
6 atively in long-term corporate bonds
7 during the 4-year period ending on
8 the last day before the beginning of
9 the plan year. Such rates shall be de-
10 termined by the Secretary on the
11 basis of 2 or more indices that are se-
12 lected periodically by the Secretary
13 and that are in the top 3 quality lev-
14 els available. The Secretary shall
15 make the permissible range, and the
16 indices and methodology used to de-
17 termine the average rate, publicly
18 available.”.

19 (B) SECRETARIAL AUTHORITY.—Subclause
20 (III) of section 412(b)(5)(B)(ii) of such Code,
21 as redesignated by subparagraph (A), is amend-
22 ed—

23 (i) by inserting “or (II)” after “sub-
24 clause (I)” the first place it appears, and

1 (ii) by striking “subclause (I)” the
2 second place it appears and inserting
3 “such subclause”.

4 (C) CONFORMING AMENDMENT.—Sub-
5 clause (I) of section 412(b)(5)(B)(ii) of such
6 Code is amended by inserting “or (III)” after
7 “subclause (II)”.

8 (2) DETERMINATION OF CURRENT LIABILITY.—
9 Clause (i) of section 412(l)(7)(C) of such Code is
10 amended by adding at the end the following new
11 subclause:

12 “(IV) SPECIAL RULE FOR 2004
13 AND 2005.—For plan years beginning
14 in 2004 or 2005, notwithstanding
15 subclause (I), the rate of interest used
16 to determine current liability under
17 this subsection shall be the rate of in-
18 terest under subsection (b)(5).”.

19 (3) CONFORMING AMENDMENT.—Paragraph (7)
20 of section 412(m) of such Code is amended to read
21 as follows:

22 “(7) SPECIAL RULE FOR 2002.—In any case in
23 which the interest rate used to determine current li-
24 ability is determined under subsection
25 (l)(7)(C)(i)(III), for purposes of applying paragraphs

1 (1) and (4)(B)(ii) for plan years beginning in 2002,
2 the current liability for the preceding plan year shall
3 be redetermined using 120 percent as the specified
4 percentage determined under subsection
5 (l)(7)(C)(i)(II).”.

6 (4) LIMITATION ON CERTAIN ASSUMPTIONS.—
7 Section 415(b)(2)(E)(ii) of such Code is amended by
8 inserting “, except that in the case of plan years be-
9 ginning in 2004 or 2005, ‘5.5 percent’ shall be sub-
10 stituted for ‘5 percent’ in clause (i)” before the pe-
11 riod at the end.

12 (5) ELECTION TO DISREGARD MODIFICATION
13 FOR DEDUCTION PURPOSES.—Section 404(a)(1) of
14 such Code is amended by adding at the end the fol-
15 lowing new subparagraph:

16 “(F) ELECTION TO DISREGARD MODIFIED
17 INTEREST RATE.—An employer may elect to
18 disregard subsections (b)(5)(B)(ii)(II) and
19 (l)(7)(C)(i)(IV) of section 412 solely for pur-
20 poses of determining the interest rate used in
21 calculating the maximum amount of the deduc-
22 tion allowable under this section for contribu-
23 tions to a plan to which this paragraph ap-
24 plies.”.

1 (c) PROVISIONS RELATING TO PLAN AMEND-
2 MENTS.—

3 (1) IN GENERAL.—If this subsection applies to
4 any plan or annuity contract amendment—

5 (A) such plan or contract shall be treated
6 as being operated in accordance with the terms
7 of the plan or contract during the period de-
8 scribed in paragraph (2)(B)(i), and

9 (B) except as provided by the Secretary of
10 the Treasury, such plan shall not fail to meet
11 the requirements of section 411(d)(6) of the In-
12 ternal Revenue Code of 1986 and section
13 204(g) of the Employee Retirement Income Se-
14 curity Act of 1974 by reason of such amend-
15 ment.

16 (2) AMENDMENTS TO WHICH SECTION AP-
17 PLIES.—

18 (A) IN GENERAL.—This subsection shall
19 apply to any amendment to any plan or annuity
20 contract which is made—

21 (i) pursuant to any amendment made
22 by this section, and

23 (ii) on or before the last day of the
24 first plan year beginning on or after Janu-
25 ary 1, 2006.

1 (B) CONDITIONS.—This subsection shall
2 not apply to any plan or annuity contract
3 amendment unless—

4 (i) during the period beginning on the
5 date the amendment described in subpara-
6 graph (A)(i) takes effect and ending on the
7 date described in subparagraph (A)(ii) (or,
8 if earlier, the date the plan or contract
9 amendment is adopted), the plan or con-
10 tract is operated as if such plan or con-
11 tract amendment were in effect; and

12 (ii) such plan or contract amendment
13 applies retroactively for such period.

14 (d) EFFECTIVE DATE.—

15 (1) IN GENERAL.—Except as provided in para-
16 graphs (2) and (3), the amendments made by this
17 section shall apply to plan years beginning after De-
18 cember 31, 2003.

19 (2) LOOKBACK RULES.—For purposes of apply-
20 ing subsections (d)(9)(B)(ii) and (e)(1) of section
21 302 of the Employee Retirement Income Security
22 Act of 1974 and subsections (l)(9)(B)(ii) and (m)(1)
23 of section 412 of the Internal Revenue Code of 1986
24 to plan years beginning after December 31, 2003,
25 the amendments made by this section may be ap-

1 plied as if such amendments had been in effect for
2 all prior plan years. The Secretary of the Treasury
3 may prescribe simplified assumptions which may be
4 used in applying the amendments made by this sec-
5 tion to such prior plan years.

6 (3) **TRANSITION RULE FOR SECTION 415 LIM-**
7 **TATION.**—In the case of any participant or bene-
8 ficiary receiving a distribution after December 31,
9 2003 and before January 1, 2005, the amount pay-
10 able under any form of benefit subject to section
11 417(e)(3) of the Internal Revenue Code of 1986 and
12 subject to adjustment under section 415(b)(2)(B) of
13 such Code shall not, solely by reason of the amend-
14 ment made by subsection (b)(4), be less than the
15 amount that would have been so payable had the
16 amount payable been determined using the applica-
17 ble interest rate in effect as of the last day of the
18 last plan year beginning before January 1, 2004.

