

105TH CONGRESS
1ST SESSION

S. 729

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

IN THE SENATE OF THE UNITED STATES

MAY 8, 1997

Mr. HUTCHINSON (for himself, Mr. LOTT, Mr. HOLLINGS, Ms. LANDRIEU, Mr. ROBERTS, and Mr. BROWNBACK) introduced the following bill; which was read twice and referred to the Committee on Labor and Human Resources

A BILL

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

4 This Act may be cited as the “Expansion of Port-
5 ability and Health Insurance Coverage Act of 1997”.

(a) IN GENERAL.—Subtitle B of title I of the Employee Retirement Income Security Act of 1974 is amended by adding after part 7 the following new part:

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
15 plan—

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

“(2) under which at least one option of health insurance coverage offered by a health insurance issuer (which may include, among other options, managed care options, point of service options, and preferred provider options) is provided to participants and beneficiaries.

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

1 “(1) is organized and maintained in good faith,
2 with a constitution and bylaws specifically stating its
3 purpose and providing for periodic meetings on at
4 least an annual basis, as a trade association, an in-
5 dustry association (including a rural electric cooper-
6 ative association or a rural telephone cooperative as-
7 sociation), a professional association, or a chamber
8 of commerce (or similar business group, including a
9 corporation or similar organization that operates on
10 a cooperative basis (within the meaning of section
11 1381 of the Internal Revenue Code of 1986)), for
12 substantial purposes other than that of obtaining or
13 providing medical care, and

14 “(2) is established as a permanent entity which
15 receives the active support of its members and col-
16 lects dues or contributions from its members (includ-
17 ing affiliated members) on a periodic basis, without
18 conditioning such dues or contributions on the basis
19 of health status-related factors with respect to the
20 employees of such members or the dependents of
21 such employees or on the basis of participation in a
22 group health plan.

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

1 **“SEC. 802. CERTIFICATION OF ASSOCIATION HEALTH**
 2 **PLANS.**

3 “(a) IN GENERAL.—The Secretary shall prescribe by
 4 regulation a procedure under which, subject to subsection
 5 (b), the Secretary shall certify association health plans
 6 which apply for certification as meeting the requirements
 7 of this part.

8 “(b) STANDARDS.—Under the procedure prescribed
 9 pursuant to subsection (a), the Secretary shall certify an
 10 association health plan as meeting the requirements of
 11 this part only if the Secretary is satisfied that—

12 “(1) such certification—

13 “(A) is administratively feasible,

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

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

18 “(2) the applicable requirements of this part
 19 are met (or, upon the date on which the plan is to
 20 commence operations, will be met) with respect to
 21 the plan.

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

1 of certification (or, if later, on the date on which the plan
2 is to commence operations).

3 “(d) REQUIREMENTS FOR CONTINUED CERTIFI-
4 CATION.—The Secretary may provide by regulation for
5 continued certification under this part, including require-
6 ments relating to any commencement, by an association
7 health plan which has been certified under this part, of
8 a benefit option which does not consist of health insurance
9 coverage.

10 “(e) CLASS CERTIFICATION FOR FULLY-INSURED
11 PLANS.—The Secretary shall establish a class certification
12 procedure for association health plans under which all ben-
13 efits consist of health insurance coverage. Under such pro-
14 cedure, the Secretary shall provide for the granting of cer-
15 tification under this part to the plans in each class of such
16 association health plans upon appropriate filing under
17 such procedure in connection with plans in such class and
18 payment of the prescribed fee under section 807(a).

