

Union Calendar No. 87

118TH CONGRESS
1ST SESSION

H. R. 2868

[Report No. 118-112]

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.

IN THE HOUSE OF REPRESENTATIVES

APRIL 25, 2023

Mr. WALBERG (for himself, Ms. FOXX, Mr. GOOD of Virginia, Mr. ALLEN, Mr. CRENSHAW, and Mr. BURGESS) introduced the following bill; which was referred to the Committee on Education and the Workforce

JUNE 14, 2023

Additional sponsors: Mr. THOMPSON of Pennsylvania and Mr. DUNN of Florida

JUNE 14, 2023

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

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

[For text of introduced bill, see copy of bill as introduced on April 25, 2023]

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”.*

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

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

11 *(1) by striking “The term” and inserting “(A)*
12 *The term”; and*

13 *(2) by adding at the end the following:*

14 *“(B) For purposes of subparagraph (A), a group or*
15 *association of employers shall be treated as an ‘employer’,*
16 *regardless of whether the employers composing such group*
17 *or association are in the same industry, trade, or profes-*
18 *sion, if such group or association—*

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

22 *“(II) provides coverage under such plan to at*
23 *least 51 employees after all of the employees employed*
24 *by all of the employer members of such group or asso-*

1 *ciation have been aggregated and counted together as*
2 *described in subparagraph (D);*

3 *“(III) has been actively in existence for at least*
4 *2 years prior to establishing and maintaining an em-*
5 *ployer welfare benefit plan that is a group health*
6 *plan (as defined in section 733(a)(1));*

7 *“(IV) has been formed and maintained in good*
8 *faith for purposes other than providing medical care*
9 *(as defined in section 733(a)(2)) through the purchase*
10 *of insurance or otherwise;*

11 *“(V) does not condition membership in the group*
12 *or association on any health status-related factor (as*
13 *described in section 702(a)(1)) relating to any indi-*
14 *vidual;*

15 *“(VI) makes coverage under such plan available*
16 *to all employer members of such group or association*
17 *regardless of any health status-related factor (as de-*
18 *scribed in section 702(a)(1)) relating to such em-*
19 *ployer members;*

20 *“(VII) does not provide coverage under such plan*
21 *to any individual other than an employee of an em-*
22 *ployer member of such group or association;*

23 *“(VIII) has established a governing board with*
24 *by-laws or other similar indications of formality to*
25 *manage and operate such plan in both form and sub-*

1 *stance, of which at least 75 percent of the board mem-*
2 *bers shall be made up of employer members of such*
3 *group or association participating in the plan that*
4 *are duly elected by each participating employer mem-*
5 *ber casting 1 vote during a scheduled election;*

6 *“(IX) is not a health insurance issuer (as defined*
7 *in section 733(b)(2)), and is not owned or controlled*
8 *by such a health insurance issuer or by a subsidiary*
9 *or affiliate of such a health insurance issuer, other*
10 *than to the extent such a health insurance issuer—*

11 *“(aa) may participate in the group or asso-*
12 *ciation as a member; and*

13 *“(bb) may provide services such as assist-*
14 *ance with plan development, marketing, and ad-*
15 *ministrative services to such group or associa-*
16 *tion;*

17 *“(ii) meets any set of criteria to qualify for such*
18 *treatment in an advisory opinion issued by the Sec-*
19 *retary prior to the date of enactment of the Associa-*
20 *tion Health Plans Act; or*

21 *“(iii) meets any other set of criteria to qualify*
22 *for such treatment that the Secretary by regulation*
23 *may provide.*

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

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

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

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

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

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

12 “(II) has an ownership right in a trade or busi-
13 ness, regardless of whether such trade or business is
14 incorporated or unincorporated;

15 “(III) earns wages (as defined in section 3121(a)
16 of the Internal Revenue Code of 1986) or self-employ-
17 ment income (as defined in section 1402(b) of such
18 Code) from such trade or business; and

19 “(IV) works at least 10 hours per week or 40
20 hours per month providing personal services to such
21 trade or business.

22 “(iii) The board of a group or association of employers
23 shall—

24 “(I) initially determine whether an individual
25 meets the requirements under clause (ii) to be consid-

1 *ered a self-employed individual for the purposes of*
2 *being treated as an—*

3 *“(aa) employer member of such group or as-*
4 *sociation (in accordance with clause (i)(I)); and*

5 *“(bb) employee who may participate in the*
6 *employee welfare benefit plan established and*
7 *maintained by such group or association (in ac-*
8 *cordance with clause (i)(II));*

9 *“(II) through reasonable monitoring procedures,*
10 *periodically determine whether the individual con-*
11 *tinues to meet such requirements; and*

12 *“(III) if the board determines that an individual*
13 *no longer meets such requirements, not make such*
14 *plan coverage available to such individual (or de-*
15 *pendents thereof) for any plan year following the plan*
16 *year during which the board makes such determina-*
17 *tion. If, subsequent to a determination that an indi-*
18 *vidual no longer meets such requirements, such indi-*
19 *vidual furnishes evidence of satisfying such require-*
20 *ments, such individual (and dependents thereof) shall*
21 *be eligible to receive plan coverage.*

22 *“(D) For purposes of subparagraph (B), all of the em-*
23 *ployees (including self-employed individuals) employed by*
24 *all of the employer members (including self-employed indi-*
25 *viduals) of a group or association of employers shall be—*

1 *employers described in section 3(5)(B), such plan*
2 *may—*

3 *“(i) establish base premium rates formed on*
4 *an actuarially sound, modified community rat-*
5 *ing methodology that considers the pooling of all*
6 *plan participant claims; and*

7 *“(ii) utilize the specific risk profile of each*
8 *employer member of such group or association to*
9 *determine contribution rates for each such em-*
10 *ployer member’s share of a premium by actuari-*
11 *ally adjusting above or below the established base*
12 *premium rates.*

13 *“(B) For purposes of paragraph (1), the term*
14 *‘employer member’ means—*

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

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

1 “(2) *In the event a group or association is made*
2 *up solely of self-employed individuals (and no em-*
3 *ployers with at least 1 common law employee are*
4 *members of such group or association), the group*
5 *health plan established by such group or association*
6 *shall—*

7 “(A) *treat all self-employed individuals who*
8 *are members of such group or association as a*
9 *single risk pool;*

10 “(B) *pool all plan participant claims; and*

11 “(C) *charge each plan participant the same*
12 *premium rate.*

13 “(b) *DISCRIMINATION AND PRE-EXISTING CONDITION*
14 *PROTECTIONS.—A group health plan established and main-*
15 *tained by a group or association of employers described in*
16 *section 3(5)(B) shall be prohibited from—*

17 “(1) *establishing any rule for eligibility (includ-*
18 *ing continued eligibility) of any individual (includ-*
19 *ing an employee of an employer member or a self-em-*
20 *ployed individual, or a dependent of such employee or*
21 *self-employed individual) to enroll for benefits under*
22 *the terms of the plan that discriminates based on any*
23 *health status-related factor that relates to such indi-*
24 *vidual (consistent with the rules under section*
25 *702(a)(1));*

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

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

15 **SEC. 4. RULE OF CONSTRUCTION.**

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

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