

119TH CONGRESS  
1ST SESSION

**S.** \_\_\_\_\_

To amend the Employee Retirement Income Security Act of 1974 to clarify the treatment of certain association health plans as employers, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

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Mr. PAUL introduced the following bill; which was read twice and referred to the Committee on \_\_\_\_\_

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## **A BILL**

To amend the Employee Retirement Income Security Act of 1974 to clarify the treatment of certain association health plans as employers, 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 “Association Health  
5       Plans Act”.

1   **SEC. 2. TREATMENT OF GROUP OR ASSOCIATION OF EM-**  
2                           **PLOYERS.**

3           (a) IN GENERAL.—Section 3(5) of the Employee Re-  
4   tirement Income Security Act of 1974 (29 U.S.C.  
5   1002(5)) is amended—

6                   (1) by striking “The term” and inserting “(A)  
7   The term”; and

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

9           “(B) For purposes of subparagraph (A), a group or  
10   association of employers shall be treated as an ‘employer’,  
11   regardless of whether the employers composing such group  
12   or association are in the same industry, trade, or profes-  
13   sion, if such group or association—

14                   “(i)(I) has established and maintains an em-  
15   ployee welfare benefit plan that is a group health  
16   plan (as defined in section 733(a)(1));

17                   “(II) provides coverage under such plan to at  
18   least 51 employees after all of the employees em-  
19   ployed by all of the employer members of such group  
20   or association have been aggregated and counted to-  
21   gether as described in subparagraph (D);

22                   “(III) has been actively in existence for at least  
23   2 years;

24                   “(IV) has been formed and maintained in good  
25   faith for purposes other than providing medical care

1 (as defined in section 733(a)(2)) through the pur-  
2 chase of insurance or otherwise;

3 “(V) does not condition membership in the  
4 group or association on any health status-related  
5 factor (as described in section 702(a)(1)) relating to  
6 any individual;

7 “(VI) makes coverage under such plan available  
8 to all employer members of such group or associa-  
9 tion regardless of any health status-related factor  
10 (as described in section 702(a)(1)) relating to such  
11 employer members;

12 “(VII) does not provide coverage under such  
13 plan to any individual other than an employee of an  
14 employer member of such group or association;

15 “(VIII) has established a governing board with  
16 by-laws or other similar indications of formality to  
17 manage and operate such plan in both form and  
18 substance, of which at least 75 percent of the board  
19 members shall be made up of employer members of  
20 such group or association participating in the plan  
21 that are duly elected by each participating employer  
22 member casting 1 vote during a scheduled election;

23 “(IX) is not a health insurance issuer (as de-  
24 fined in section 733(b)(2)), and is not owned or con-  
25 trolled by such a health insurance issuer or by a

1 subsidiary or affiliate of such a health insurance  
2 issuer, other than to the extent such a health insur-  
3 ance issuer may participate in the group or associa-  
4 tion as a member;

5 “(ii) is structured in good faith with any set of  
6 criteria to qualify for such treatment in any advisory  
7 opinion issued prior to the date of enactment of the  
8 Association Health Plans Act; or

9 “(iii) meets any other set of criteria to qualify  
10 for such treatment that the Secretary by regulation  
11 may provide.

12 “(C)(i) For purposes of subparagraph (B), a self-em-  
13 ployed individual shall be treated as—

14 “(I) an employer who may become a member of  
15 a group or association of employers;

16 “(II) an employee who may participate in an  
17 employee welfare benefit plan established and main-  
18 tained by such group or association; and

19 “(III) a participant of such plan subject to the  
20 eligibility determination and monitoring require-  
21 ments set forth in clause (iii).

22 “(ii) For purposes of this subparagraph, the term  
23 ‘self-employed individual’ means an individual who—

24 “(I) does not have any common law employees;

1           “(II) has a bona fide ownership right in a trade  
2           or business, regardless of whether such trade or  
3           business is incorporated or unincorporated;

4           “(III) earns wages (as defined in section  
5           3121(a) of the Internal Revenue Code of 1986) or  
6           self-employment income (as defined in section  
7           1402(b) of such Code) from such trade or business;  
8           and

9           “(IV) works at least 10 hours a week or 40  
10          hours per month providing personal services to such  
11          trade or business.

12          “(iii) The board of a group or association of employ-  
13          ers shall—

14               “(I) initially determine whether an individual  
15               meets the requirements under clause (ii) to be con-  
16               sidered to a self-employed individual for the pur-  
17               poses of being treated as an—

18                       “(aa) employer member of such group or  
19                       association (in accordance with clause (i)(I));  
20                       and

21                       “(bb) employee who may participate in the  
22                       employee welfare benefit plan established and  
23                       maintained by such group or association (in ac-  
24                       cordance with clause (i)(II));

1           “(II) through reasonable monitoring proce-  
2           dures, periodically determine whether the individual  
3           continues to meet such requirements; and

4           “(III) if the board determines that an indi-  
5           vidual no longer meets such requirements, not make  
6           such plan coverage available to such individual (or  
7           dependents thereof) for any plan year following the  
8           plan year during which the board makes such deter-  
9           mination. If, subsequent to a determination that an  
10          individual no longer meets such requirements, such  
11          individual furnishes evidence of satisfying such re-  
12          quirements, such individual (and dependents thereof)  
13          shall be eligible to receive plan coverage.