19 **“SEC. 803. REQUIREMENTS RELATING TO SPONSORS AND**
20 **BOARDS OF TRUSTEES.**

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

23 “(1) the sponsor (together with its immediate
24 predecessor, if any) has met (or is deemed under
25 this part to have met) for a continuous period of not

1 less than 3 years ending with the date of the appli-
2 cation for certification under this part, the require-
3 ments of section 801(b)(1), and

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

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

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

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

20 “(3) RULES GOVERNING RELATIONSHIP TO
21 PARTICIPATING EMPLOYERS AND TO CONTRAC-
22 TORS.—The members of the board of trustees are
23 individuals selected from individuals who are the
24 owners, officers, directors, or employees of the par-
25 ticipating employers or who are partners in the par-

1 participating employers and actively participate in the
 2 business. No such member is an owner, officer, di-
 3 rector, or employee of, or partner in, a contract ad-
 4 ministrator or other service provider to the plan, ex-
 5 cept that officers or employees of a sponsor which is
 6 a service provider (other than a contract adminis-
 7 trator) to the plan may be members of the board if
 8 they constitute not more than 25 percent of the
 9 membership of the board and they do not provide
 10 services to the plan other than on behalf of the spon-
 11 sor. The board has sole authority to approve applica-
 12 tions for participation in the plan and to contract
 13 with a service provider to administer the day-to-day
 14 affairs of the plan.

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

19 “(1) the requirements of subsection (a) and sec-
 20 tion 801(a)(1) shall be deemed met if such require-
 21 ments would otherwise be met if the franchiser were
 22 deemed to be the sponsor referred to in section
 23 801(b), such network were deemed to be an associa-
 24 tion described in section 801(b), and each franchisee

1 were deemed to be a member (of the association and
2 the sponsor) referred to in section 801(b), and

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

5 “(d) CERTAIN COLLECTIVELY BARGAINED PLANS.—

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

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

10 “(B) the joint board of trustees shall be
11 deemed a board of trustees with respect to
12 which the requirements of subsection (b) are
13 met, and

14 “(C) the requirements of section 804 shall
15 be deemed met.

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

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

19 “(B) the plan is in existence on April 1,
20 1997, and would be described in section
21 3(40)(A)(i) but solely for the failure to meet
22 the requirements of section 3(40)(C)(ii) or (to
23 the extent provided in regulations of the Sec-
24 retary) solely for the failure to meet the re-

1 requirements of subparagraph (D) of section
2 3(40), or

3 “(C)(i) the plan is in existence on April 1,
4 1997, has been in existence as of such date for
5 at least 3 years, meets the requirements of sec-
6 tion 801(b)(2), and would be described in sec-
7 tion 3(40)(A)(i) but solely for the failure to
8 meet the requirements of subparagraph (C)(i)
9 or (C)(ii), and

10 “(ii) individuals who are members of the
11 plan sponsor—

12 “(I) participate by elections in the or-
13 ganizational governance of the plan spon-
14 sor,

15 “(II) are eligible for appointment as
16 trustee of the plan or for participation in
17 the appointment of trustees of the plan,
18 and

19 “(III) if covered under the plan, have
20 full rights under the plan of a participant
21 in an employee welfare benefit plan.

22 “(e) CERTAIN PLANS NOT MEETING SINGLE EM-
23 PLOYER REQUIREMENT.—

24 “(1) IN GENERAL.—In any case in which the
25 majority of the employees covered under a group

1 health plan are employees of a single employer
 2 (within the meaning of clauses (i) and (ii) of section
 3 3(40)(B)), if all other employees covered under the
 4 plan are employed by employers who are related to
 5 such single employer—

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

9 “(B) the requirements of subsection (b)
 10 shall be deemed met if the board of trustees is
 11 the named fiduciary in connection with the
 12 plan.