19 **SEC. 102. ELECTION OF ALTERNATIVE DEFICIT REDUCTION**
20 **CONTRIBUTION.**

21 (a) **AMENDMENT OF ERISA.**—Section 302(d) of the
22 Employee Retirement Income Security Act of 1974 (29
23 U.S.C. 1082(d)) is amended by adding at the end the fol-
24 lowing new paragraph:

25 “(12) **ELECTION FOR CERTAIN PLANS.**—

1 “(A) IN GENERAL.—In the case of a de-
2 fined benefit plan established and maintained
3 by an applicable employer, if this subsection did
4 not apply to the plan for the plan year begin-
5 ning in 2000 (determined without regard to
6 paragraph (6)), then, at the election of the em-
7 ployer, the increased amount under paragraph
8 (1) for any applicable plan year shall be the
9 greater of—

10 “(i) 20 percent of the increased
11 amount under paragraph (1) determined
12 without regard to this paragraph, or

13 “(ii) the increased amount which
14 would be determined under paragraph (1)
15 if the deficit reduction contribution under
16 paragraph (2) for the applicable plan year
17 were determined without regard to sub-
18 paragraphs (A), (B), and (D) of paragraph
19 (2).

20 “(B) RESTRICTIONS ON BENEFIT IN-
21 CREASES.—No amendment which increases the
22 liabilities of the plan by reason of any increase
23 in benefits, any change in the accrual of bene-
24 fits, or any change in the rate at which benefits
25 become nonforfeitable under the plan shall be

1 adopted during any applicable plan year, un-
2 less—

3 “(i) the funded current liability per-
4 centage (as defined in paragraph (8)(B))
5 as of the end of such plan year is projected
6 (taking into account the effect of the
7 amendment) to be at least 75 percent,

8 “(ii) the amendment provides for an
9 increase in benefits under a formula which
10 is not based on a participant’s compensa-
11 tion, but only if the rate of such increase
12 is not in excess of the contemporaneous
13 rate of increase in average wages of par-
14 ticipants covered by the amendment,

15 “(iii) the amendment is required by a
16 collective bargaining agreement which is in
17 effect on the date of enactment of this sub-
18 paragraph, or

19 “(iv) the amendment is otherwise de-
20 scribed in subparagraph (A) or (C) of sec-
21 tion 304(b)(2).

22 If a plan is amended during any applicable plan
23 year in violation of the preceding sentence, any
24 election under this paragraph shall not apply to

1 any applicable plan year ending on or after the
2 date on which such amendment is adopted.

3 “(C) APPLICABLE EMPLOYER.—For pur-
4 poses of this paragraph, the term ‘applicable
5 employer’ means an employer which is—

6 “(i) a commercial passenger airline,

7 “(ii) primarily engaged in the produc-
8 tion or manufacture of a steel mill product
9 or the mining or processing of iron ore pel-
10 lets, or

11 “(iii) an organization described in sec-
12 tion 501(c)(5) of the Internal Revenue
13 Code of 1986 and which established the
14 plan to which this paragraph applies on
15 June 30, 1955.

16 “(D) APPLICABLE PLAN YEAR.—For pur-
17 poses of this paragraph—

18 “(i) IN GENERAL.—The term ‘applica-
19 ble plan year’ means any plan year begin-
20 ning after December 27, 2003, and before
21 December 28, 2005, for which the em-
22 ployer elects the application of this para-
23 graph.

24 “(ii) LIMITATION ON NUMBER OF
25 YEARS WHICH MAY BE ELECTED.—An elec-

1 tion may not be made under this para-
2 graph with respect to more than 2 plan
3 years.

4 “(E) NOTICE REQUIREMENTS FOR PLANS
5 ELECTING ALTERNATIVE DEFICIT REDUCTION
6 CONTRIBUTIONS.—

7 “(i) IN GENERAL.—If an employer
8 elects an alternative deficit reduction con-
9 tribution under this paragraph and section
10 412(l)(12) of the Internal Revenue Code of
11 1986 for any year, the employer shall pro-
12 vide, within 30 days (120 days in the case
13 of an employer described in subparagraph
14 (C)(ii)) of filing the election for such year,
15 written notice of the election to partici-
16 pants and beneficiaries and to the Pension
17 Benefit Guaranty Corporation.

18 “(ii) NOTICE TO PARTICIPANTS AND
19 BENEFICIARIES.—The notice under clause
20 (i) to participants and beneficiaries shall
21 include with respect to any election—

22 “(I) the due date of the alter-
23 native deficit reduction contribution
24 and the amount by which such con-
25 tribution was reduced from the

1 amount which would have been owed
2 if the election were not made, and

3 “(II) a description of the benefits
4 under the plan which are eligible to be
5 guaranteed by the Pension Benefit
6 Guaranty Corporation and an expla-
7 nation of the limitations on the guar-
8 antee and the circumstances under
9 which such limitations apply, includ-
10 ing the maximum guaranteed monthly
11 benefits which the Pension Benefit
12 Guaranty Corporation would pay if
13 the plan terminated while under-
14 funded.

15 “(iii) NOTICE TO PBGC.—The notice
16 under clause (i) to the Pension Benefit
17 Guaranty Corporation shall include—

18 “(I) the information described in
19 clause (ii)(I),

20 “(II) the number of years it will
21 take to restore the plan to full fund-
22 ing if the employer only makes the re-
23 quired contributions, and

24 “(III) information as to how the
25 amount by which the plan is under-

1 funded compares with the capitaliza-
2 tion of the employer making the elec-
3 tion.

4 “(F) ELECTION.—An election under this
5 paragraph shall be made at such time and in
6 such manner as the Secretary of the Treasury
7 may prescribe.”

8 (b) AMENDMENT OF 1986 CODE.—Section 412(l) of
9 the Internal Revenue Code of 1986 (relating to applica-
10 bility of subsection) is amended by adding at the end the
11 following new paragraph:

12 “(12) ELECTION FOR CERTAIN PLANS.—

13 “(A) IN GENERAL.—In the case of a de-
14 fined benefit plan established and maintained
15 by an applicable employer, if this subsection did
16 not apply to the plan for the plan year begin-
17 ning in 2000 (determined without regard to
18 paragraph (6)), then, at the election of the em-
19 ployer, the increased amount under paragraph
20 (1) for any applicable plan year shall be the
21 greater of—

22 “(i) 20 percent of the increased
23 amount under paragraph (1) determined
24 without regard to this paragraph, or

1 “(ii) the increased amount which
2 would be determined under paragraph (1)
3 if the deficit reduction contribution under
4 paragraph (2) for the applicable plan year
5 were determined without regard to sub-
6 paragraphs (A), (B), and (D) of paragraph
7 (2).