14          “(D) For purposes of subparagraph (B), all of the  
15          employees (including self-employed individuals) employed  
16          by all of the employer members (including self-employed  
17          individuals) of a group or association of employers shall  
18          be—

19               “(i) treated as participants in a single plan  
20               multiple employer welfare arrangement; and

21               “(ii) aggregated and counted together for pur-  
22               poses of any regulation of an employee welfare ben-  
23               efit plan established and maintained by such group  
24               or association.”.

1 (b) DETERMINATION OF EMPLOYER OR JOINT EM-  
2 PLOYER STATUS.—The provision of employee welfare ben-  
3 efit plan coverage by a group or association of employers  
4 shall not be construed as evidence for establishing an em-  
5 ployer or joint employer relationship under any Federal  
6 or State law.

7 **SEC. 3. RULES APPLICABLE TO EMPLOYEE WELFARE BEN-**  
8 **EFIT PLANS ESTABLISHED AND MAINTAINED**  
9 **BY A GROUP OR ASSOCIATION OF EMPLOY-**  
10 **ERS.**

11 Part 7 of subtitle B of title I of the Employee Retire-  
12 ment Income Security Act of 1974 (29 U.S.C. 1181 et  
13 seq.) is amended by adding at the end the following:

14 **“SEC. 736. RULES APPLICABLE TO EMPLOYEE WELFARE**  
15 **BENEFIT PLANS ESTABLISHED AND MAIN-**  
16 **TAINED BY A GROUP OR ASSOCIATION OF**  
17 **EMPLOYERS.**

18 “(a) PREMIUM RATES FOR A GROUP OR ASSOCIA-  
19 TION OF EMPLOYERS.—

20 “(1)(A) In the case of an employee welfare ben-  
21 efit plan established and maintained by a group or  
22 association of employers described in section  
23 3(5)(B), such plan may, to the extent not prohibited  
24 under State law—

1           “(i) establish base premium rates formed  
2           on an actuarially sound, modified community  
3           rating methodology that considers the pooling  
4           of all plan participant claims; and

5           “(ii) utilize the specific risk profile of each  
6           employer member of such group or association  
7           to determine contribution rates for each such  
8           employer member’s share of a premium by ac-  
9           tuarily adjusting above or below the estab-  
10          lished base premium rates.

11          “(B) For purposes of paragraph (1), the term  
12          ‘employer member’ means—

13           “(i) an employer who is a member of such  
14           group or association of employers and employs  
15           at least 1 common law employee; or

16           “(ii) a group made up solely of self-em-  
17           ployed individuals, within which all of the self-  
18           employed individual members of such group or  
19           association are aggregated together as a single  
20           employer member group, provided the group in-  
21           cludes at least 20 self-employed individual  
22           members.

23          “(2) In the event a group or association is  
24          made up solely of self-employed individuals (and no  
25          employers with at least 1 common law employee are



1 members of such group or association), the employee  
2 welfare benefit plan established by such group or as-  
3 sociation shall—

4 “(A) treat all self-employed individuals  
5 who are members of such group or association  
6 as a single risk pool;

7 “(B) pool all plan participant claims; and

8 “(C) charge each plan participant the  
9 same premium rate.

10 “(b) DISCRIMINATION AND PRE-EXISTING CONDI-  
11 TION PROTECTIONS.—An employee welfare benefit plan  
12 established and maintained by a group or association of  
13 employers described in section 3(5)(B) shall be prohibited  
14 from—

15 “(1) establishing any rule for eligibility (includ-  
16 ing continued eligibility) of any individual (including  
17 an employee of an employer member or a self-em-  
18 ployed individual, or a dependent of such employee  
19 or self-employed individual) to enroll for benefits  
20 under the terms of the plan that discriminates based  
21 on any health status-related factor that relates to  
22 such individual (consistent with the rules under sec-  
23 tion 702(a)(1));

24 “(2) requiring an individual (including an em-  
25 ployee of an employer member or a self-employed in-

1       dividual, or a dependent of such employee or self-  
2       employed individual), as a condition of enrollment or  
3       continued enrollment under the plan, to pay a pre-  
4       mium or contribution that is greater than the pre-  
5       mium or contribution for a similarly situated indi-  
6       vidual enrolled in the plan based on any health sta-  
7       tus-related factor that relates to such individual  
8       (consistent with the rules under section 702(b)(1));  
9       and

10               “(3) denying coverage under such plan on the  
11       basis of a pre-existing condition (consistent with the  
12       rules under section 2704 of the Public Health Serv-  
13       ice Act).”.

14       **SEC. 4. RULE OF CONSTRUCTION.**

15       Nothing in this Act shall be construed to exempt a  
16       group health plan which is an employee welfare benefit  
17       plan offered through a group or association of employers  
18       from the requirements of part 7 of subtitle B of title I  
19       of the Employee Retirement Income Security Act of 1974  
20       (29 U.S.C. 1181 et. seq.), including the provisions of part  
21       A of title XXVII of the Public Health Service Act as incor-  
22       porated by reference into this Act through section 715.