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

18 **“SEC. 804. PARTICIPATION AND COVERAGE REQUIRE-**
 19 **MENTS.**

20 “(a) COVERED EMPLOYERS AND INDIVIDUALS.—The
 21 requirements of this subsection are met with respect to
 22 an association health plan if, under the terms of the
 23 plan—

24 “(1) all participating employers must be mem-
 25 bers or affiliated members of the sponsor, except

1 that, in the case of a sponsor which is a professional
2 association or other individual-based association, if
3 at least one of the officers, directors, or employees
4 of an employer, or at least one of the individuals
5 who are partners in an employer and who actively
6 participates in the business, is a member or affili-
7 ated member of the sponsor, participating employers
8 may also include such employer, and

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

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

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

18 “(b) COVERAGE OF PREVIOUSLY UNINSURED EM-
19 PLOYEES.—The requirements of this subsection are met
20 with respect to an association health plan if, under the
21 terms of the plan, no affiliated member of the sponsor may
22 be offered coverage under the plan as a participating em-
23 ployer unless—

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, no employer
 2 meeting the preceding requirements of this section is
 3 excluded as a participating employer, unless—

4 “(A) participation or contribution require-
 5 ments of the type referred to in section 2711 of
 6 the Public Health Service Act are not met with
 7 respect to the excluded employer, or

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

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

14 “(3) applicable benefit options under the plan
 15 are actively marketed to all eligible participating em-
 16 ployers.

17 **“SEC. 805. OTHER REQUIREMENTS RELATING TO PLAN**
 18 **DOCUMENTS, CONTRIBUTION RATES, AND**
 19 **BENEFIT OPTIONS.**

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

23 “(1) CONTENTS OF GOVERNING INSTRU-
 24 MENTS.—The instruments governing the plan in-
 25 clude a written instrument, meeting the require-

1 ments of an instrument required under section
2 402(a)(1), which—

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

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

11 “(C) incorporates the requirements of sec-
12 tion 806.

13 “(2) CONTRIBUTION RATES MUST BE NON-
14 DISCRIMINATORY.—

15 “(A) The contribution rates for any par-
16 ticipating employer do not vary significantly on
17 the basis of the claims experience of such em-
18 ployer and do not vary on the basis of the type
19 of business or industry in which such employer
20 is engaged.

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

1 from setting contribution rates based on the
2 claims experience of the plan, to the extent con-
3 tribution rates under the plan meet the require-
4 ments of section 702(b).

5 “(3) FLOOR FOR NUMBER OF COVERED INDIV-
6 IDUALS WITH RESPECT TO CERTAIN PLANS.—If
7 any benefit option under the plan does not consist
8 of health insurance coverage, the plan has not fewer
9 than 1,000 participants and beneficiaries.

10 “(4) REGULATORY REQUIREMENTS.—Such
11 other requirements as the Secretary may prescribe
12 by regulation as necessary to carry out the purposes
13 of this part.

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

1 emptied under section 731(a)(1) with respect to matters
 2 governed by section 711 or 712.

3 **“SEC. 806. MAINTENANCE OF RESERVES AND PROVISIONS**
 4 **FOR SOLVENCY FOR PLANS PROVIDING**
 5 **HEALTH BENEFITS IN ADDITION TO HEALTH**
 6 **INSURANCE COVERAGE.**

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

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

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

14 “(A) establishes and maintains reserves
 15 with respect to such additional benefit options,
 16 consisting of—

17 “(i) a reserve sufficient for unearned
 18 contributions,

19 “(ii) a reserve sufficient for benefit li-
 20 abilities which have been incurred, which
 21 have not been satisfied, and for which risk
 22 of loss has not yet been transferred, and
 23 for expected administrative costs with re-
 24 spect to such benefit liabilities, and

1 “(iii) a reserve, in an amount rec-
2 ommended by the qualified actuary, for
3 any other obligations of the plan,

4 and

5 “(B) establishes and maintains aggregate
6 excess/stop loss insurance and solvency indem-
7 nification as follows:

8 “(i) The plan shall secure aggregate
9 excess/stop loss insurance for the plan with
10 an attachment point which is not greater
11 than 125 percent of expected gross annual
12 claims. The Secretary may by regulation
13 define the incurred or paid basis and rel-
14 evant claims periods for purposes of deter-
15 mining expected claims under this clause
16 and provide for upward adjustments in the
17 amount of such percentage in specified cir-
18 cumstances in which the plan specifically
19 provides for and maintains reserves in ex-
20 cess of the amounts required under sub-
21 paragraph (A).