8 “(B) RESTRICTIONS ON BENEFIT IN-
9 CREASES.—No amendment which increases the
10 liabilities of the plan by reason of any increase
11 in benefits, any change in the accrual of bene-
12 fits, or any change in the rate at which benefits
13 become nonforfeitable shall be adopted during
14 any applicable plan year, unless—

15 “(i) the funded current liability per-
16 centage (as defined in paragraph (8)(B))
17 as of the end of such plan year is projected
18 (taking into account the effect of the
19 amendment) to be at least 75 percent,

20 “(ii) the amendment provides for an
21 increase in benefits under a formula which
22 is not based on a participant’s compensa-
23 tion, but only if the rate of such increase
24 is not in excess of the contemporaneous

1 rate of increase in average wages of partici-
2 pants covered by the amendment,

3 “(iii) the amendment is required by a
4 collective bargaining agreement which is in
5 effect on the date of enactment of this sub-
6 paragraph, or

7 “(iv) the amendment is otherwise de-
8 scribed in subparagraph (A) or (C) of sub-
9 section (f)(2).

10 If a plan is amended during any applicable plan
11 year in violation of the preceding sentence, any
12 election under this paragraph shall not apply to
13 any applicable plan year ending on or after the
14 date on which such amendment is adopted.

15 “(C) APPLICABLE EMPLOYER.—For pur-
16 poses of this paragraph, the term ‘applicable
17 employer’ means an employer which is—

18 “(i) a commercial passenger airline,

19 “(ii) primarily engaged in the produc-
20 tion or manufacture of a steel mill product
21 or the mining or processing of iron ore pel-
22 lets, or

23 “(iii) an organization described in sec-
24 tion 501(c)(5) and which established the

1 plan to which this paragraph applies on
2 June 30, 1955.

3 “(D) APPLICABLE PLAN YEAR.—For pur-
4 poses of this paragraph—

5 “(i) IN GENERAL.—The term ‘applica-
6 ble plan year’ means any plan year begin-
7 ning after December 27, 2003, and before
8 December 28, 2005, for which the em-
9 ployer elects the application of this para-
10 graph.

11 “(ii) LIMITATION ON NUMBER OF
12 YEARS WHICH MAY BE ELECTED.—An elec-
13 tion may not be made under this para-
14 graph with respect to more than 2 plan
15 years.

16 “(E) ELECTION.—An election under this
17 paragraph shall be made at such time and in
18 such manner as the Secretary may prescribe.”

19 (c) EFFECT OF ELECTION.—An election under sec-
20 tion 412(l)(12) of the Internal Revenue Code of 1986 or
21 section 302(d)(12) of the Employee Retirement Income
22 Security Act of 1974 (as added by this section) with re-
23 spect to a plan shall not invalidate any obligation (pursu-
24 ant to a collective bargaining agreement in effect on the
25 date of the election) to provide benefits, to change the ac-

1 crucial of benefits, or to change the rate at which benefits
2 become nonforfeitable under the plan .

3 (d) PENALTY FOR FAILING TO PROVIDE NOTICE.—
4 Section 502(c)(3) of the Employee Retirement Income Se-
5 curity Act of 1974 (29 U.S.C. 1132(c)(3)) is amended by
6 inserting “or who fails to meet the requirements of section
7 302(d)(12)(E) with respect to any person” after
8 “101(e)(2) with respect to any person”.

9 **SEC. 103. MULTIEMPLOYER PLAN FUNDING NOTICES.**

10 (a) IN GENERAL.—Section 101 of the Employee Re-
11 tirement Income Security Act of 1974 (29 U.S.C. 1021)
12 is amended by inserting after subsection (e) the following
13 new subsection:

14 “(f) MULTIEMPLOYER DEFINED BENEFIT PLAN
15 FUNDING NOTICES.—

16 “(1) IN GENERAL.—The administrator of a de-
17 fined benefit plan which is a multiemployer plan
18 shall for each plan year provide a plan funding no-
19 tice to each plan participant and beneficiary, to each
20 labor organization representing such participants or
21 beneficiaries, to each employer that has an obliga-
22 tion to contribute under the plan, and to the Pen-
23 sion Benefit Guaranty Corporation.

24 “(2) INFORMATION CONTAINED IN NOTICES.—

1 “(A) IDENTIFYING INFORMATION.—Each
2 notice required under paragraph (1) shall con-
3 tain identifying information, including the name
4 of the plan, the address and phone number of
5 the plan administrator and the plan’s principal
6 administrative officer, each plan sponsor’s em-
7 ployer identification number, and the plan num-
8 ber of the plan.

9 “(B) SPECIFIC INFORMATION.—A plan
10 funding notice under paragraph (1) shall in-
11 clude—

12 “(i) a statement as to whether the
13 plan’s funded current liability percentage
14 (as defined in section 302(d)(8)(B)) for
15 the plan year to which the notice relates is
16 at least 100 percent (and, if not, the actual
17 percentage);

18 “(ii) a statement of the value of the
19 plan’s assets, the amount of benefit pay-
20 ments, and the ratio of the assets to the
21 payments for the plan year to which the
22 notice relates;

23 “(iii) a summary of the rules gov-
24 erning insolvent multiemployer plans, in-
25 cluding the limitations on benefit payments

1 and any potential benefit reductions and
2 suspensions (and the potential effects of
3 such limitations, reductions, and suspen-
4 sions on the plan); and

5 “(iv) a general description of the ben-
6 efits under the plan which are eligible to be
7 guaranteed by the Pension Benefit Guar-
8 anty Corporation, along with an expla-
9 nation of the limitations on the guarantee
10 and the circumstances under which such
11 limitations apply.

12 “(C) OTHER INFORMATION.—Each notice
13 under paragraph (1) shall include any addi-
14 tional information which the plan administrator
15 elects to include to the extent not inconsistent
16 with regulations prescribed by the Secretary.