22 “(ii) The plan shall secure a means of
23 indemnification for any claims which the
24 plan is unable to satisfy by reason of a ter-

1 mination pursuant to section 809(b) (relat-
2 ing to mandatory termination).

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

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

11 “(1) 25 percent of expected incurred claims and
12 expenses for the plan year, or

13 “(2) \$400,000.

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

20 “(d) ADDITIONAL REQUIREMENTS.—In the case of
21 any association health plan described in subsection (a)(2),
22 the Secretary may provide such additional requirements
23 relating to reserves and excess/stop loss insurance as the
24 Secretary considers appropriate. Such requirements may

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

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

9 “(f) ALTERNATIVE MEANS OF COMPLIANCE.—The
10 Secretary may permit an association health plan described
11 in subsection (a)(2) to substitute, for all or part of the
12 requirements of this section, such security, guarantee,
13 hold-harmless arrangement, or other financial arrange-
14 ment as the Secretary determines to be adequate to enable
15 the plan to fully meet all its financial obligations on a
16 timely basis. The Secretary may take into account, for
17 purposes of this subsection, evidence provided by the plan
18 or sponsor which demonstrates an assumption of liability
19 with respect to the plan. Such evidence may be in the form
20 of a contract of indemnification, lien, bonding, insurance,
21 letter of credit, recourse under applicable terms of the plan
22 in the form of assessments of participating employers, se-
23 curity, or other financial arrangement.

24 “(g) EXCESS/STOP LOSS INSURANCE.—For purposes
25 of this section, the term ‘excess/stop loss insurance’

1 means, in connection with an association health plan, a
 2 contract under which a health insurance issuer (or such
 3 other insurer as may be determined under regulations of
 4 the Secretary) provides for payment to the plan with re-
 5 spect to claims under the plan in excess of an amount or
 6 amounts specified in such contract.

7 **“SEC. 807. REQUIREMENTS FOR APPLICATION AND RELAT-**
 8 **ED REQUIREMENTS.**

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

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

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

25 “(A) the sponsor, and

1 “(B) the members of the board of trustees
2 of the plan.

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

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

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

19 “(5) AGREEMENTS WITH SERVICE PROVID-
20 ERS.—A copy of any agreements between the plan
21 and contract administrators and other service pro-
22 viders.

23 “(6) FUNDING REPORT.—In the case of asso-
24 ciation health plans providing benefits options in ad-
25 dition to health insurance coverage, a report setting

1 forth information with respect to such additional
2 benefit options determined as of a date within the
3 120-day period ending with the date of the applica-
4 tion, including the following:

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

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

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

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

17 “(E) OTHER INFORMATION.—Any other
 18 information which may be prescribed in regula-
 19 tions of the Secretary as necessary to carry out
 20 the purposes of this part.

21 “(c) FILING NOTICE OF CERTIFICATION WITH
 22 STATES.—A certification granted under this part to an
 23 association health plan shall not be effective unless written
 24 notice of such certification is filed with the applicable
 25 State authority of each State in which at least 25 percent

1 of the participants and beneficiaries under the plan are
2 located. For purposes of this subsection, an individual
3 shall be considered to be located in the State in which a
4 known address of such individual is located or in which
5 such individual is employed.

6 “(d) NOTICE OF MATERIAL CHANGES.—In the case
7 of any association health plan certified under this part,
8 descriptions of material changes in any information which
9 was required to be submitted with the application for the
10 certification under this part shall be filed in such form
11 and manner as shall be prescribed in regulations of the
12 Secretary. The Secretary may require by regulation prior
13 notice of material changes with respect to specified mat-
14 ters which might serve as the basis for suspension or rev-
15 ocation of the certification.