17 “(3) TIME FOR PROVIDING NOTICE.—Any no-
18 tice under paragraph (1) shall be provided no later
19 than two months after the deadline (including exten-
20 sions) for filing the annual report for the plan year
21 to which the notice relates.

22 “(4) FORM AND MANNER.—Any notice under
23 paragraph (1)—

24 “(A) shall be provided in a form and man-
25 ner prescribed in regulations of the Secretary,

1 “(B) shall be written in a manner so as to
2 be understood by the average plan participant,
3 and

4 “(C) may be provided in written, elec-
5 tronic, or other appropriate form to the extent
6 such form is reasonably accessible to persons to
7 whom the notice is required to be provided.”

8 (b) PENALTIES.—Section 502(c)(1) of the Employee
9 Retirement Income Security Act of 1974 (29 U.S.C.
10 1132(c)(1)) is amended by striking “or section 101(e)(1)”
11 and inserting “, section 101(e)(1), or section 101(f)”.

12 (c) REGULATIONS AND MODEL NOTICE.—The Sec-
13 retary of Labor shall, not later than 1 year after the date
14 of the enactment of this Act, issue regulations (including
15 a model notice) necessary to implement the amendments
16 made by this section.

17 (d) EFFECTIVE DATE.—The amendments made by
18 this section shall apply to plan years beginning after De-
19 cember 31, 2004.

20 **SEC. 104. AMORTIZATION HIATUS FOR NET EXPERIENCE**
21 **LOSSES IN MULTIEMPLOYER PLANS.**

22 (a) EMPLOYEE RETIREMENT INCOME SECURITY ACT
23 OF 1974.—

24 (1) IN GENERAL.—Section 302(b)(7) of the
25 Employee Retirement Income Security Act of 1974

1 (29 U.S.C.1082(b)(7)) is amended by adding at the
2 end the following new subparagraph:

3 “(F) AMORTIZATION HIATUS.—

4 “(i) ELECTION TO AMORTIZE.—

5 “(I) IN GENERAL.—If the 15-
6 year amortization period under para-
7 graph (2)(B)(iv) with respect to the
8 net experience loss of an eligible mul-
9 tiemployer plan would, but for this
10 subparagraph, begin in any plan year
11 beginning after June 30, 2002, and
12 before July 1, 2006, the plan may
13 elect, with respect to 80 percent of
14 such net experience loss, to have such
15 period begin in any plan year selected
16 by the plan from either of the 2 im-
17 mediately succeeding plan years.

18 “(II) LIMITATION.—Notwith-
19 standing clause (i), a plan may elect
20 to have this subparagraph apply to
21 the amortization of net experience
22 losses with respect to only 2 plan
23 years beginning after June 30, 2002,
24 and before July 1, 2006.

1 “(ii) RESTRICTIONS ON BENEFIT IN-
2 CREASES.—An amendment which increases
3 the liabilities of the plan by reason of any
4 increase in benefits, any change in the ac-
5 crual of benefits, or any change in the rate
6 at which benefits become nonforfeitable
7 under the plan shall not take effect for any
8 plan year in the hiatus period. The pre-
9 ceding sentence shall not apply to a plan
10 amendment described in subparagraph (A)
11 or (C) of section 304(b)(2).

12 “(iii) BENEFIT INCREASES ATTRIB-
13 UTABLE TO INCREASES IN CONTRIBU-
14 TIONS.—Clause (ii) shall not apply to an
15 increase in benefits for a group of partici-
16 pants resulting solely from an increase in
17 the contributions made on their behalf
18 (and not from any action taken to amend
19 the terms of the plan), but only if the
20 plan’s actuary certifies that the amount of
21 the increase in contributions scheduled
22 under the terms of the plan for any year
23 will in the aggregate exceed the increase in
24 the charges to the funding standard ac-

1 count for such year attributable to the cor-
2 responding scheduled increase in benefits.

3 “(iv) ELIGIBLE MULTIEMPLOYER
4 PLAN.—For purposes of this subpara-
5 graph, the term ‘eligible multiemployer
6 plan’ means a multiemployer plan—

7 “(I) which had a net investment
8 loss for the last plan year of the plan
9 ending before April 1, 2003, of at
10 least 4 percent, and

11 “(II) with respect to which the
12 plan’s actuary certifies (not taking
13 into account the application of this
14 subparagraph) that the plan is pro-
15 jected to have an accumulated funding
16 deficiency (within the meaning of sub-
17 section (a)(2)) for any plan year be-
18 ginning after December 31, 2002, and
19 on or before December 31, 2008.

20 For purposes of subclause (I), a plan’s net
21 investment loss shall be determined in the
22 manner specified in guidance provided by
23 the Secretary of the Treasury on the basis
24 of the actual fair market value of the as-
25 sets of the plan. In making the projection

1 under subclause (II), the actuary shall use
2 the actuarial assumptions and methods
3 used in the plan valuation for the last plan
4 year of the plan ending before the date of
5 the enactment of this subparagraph, with
6 the interest rate used in such assumptions
7 applied to the fair market value of the as-
8 sets, and take into account contribution
9 rates, benefit levels, and all other relevant
10 facts and circumstances in effect as of the
11 valuation date for such last plan year.

12 “(v) EXCEPTION TO TREATMENT OF
13 ELIGIBLE MULTIEMPLOYER PLAN.—In no
14 event shall a plan be treated as an eligible
15 multiemployer plan under clause (iv) if—

16 “(I) for any taxable year begin-
17 ning during the 10-year period pre-
18 ceding the first plan year for which an
19 election is made under clause (i), any
20 employer required to contribute to the
21 plan failed to timely pay any excise
22 tax imposed under section 4971 of the
23 Internal Revenue Code of 1986 with
24 respect to the plan, or

1 “(II) with respect to any of the
2 plan years beginning after June 30,
3 1993, and before the first plan year
4 for which an election is made under
5 clause (i), a waiver was granted under
6 section 303 of this Act or section
7 412(d) of the Internal Revenue Code
8 of 1986 with respect to the plan or an
9 extension of an amortization period
10 was granted under section 304 of this
11 Act or section 412(e) of such Code
12 with respect to the plan.