16 “(e) REPORTING REQUIREMENTS FOR CERTAIN AS-
17 SOCIATION HEALTH PLANS.—An association health plan
18 certified under this part which provides benefit options in
19 addition to health insurance coverage for such plan year
20 shall meet the requirements of section 103 by filing an
21 annual report under such section which shall include infor-
22 mation described in subsection (b)(6) with respect to the
23 plan year and, notwithstanding section 104(a)(1)(A), shall
24 be filed not later than 90 days after the close of the plan

1 year (or on such later date as may be prescribed by the
2 Secretary).

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

16 “(1) are in the aggregate reasonably related to
17 the experience of the plan and to reasonable expecta-
18 tions, and

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

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

1 **“SEC. 808. NOTICE REQUIREMENTS FOR VOLUNTARY TER-**
 2 **MINATION.**

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

7 “(1) not less than 60 days before the proposed
 8 termination date, provides to the participants and
 9 beneficiaries a written notice of intent to terminate
 10 stating that such termination is intended and the
 11 proposed termination date,

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

16 “(3) submits such plan in writing to the Sec-
 17 retary.

18 Actions required under this section shall be taken in such
 19 form and manner as may be prescribed in regulations of
 20 the Secretary.

21 **“SEC. 809. CORRECTIVE ACTIONS AND MANDATORY TERMI-**
 22 **NATION.**

23 “(a) ACTIONS TO AVOID DEPLETION OF RE-
 24 SERVES.—An association health plan which is certified
 25 under this part and which provides benefits other than
 26 health insurance coverage shall continue to meet the re-

1 requirements of section 806, irrespective of whether such
2 certification continues in effect. The board of trustees of
3 such plan shall determine quarterly whether the require-
4 ments of section 806 are met. In any case in which the
5 board determines that there is reason to believe that there
6 is or will be a failure to meet such requirements, or the
7 Secretary makes such a determination and so notifies the
8 board, the board shall immediately notify the qualified ac-
9 tuary engaged by the plan, and such actuary shall, not
10 later than the end of the next following month, make such
11 recommendations to the board for corrective action as the
12 actuary determines necessary to ensure compliance with
13 section 806. Not later than 30 days after receiving from
14 the actuary recommendations for corrective actions, the
15 board shall notify the Secretary (in such form and manner
16 as the Secretary may prescribe by regulation) of such rec-
17 ommendations of the actuary for corrective action, to-
18 gether with a description of the actions (if any) that the
19 board has taken or plans to take in response to such rec-
20 ommendations. The board shall thereafter report to the
21 Secretary, in such form and frequency as the Secretary
22 may specify to the board, regarding corrective action taken
23 by the board until the requirements of section 806 are
24 met.

1 “(b) MANDATORY TERMINATION.—In any case in
2 which—

3 “(1) the Secretary has been notified under sub-
4 section (a) of a failure of an association health plan
5 which is or has been certified under this part and
6 is described in section 806(a)(2) to meet the require-
7 ments of section 806 and has not been notified by
8 the board of trustees of the plan that corrective ac-
9 tion has restored compliance with such require-
10 ments, and

11 “(2) the Secretary determines that there is a
12 reasonable expectation that the plan will continue to
13 fail to meet the requirements of section 806,

14 the board of trustees of the plan shall, at the direction
15 of the Secretary, terminate the plan and, in the course
16 of the termination, take such actions as the Secretary may
17 require, including satisfying any claims referred to in sec-
18 tion 806(a)(2)(B)(ii) and recovering for the plan any li-
19 ability under section 806(f), as necessary to ensure that
20 the affairs of the plan will be, to the maximum extent pos-
21 sible, wound up in a manner which will result in timely
22 provision of all benefits for which the plan is obligated.