13 “(vi) HIATUS PERIOD.—For purposes
14 of this subparagraph, the term ‘hiatus pe-
15 riod’ means any period during which the
16 amortization of a net experience loss is
17 suspended by reason of this subparagraph.

18 “(vii) INTEREST ACCRUED DURING HI-
19 ATUS.—Interest shall accrue (at the rate
20 specified for multiemployer plans under
21 section 304(a)) during a hiatus period on
22 the portion of the net experience loss the
23 amortization of which is suspended during
24 such period by reason of this subpara-
25 graph. Such interest shall be added to the

1 amount of such portion of the net experi-
2 ence loss in determining the amount to be
3 amortized at the end of the hiatus period.

4 “(viii) NOTICE.—If a plan elects an
5 amortization hiatus under this subpara-
6 graph and section 412(b)(7)(F) of the In-
7 ternal Revenue Code of 1986 for any plan
8 year, the plan administrator shall provide,
9 within 30 days of filing the election for
10 such year, written notice of the election to
11 participants and beneficiaries, to each
12 labor organization representing such par-
13 ticipants or beneficiaries, and to each em-
14 ployer that has an obligation to contribute
15 under the plan. Such notice shall include
16 with respect to any election the amount of
17 the net experience loss to be deferred and
18 the period of the deferral. Such notice shall
19 also include—

20 “(I) a description of the max-
21 imum guaranteed monthly benefits for
22 which the Pension Benefit Guaranty
23 Corporation would provide financial
24 assistance if the plan became insol-
25 vent, and

1 “(II) such other information as
2 the plan administrator elects to the
3 extent the inclusion of such informa-
4 tion is not inconsistent with regula-
5 tions prescribed by the Secretary.

6 “(ix) ELECTION.—An election under
7 this subparagraph shall be made at such
8 time and in such manner as the Secretary
9 of the Treasury may prescribe.”

10 (2) PENALTY.—Section 502(c)(4) of such Act
11 (29 U.S.C. 1132(c)(4)) is amended to read as fol-
12 lows:

13 “(4) The Secretary may assess a civil penalty of
14 not more than \$1,000 a day for each violation by
15 any person of section 302(b)(7)(F)(viii).”

16 (b) INTERNAL REVENUE CODE OF 1986.—

17 (1) IN GENERAL.—Section 412(b)(7) of the In-
18 ternal Revenue Code of 1986 (relating to special
19 rules for multiemployer plans) is amended by adding
20 at the end the following new subparagraph:

21 “(F) AMORTIZATION HIATUS.—

22 “(i) ELECTION TO AMORTIZE.—

23 “(I) IN GENERAL.—If the 15-
24 year amortization period under para-
25 graph (2)(B)(iv) with respect to the

1 net experience loss of an eligible mul-
2 tiemployer plan would, but for this
3 subparagraph, begin in any plan year
4 beginning after June 30, 2002, and
5 before July 1, 2006, the plan may
6 elect, with respect to 80 percent of
7 such net experience loss, to have such
8 period begin in any plan year selected
9 by the plan from either of the 2 im-
10 mediately succeeding plan years.

11 “(II) LIMITATION.—Notwith-
12 standing clause (i), a plan may elect
13 to have this subparagraph apply to
14 the amortization of net experience
15 losses with respect to only 2 plan
16 years beginning after June 30, 2002,
17 and before July 1, 2006.

18 “(ii) RESTRICTIONS ON BENEFIT IN-
19 CREASES.—An amendment which increases
20 the liabilities of the plan by reason of any
21 increase in benefits, any change in the ac-
22 crual of benefits, or any change in the rate
23 at which benefits become nonforfeitable
24 under the plan shall not take effect for any
25 plan year in the hiatus period. The pre-

1 ceding sentence shall not apply to a plan
2 amendment described in subparagraph (A)
3 or (C) of subsection (f)(2).

4 “(iii) BENEFIT INCREASES ATTRIB-
5 UTABLE TO INCREASES IN CONTRIBU-
6 TIONS.—Clause (ii) shall not apply to an
7 increase in benefits for a group of partici-
8 pants resulting solely from an increase in
9 the contributions made on their behalf
10 (and not from any action taken to amend
11 the terms of the plan), but only if the
12 plan’s actuary certifies that the amount of
13 the increase in contributions scheduled
14 under the terms of the plan for any year
15 will in the aggregate exceed the increase in
16 the charges to the funding standard ac-
17 count for such year attributable to the cor-
18 responding scheduled increase in benefits.

19 “(iv) ELIGIBLE MULTIEMPLOYER
20 PLAN.—For purposes of this subpara-
21 graph, the term ‘eligible multiemployer
22 plan’ means a multiemployer plan—

23 “(I) which had a net investment
24 loss for the last plan year of the plan

1 ending before April 1, 2003, of at least
2 4 percent, and

3 “(II) with respect to which the
4 plan’s actuary certifies (not taking
5 into account the application of this
6 subparagraph) that the plan is pro-
7 jected to have an accumulated funding
8 deficiency (within the meaning of sub-
9 section (a)) for any plan year begin-
10 ning after December 31, 2002, and on
11 or before December 31, 2008.

12 For purposes of subclause (I), a plan’s net
13 investment loss shall be determined in the
14 manner specified in guidance provided by
15 the Secretary of the Treasury on the basis
16 of the actual fair market value of the as-
17 sets of the plan. In making the projection
18 under subclause (II), the actuary shall use
19 the actuarial assumptions and methods
20 used in the plan valuation for the last plan
21 year of the plan ending before the date of
22 the enactment of this subparagraph, with
23 the interest rate used in such assumptions
24 applied to the fair market value of the as-
25 sets, and take into account contribution

1 rates, benefit levels, and all other relevant
2 facts and circumstances in effect as of the
3 valuation date for such last plan year.

4 “(v) EXCEPTION TO TREATMENT OF
5 ELIGIBLE MULTIEMPLOYER PLAN.—In no
6 event shall a plan be treated as an eligible
7 multiemployer plan under clause (iv) if—

8 “(I) for any taxable year begin-
9 ning during the 10-year period pre-
10 ceding the first plan year for which an
11 election is made under clause (i), any
12 employer required to contribute to the
13 plan failed to timely pay any excise
14 tax imposed under section 4971 with
15 respect to the plan, or

16 “(II) with respect to any of the
17 plan years beginning after June 30,
18 1993, and before the first plan year
19 for which an election is made under
20 clause (i), a waiver was granted under
21 section 412(d) or section 303 of the
22 Employee Retirement Income Security
23 Act of 1974 with respect to the plan
24 or an extension of an amortization pe-
25 riod was granted under subsection (e)

1 or section 304 of such Act with re-
2 spect to the plan.