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

24 “(a) ELECTION FOR CHURCH PLANS.—Notwith-
25 standing section 4(b)(2), if a church, a convention or asso-

1 ciation of churches, or an organization described in section
 2 3(33)(C)(i) maintains a church plan which is a group
 3 health plan (as defined in section 733(a)(1)), and such
 4 church, convention, association, or organization makes an
 5 election with respect to such plan under this subsection
 6 (in such form and manner as the Secretary may by regula-
 7 tion prescribe), then the provisions of this section shall
 8 apply to such plan, with respect to benefits provided under
 9 such plan consisting of medical care, as if section 4(b)(2)
 10 did not contain an exclusion for church plans. Nothing in
 11 this paragraph shall be construed to render any other sec-
 12 tion of this title applicable to church plans, except to the
 13 extent that such other section is incorporated by reference
 14 in this section.

15 “(b) EFFECT OF ELECTION.—

16 “(1) PREEMPTION OF STATE INSURANCE LAWS
 17 REGULATING COVERED CHURCH PLANS.—Subject to
 18 paragraphs (2) and (3), this section shall supersede
 19 any and all State laws which regulate insurance in-
 20 sofar as they may now or hereafter regulate church
 21 plans to which this section applies or trusts estab-
 22 lished under such church plans.

23 “(2) GENERAL STATE INSURANCE REGULATION
 24 UNAFFECTED.—

1 “(A) IN GENERAL.—Except as provided in
2 subparagraph (B), nothing in this section shall
3 be construed to exempt or relieve any person
4 from any provision of State law which regulates
5 insurance.

6 “(B) CHURCH PLANS NOT TO BE DEEMED
7 INSURANCE COMPANIES OR INSURERS.—Neither
8 a church plan to which this section applies, nor
9 any trust established under such a church plan,
10 shall be deemed to be an insurance company or
11 other insurer or to be engaged in the business
12 of insurance for purposes of any State law pur-
13 porting to regulate insurance companies or in-
14 surance contracts.

15 “(3) PREEMPTION OF CERTAIN STATE LAWS
16 RELATING TO PREMIUM RATE REGULATION AND
17 BENEFIT MANDATES.—The provisions of subsections
18 (a)(2)(B) and (b) of section 805 shall apply with re-
19 spect to a church plan to which this section applies
20 in the same manner and to the same extent as such
21 provisions apply with respect to association health
22 plans.

23 “(4) DEFINITIONS.—For purposes of this sub-
24 section—

1 “(A) STATE LAW.—The term ‘State law’
 2 includes all laws, decisions, rules, regulations,
 3 or other State action having the effect of law,
 4 of any State. A law of the United States appli-
 5 cable only to the District of Columbia shall be
 6 treated as a State law rather than a law of the
 7 United States.

8 “(B) STATE.—The term ‘State’ includes a
 9 State, any political subdivision thereof, or any
 10 agency or instrumentality of either, which
 11 purports to regulate, directly or indirectly, the
 12 terms and conditions of church plans covered by
 13 this section.

14 “(c) REQUIREMENTS FOR COVERED CHURCH
 15 PLANS.—

16 “(1) FIDUCIARY RULES AND EXCLUSIVE PUR-
 17 POSE.—A fiduciary shall discharge his duties with
 18 respect to a church plan to which this section ap-
 19 plies—

20 “(A) for the exclusive purpose of:

21 “(i) providing benefits to participants
 22 and their beneficiaries; and

23 “(ii) defraying reasonable expenses of
 24 administering the plan;

1 “(B) with the care skill, prudence and dili-
2 gence under the circumstances then prevailing
3 that a prudent man acting in a like capacity
4 and familiar with such matters would use in the
5 conduct of an enterprise of a like character and
6 with like aims; and

7 “(C) in accordance with the documents
8 and instruments governing the plan.

9 The requirements of this paragraph shall not be
10 treated as not satisfied solely because the plan as-
11 sets are commingled with other church assets, to the
12 extent that such plan assets are separately ac-
13 counted for.

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

17 “(A) provide adequate notice in writing to
18 any participant or beneficiary whose claim for
19 benefits under the plan has been denied, setting
20 forth the specific reasons for such denial, writ-
21 ten in a manner calculated to be understood by
22 the participant,

23 “(B) afford a reasonable opportunity to
24 any participant whose claim for benefits has
25 been denied for a full and fair review by the ap-

1 appropriate fiduciary of the decision denying the
2 claim, and

3 “(C) provide a written statement to each
4 participant describing the procedures estab-
5 lished pursuant to this paragraph.