3 “(vi) HIATUS PERIOD.—For purposes
4 of this subparagraph, the term ‘hiatus pe-
5 riod’ means any period during which the
6 amortization of a net experience loss is
7 suspended by reason of this subparagraph.

8 “(vii) INTEREST ACCRUED DURING HI-
9 ATUS.—Interest shall accrue (at the rate
10 specified for multiemployer plans under
11 section 412(e)) during a hiatus period on
12 the portion of the net experience loss the
13 amortization of which is suspended during
14 such period by reason of this subpara-
15 graph. Such interest shall be added to the
16 amount of such portion of the net experi-
17 ence loss in determining the amount to be
18 amortized at the end of the hiatus period.

19 “(viii) ELECTION.—An election under
20 this subparagraph shall be made at such
21 time and in such manner as the Secretary
22 may prescribe.”

23 (2) QUALIFICATION REQUIREMENT.—Section
24 401(a) of such Code is amended by inserting after
25 paragraph (34) the following new paragraph:

1 “(35) BENEFIT INCREASES IN CERTAIN MULTI-
 2 EMPLOYER PLANS.—A trust which is part of a plan
 3 shall not constitute a qualified trust under this sec-
 4 tion if the plan adopts an amendment during a hia-
 5 tus period (within the meaning of section
 6 412(b)(7)(F)(vi)) which the plan is prohibited from
 7 adopting by reason of section 412(b)(7)(F)(ii).”.

8 **TITLE II—OTHER PROVISIONS**

9 **SEC. 201. 2-YEAR EXTENSION OF TRANSITION RULE TO** 10 **PENSION FUNDING REQUIREMENTS.**

11 (a) IN GENERAL.—Section 769(c) of the Retirement
 12 Protection Act of 1994, as added by section 1508 of the
 13 Taxpayer Relief Act of 1997, is amended—

14 (1) by inserting “except as provided in para-
 15 graph (3),” before “the transition rules”, and

16 (2) by adding at the end the following:

17 “(3) SPECIAL RULES.—In the case of plan years be-
 18 ginning in 2004 and 2005, the following transition rules
 19 shall apply in lieu of the transition rules described in para-
 20 graph (2):

21 “(A) For purposes of section 412(l)(9)(A)
 22 of the Internal Revenue Code of 1986 and sec-
 23 tion 302(d)(9)(A) of the Employee Retirement
 24 Income Security Act of 1974, the funded cur-

1 rent liability percentage for any plan year shall
2 be treated as not less than 90 percent.

3 “(B) For purposes of section 412(m) of
4 the Internal Revenue Code of 1986 and section
5 302(e) of the Employee Retirement Income Se-
6 curity Act of 1974, the funded current liability
7 percentage for any plan year shall be treated as
8 not less than 100 percent.

9 “(C) For purposes of determining un-
10 funded vested benefits under section
11 4006(a)(3)(E)(iii) of the Employee Retirement
12 Income Security Act of 1974, the mortality
13 table shall be the mortality table used by the
14 plan.”

15 (b) EFFECTIVE DATE.—The amendments made by
16 this section shall apply to plan years beginning after De-
17 cember 31, 2003.

18 **SEC. 202. PROCEDURES APPLICABLE TO DISPUTES INVOLV-**
19 **ING PENSION PLAN WITHDRAWAL LIABILITY.**

20 (a) IN GENERAL.—Section 4221 of the Employee Re-
21 tirement Income Security Act of 1974 (29 U.S.C. 1401)
22 is amended by adding at the end the following new sub-
23 section:

24 “(f) PROCEDURES APPLICABLE TO CERTAIN DIS-
25 PUTES.—

1 “(1) IN GENERAL.—If—

2 “(A) a plan sponsor of a plan determines
3 that—

4 “(i) a complete or partial withdrawal
5 of an employer has occurred, or

6 “(ii) an employer is liable for with-
7 drawal liability payments with respect to
8 the complete or partial withdrawal of an
9 employer from the plan,

10 “(B) such determination is based in whole
11 or in part on a finding by the plan sponsor
12 under section 4212(c) that a principal purpose
13 of a transaction that occurred before January
14 1, 1999, was to evade or avoid withdrawal li-
15 ability under this subtitle, and

16 “(C) such transaction occurred at least 5
17 years before the date of the complete or partial
18 withdrawal,

19 then the special rules under paragraph (2) shall be
20 used in applying subsections (a) and (d) of this sec-
21 tion and section 4219(c) to the employer.

22 “(2) SPECIAL RULES.—

23 “(A) DETERMINATION.—Notwithstanding
24 subsection (a)(3)—

1 “(i) a determination by the plan spon-
2 sor under paragraph (1)(B) shall not be
3 presumed to be correct, and

4 “(ii) the plan sponsor shall have the
5 burden to establish, by a preponderance of
6 the evidence, the elements of the claim
7 under section 4212(c) that a principal pur-
8 pose of the transaction was to evade or
9 avoid withdrawal liability under this sub-
10 title.

11 Nothing in this subparagraph shall affect the
12 burden of establishing any other element of a
13 claim for withdrawal liability under this sub-
14 title.

15 “(B) PROCEDURE.—Notwithstanding sub-
16 section (d) and section 4219(c), if an employer
17 contests the plan sponsor’s determination under
18 paragraph (1) through an arbitration pro-
19 ceeding pursuant to subsection (a), or through
20 a claim brought in a court of competent juris-
21 diction, the employer shall not be obligated to
22 make any withdrawal liability payments until a
23 final decision in the arbitration proceeding, or
24 in court, upholds the plan sponsor’s determina-
25 tion.”.

1 (b) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to any employer that receives a
3 notification under section 4219(b)(1) of the Employee Re-
4 tirement Income Security Act of 1974 (29 U.S.C.
5 1399(b)(1)) after October 31, 2003.