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

10 “(A) stating the names and addresses of
11 the plan and of the church, convention, or asso-
12 ciation maintaining the plan (and its principal
13 place of business);

14 “(B) certifying that it is a church plan to
15 which this section applies and that it complies
16 with the requirements of paragraphs (1) and
17 (2);

18 “(C) identifying the States in which par-
19 ticipants and beneficiaries under the plan are or
20 likely will be located during the 1-year period
21 covered by the statement; and

22 “(D) containing a copy of a statement of
23 actuarial opinion signed by a qualified actuary
24 that the plan maintains capital, reserves, insur-
25 ance, other financial arrangements, or any com-

1 bination thereof adequate to enable the plan to
2 fully meet all of its financial obligations on a
3 timely basis.

4 “(4) DISCLOSURE.—At the time that the an-
5 nual statement is filed by a church plan with the
6 Secretary pursuant to paragraph (3), a copy of such
7 statement shall be made available by the Secretary
8 to the State insurance commissioner (or similar offi-
9 cial) of any State. The name of each church plan
10 and sponsoring organization filing an annual state-
11 ment in compliance with paragraph (3) shall be pub-
12 lished annually in the Federal Register.

13 “(c) ENFORCEMENT.—The Secretary may enforce
14 the provisions of this section in a manner consistent with
15 section 502, to the extent applicable with respect to ac-
16 tions under section 502(a)(5), and with section 3(33)(D),
17 except that, other than for the purpose of seeking a tem-
18 porary restraining order, a civil action may be brought
19 with respect to the plan’s failure to meet any requirement
20 of this section only if the plan fails to correct its failure
21 within the correction period described in section 3(33)(D).
22 The other provisions of part 5 (except sections 501(a),
23 503, 512, 514, and 515) shall apply with respect to the
24 enforcement and administration of this section.

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

3 “(1) IN GENERAL.—Except as otherwise pro-
4 vided in this section, any term used in this section
5 which is defined in any provision of this title shall
6 have the definition provided such term by such pro-
7 vision.

8 “(2) SEMINARY STUDENTS.—Seminary students
9 who are enrolled in an institution of higher learning
10 described in section 3(33)(C)(iv) and who are treat-
11 ed as participants under the terms of a church plan
12 to which this section applies shall be deemed to be
13 employees as defined in section 3(6) if the number
14 of such students constitutes an insignificant portion
15 of the total number of individuals who are treated
16 as participants under the terms of the plan.”.

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

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

19 “(1) GROUP HEALTH PLAN.—The term ‘group
20 health plan’ has the meaning provided in section
21 733(a)(1).

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

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

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

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

10 “(6) INDIVIDUAL MARKET.—

11 “(A) IN GENERAL.—The term ‘individual
12 market’ means the market for health insurance
13 coverage offered to individuals other than in
14 connection with a group health plan.

15 “(B) TREATMENT OF VERY SMALL
16 GROUPS.—

17 “(i) IN GENERAL.—Subject to clause
18 (ii), such term includes coverage offered in
19 connection with a group health plan that
20 has fewer than 2 participants as current
21 employees or participants described in sec-
22 tion 732(d)(3) on the first day of the plan
23 year.

24 “(ii) STATE EXCEPTION.—Clause (i)
25 shall not apply in the case of health insur-

1 ance coverage offered in a State if such
 2 State regulates the coverage described in
 3 such clause in the same manner and to the
 4 same extent as coverage in the small group
 5 market (as defined in section 2791(e)(5) of
 6 the Public Health Service Act) is regulated
 7 by such State.