6 **SEC. 203. EXTENSION OF TRANSFERS OF EXCESS PENSION**
7 **ASSETS TO RETIREE HEALTH ACCOUNTS.**

8 (a) AMENDMENT OF INTERNAL REVENUE CODE OF
9 1986.—Paragraph (5) of section 420(b) of the Internal
10 Revenue Code of 1986 (relating to expiration) is amended
11 by striking “December 31, 2005” and inserting “Decem-
12 ber 31, 2013”.

13 (b) AMENDMENTS OF ERISA.—

14 (1) Section 101(e)(3) of the Employee Retirement
15 Income Security Act of 1974 (29 U.S.C.
16 1021(e)(3)) is amended by striking “Tax Relief Ex-
17 tension Act of 1999” and inserting “Fairness in
18 Pension Stability Act”.

19 (2) Section 403(c)(1) of such Act (29 U.S.C.
20 1103(c)(1)) is amended by striking “Tax Relief Ex-
21 tension Act of 1999” and inserting “Fairness in
22 Pension Stability Act”.

23 (3) Paragraph (13) of section 408(b) of such
24 Act (29 U.S.C. 1108(b)(3)) is amended—

1 (A) by striking “January 1, 2006” and in-
2 serting “January 1, 2014”, and

3 (B) by striking “Tax Relief Extension Act
4 of 1999” and inserting “Fairness in Pension
5 Stability Act”.

6 **SEC. 204. CLARIFICATION OF EXEMPTION FROM TAX FOR**
7 **SMALL PROPERTY AND CASUALTY INSUR-**
8 **ANCE COMPANIES.**

9 (a) IN GENERAL.—Section 501(c)(15)(A) of the In-
10 ternal Revenue Code of 1986 is amended to read as fol-
11 lows:

12 “(A) Insurance companies (as defined in section
13 816(a)) other than life (including interinsurers and
14 reciprocal underwriters) if—

15 “(i)(I) the gross receipts for the taxable
16 year do not exceed \$600,000, and

17 “(II) more than 50 percent of such gross
18 receipts consist of premiums, or

19 “(ii) in the case of a mutual insurance
20 company—

21 “(I) the gross receipts of which for
22 the taxable year do not exceed \$150,000,
23 and

24 “(II) more than 35 percent of such
25 gross receipts consist of premiums.

1 Clause (ii) shall not apply to a company if any em-
2 ployee of the company, or a member of the employ-
3 ee’s family (as defined in section 2032A(e)(2)), is an
4 employee of another company exempt from taxation
5 by reason of this paragraph (or would be so exempt
6 but for this sentence).”.

7 (b) CONTROLLED GROUP RULE.—Section
8 501(c)(15)(C) of the Internal Revenue Code of 1986 is
9 amended by inserting “, except that in applying section
10 831(b)(2)(B)(ii) for purposes of this subparagraph, sub-
11 paragraphs (B) and (C) of section 1563(b)(2) shall be dis-
12 regarded” before the period at the end.

13 (c) DEFINITION OF INSURANCE COMPANY FOR SEC-
14 TION 831.—Section 831 of the Internal Revenue Code of
15 1986 is amended by redesignating subsection (c) as sub-
16 section (d) and by inserting after subsection (b) the fol-
17 lowing new subsection:

18 “(c) INSURANCE COMPANY DEFINED.—For purposes
19 of this section, the term ‘insurance company’ has the
20 meaning given to such term by section 816(a).”.

21 (d) CONFORMING AMENDMENT.—Clause (i) of sec-
22 tion 831(b)(2)(A) of the Internal Revenue Code of 1986
23 is amended by striking “exceed \$350,000 but”.

24 (e) EFFECTIVE DATE.—

1 (1) IN GENERAL.—The amendments made by
2 this section shall apply to taxable years beginning
3 after December 31, 2003.

4 (2) TRANSITION RULE FOR COMPANIES IN
5 BANKRUPTCY.—In the case of a company or associa-
6 tion which—

7 (A) for the taxable year which includes
8 April 1, 2004, meets the requirements of sec-
9 tion 501(c)(15)(A) of the Internal Revenue
10 Code of 1986, as in effect for the taxable year
11 beginning before January 1, 2004, and

12 (B) on April 1, 2004, is in a receivership,
13 foreclosure, or similar proceeding under the su-
14 pervision of a State court,
15 the amendments made by this section shall apply to
16 taxable years beginning after the earlier of the date
17 such proceeding ends or December 31, 2007.

18 **SEC. 205. REPEAL OF REDUCTION OF DEDUCTIONS FOR**
19 **MUTUAL LIFE INSURANCE COMPANIES.**

20 (a) IN GENERAL.—Section 809 of the Internal Rev-
21 enue Code of 1986 (relating to reductions in certain de-
22 duction of mutual life insurance companies) is hereby re-
23 pealed.

24 (b) CONFORMING AMENDMENTS.—

1 (1) Subsections (a)(2)(B) and (b)(1)(B) of sec-
2 tion 807 of such Code are each amended by striking
3 “the sum of (i)” and by striking “plus (ii) any ex-
4 cess described in section 809(a)(2) for the taxable
5 year,”.

6 (2)(A) The last sentence of section 807(d)(1) of
7 such Code is amended by striking “section
8 809(b)(4)(B)” and inserting “paragraph (6)”.

9 (B) Subsection (d) of section 807 of such Code
10 is amended by adding at the end the following new
11 paragraph:

12 “(6) STATUTORY RESERVES.—The term ‘statu-
13 tory reserves’ means the aggregate amount set forth
14 in the annual statement with respect to items de-
15 scribed in section 807(c). Such term shall not in-
16 clude any reserve attributable to a deferred and un-
17 collected premium if the establishment of such re-
18 serve is not permitted under section 811(c).”

19 (3) Subsection (e) of section 808 of such Code
20 is amended to read as follows:

21 “(e) AMOUNT OF DEDUCTION.—The deduction for
22 policyholder dividends for any taxable year shall be an
23 amount equal to the policyholder dividends paid or accrued
24 during the taxable year.”

1 (4) Subparagraph (A) of section 812(b)(3) of
2 such Code is amended by striking “sections 808 and
3 809” and inserting “section 808”.

4 (5) Subsection (e) of section 817 of such Code
5 is amended by striking “(other than section 809)”.

6 (6) Subsection (e) of section 842 of such Code
7 is amended by striking paragraph (3) and by redesi-
8 gnating paragraph (4) as paragraph (3).

9 (7) The table of sections for subpart C of part
10 I of subchapter L of chapter 1 of such Code is
11 amended by striking the item relating to section
12 809.

13 (c) EFFECTIVE DATE.—The amendments made by
14 this section shall apply to taxable years beginning after
15 December 31, 2004.

16 **SEC. 206. CONFIRMATION OF ANTITRUST STATUS OF GRAD-**
17 **UATE MEDICAL RESIDENT MATCHING PRO-**
18 **GRAMS.**

19 (a) FINDINGS AND PURPOSES.—

20 (1) FINDINGS.—Congress makes the following
21 findings:

22 (A) For over 50 years, most United States
23 medical school seniors and the large majority of
24 graduate medical education programs (popu-
25 larly known as “residency programs”) have cho-

1 sen to use a matching program to match med-
2 ical students with residency programs to which
3 they have applied. These matching programs
4 have been an integral part of an educational
5 system that has produced the finest physicians
6 and medical researchers in the world.

7 (B) Before such matching programs were
8 instituted, medical students often felt pressure,
9 at an unreasonably early stage of their medical
10 education, to seek admission to, and accept of-
11 fers from, residency programs. As a result,
12 medical students often made binding commit-
13 ments before they were in a position to make an
14 informed decision about a medical specialty or
15 a residency program and before residency pro-
16 grams could make an informed assessment of
17 students' qualifications. This situation was ineff-
18 icient, chaotic, and unfair and it often led to
19 placements that did not serve the interests of
20 either medical students or residency programs.

21 (C) The original matching program, now
22 operated by the independent non-profit Na-
23 tional Resident Matching Program and popu-
24 larly known as "the Match," was developed and
25 implemented more than 50 years ago in re-

1 sponse to widespread student complaints about
2 the prior process. This Program includes on its
3 board of directors individuals nominated by
4 medical student organizations as well as by
5 major medical education and hospital associa-
6 tions.

7 (D) The Match uses a computerized math-
8 ematical algorithm, as students had rec-
9 ommended, to analyze the preferences of stu-
10 dents and residency programs and match stu-
11 dents with their highest preferences from
12 among the available positions in residency pro-
13 grams that listed them. Students thus obtain a
14 residency position in the most highly ranked
15 program on their list that has ranked them suf-
16 ficiently high among its preferences. Each year,
17 about 85 percent of participating United States
18 medical students secure a place in one of their
19 top 3 residency program choices.

20 (E) Antitrust lawsuits challenging the
21 matching process, regardless of their merit or
22 lack thereof, have the potential to undermine
23 this highly efficient, pro-competitive, and long-
24 standing process. The costs of defending such
25 litigation would divert the scarce resources of

1 our country's teaching hospitals and medical
2 schools from their crucial missions of patient
3 care, physician training, and medical research.
4 In addition, such costs may lead to abandonment
5 of the matching process, which has effectively
6 served the interests of medical students, teach-
7 ing hospitals, and patients for over half a cen-
8 tury.

9 (2) PURPOSES.—It is the purpose of this sec-
10 tion to—

11 (A) confirm that the antitrust laws do not
12 prohibit sponsoring, conducting, or partici-
13 pating in a graduate medical education resi-
14 dency matching program, or agreeing to do so;
15 and

16 (B) ensure that those who sponsor, con-
17 duct or participate in such matching programs
18 are not subjected to the burden and expense of
19 defending against litigation that challenges such
20 matching programs under the antitrust laws.

21 (b) APPLICATION OF ANTITRUST LAWS TO GRAD-
22 UATE MEDICAL EDUCATION RESIDENCY MATCHING PRO-
23 GRAMS.—

24 (1) DEFINITIONS.—In this subsection:

1 (A) ANTITRUST LAWS.—The term “anti-
2 trust laws”—

3 (i) has the meaning given such term
4 in subsection (a) of the first section of the
5 Clayton Act (15 U.S.C. 12(a)), except that
6 such term includes section 5 of the Federal
7 Trade Commission Act (15 U.S.C. 45) to
8 the extent such section 5 applies to unfair
9 methods of competition; and

10 (ii) includes any State law similar to
11 the laws referred to in clause (i).

12 (B) GRADUATE MEDICAL EDUCATION PRO-
13 GRAM.—The term “graduate medical education
14 program” means—

15 (i) a residency program for the med-
16 ical education and training of individuals
17 following graduation from medical school;

18 (ii) a program, known as a specialty
19 or subspecialty fellowship program, that
20 provides more advanced training; and

21 (iii) an institution or organization
22 that operates, sponsors or participates in
23 such a program.

24 (C) GRADUATE MEDICAL EDUCATION RESI-
25 DENCY MATCHING PROGRAM.—The term “grad-

1 uate medical education residency matching pro-
2 gram” means a program (such as those con-
3 ducted by the National Resident Matching Pro-
4 gram) that, in connection with the admission of
5 students to graduate medical education pro-
6 grams, uses an algorithm and matching rules to
7 match students in accordance with the pref-
8 erences of students and the preferences of grad-
9 uate medical education programs.

10 (D) STUDENT.—The term “student”
11 means any individual who seeks to be admitted
12 to a graduate medical education program.

13 (2) CONFIRMATION OF ANTITRUST STATUS.—It
14 shall not be unlawful under the antitrust laws to
15 sponsor, conduct, or participate in a graduate med-
16 ical education residency matching program, or to
17 agree to sponsor, conduct, or participate in such a
18 program. Evidence of any of the conduct described
19 in the preceding sentence shall not be admissible in
20 Federal court to support any claim or action alleging
21 a violation of the antitrust laws.

22 (3) APPLICABILITY.—Nothing in this section
23 shall be construed to exempt from the antitrust laws
24 any agreement on the part of 2 or more graduate
25 medical education programs to fix the amount of the

1 stipend or other benefits received by students par-
2 ticipating in such programs.

3 (c) **EFFECTIVE DATE.**—This section shall take effect
4 on the date of enactment of this Act, shall apply to con-
5 duct whether it occurs prior to, on, or after such date of
6 enactment, and shall apply to all judicial and administra-
7 tive actions or other proceedings pending on such date of
8 enactment.

○