8 “(7) PARTICIPATING EMPLOYER.—The term
 9 ‘participating employer’ means, in connection with
 10 an association health plan, any employer, if any indi-
 11 vidual who is an employee of such employer, a part-
 12 ner in such employer, or a self-employed individual
 13 who is such employer (or any dependent, as defined
 14 under the terms of the plan, of such individual) is
 15 or was covered under such plan in connection with
 16 the status of such individual as such an employee,
 17 partner, or self-employed individual in relation to the
 18 plan.

19 “(8) APPLICABLE STATE AUTHORITY.—The
 20 term ‘applicable State authority’ means, with respect
 21 to a health insurance issuer in a State, the State in-
 22 surance commissioner or official or officials des-
 23 ignated by the State to enforce the requirements of
 24 title XXVII of the Public Health Service Act for the
 25 State involved with respect to such issuer.

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

6 “(b) RULES OF CONSTRUCTION.—

7 “(1) EMPLOYERS AND EMPLOYEES.—For pur-
 8 poses of determining whether a plan, fund, or pro-
 9 gram is an employee welfare benefit plan which is an
 10 association health plan, and for purposes of applying
 11 this title in connection with such plan, fund, or pro-
 12 gram so determined to be such an employee welfare
 13 benefit plan, the term ‘employer’ (as defined in sec-
 14 tion 3(5)) and the term ‘employee’ (as defined in
 15 section 3(6)) shall include an individual who is a
 16 partner or a self-employed individual.

17 “(2) PLANS, FUNDS, AND PROGRAMS TREATED
 18 AS GROUP HEALTH PLANS.—In the case of any plan,
 19 fund, or program which was established or is main-
 20 tained for the purpose of providing medical care
 21 (through the purchase of insurance or otherwise) for
 22 individuals covered thereunder and which dem-
 23 onstrates to the Secretary that all requirements for
 24 certification under this part would be met with re-
 25 spect to such plan, fund, or program if such plan,

1 fund, or program were a group health plan, such
 2 plan, fund, or program shall be treated for purposes
 3 of this title as an employee welfare benefit plan on
 4 and after the date of such demonstration.”.

5 (b) CONFORMING AMENDMENTS TO PREEMPTION
 6 RULES.—

7 (1) Section 514(b)(6) of such Act (29 U.S.C.
 8 1144(b)(6)) is amended by adding at the end the
 9 following new subparagraph:

10 “(E) The preceding subparagraphs of this paragraph
 11 do not apply with respect to any State law in the case
 12 of an association health plan which is certified under part
 13 8.”.

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

16 (A) in subsection (b)(4), by striking “Sub-
 17 section (a)” and inserting “Subsections (a) and
 18 (d)”;

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

1 (C) by redesignating subsection (d) as sub-
 2 section (e); and

3 (D) by inserting after subsection (c) the
 4 following new subsection:

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

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

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

1 “(B) In any case in which health insurance cov-
 2 erage of any policy type is offered under an associa-
 3 tion health plan in a State and the filing, with the
 4 applicable State authority, of the policy form in con-
 5 nection with such policy type is approved by such
 6 State authority, the provisions of this title shall su-
 7 persede any and all laws of any other State in which
 8 health insurance coverage of such type is offered, in-
 9 sofar as they may preclude, upon the filing in the
 10 same form and manner of such policy form with the
 11 applicable State authority in such other State, the
 12 approval of the filing in such other State.

13 “(3) For additional provisions relating to association
 14 health plans, see subsections (a)(2)(B) and (b) of section
 15 805.

16 “(4) For purposes of this subsection, the term ‘asso-
 17 ciation health plan’ has the meaning provided in section
 18 801(a), and the terms ‘health insurance coverage’, ‘par-
 19 ticipating employer’, and ‘health insurance issuer’ have
 20 the meanings provided such terms in section 811, respec-
 21 tively.”.

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

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

1 (B) in clause (ii), by inserting “and which
 2 does not provide medical care (within the mean-
 3 ing of section 733(a)(2)),” after “arrange-
 4 ment”, and by striking “title.” and inserting
 5 “title, and”; and

6 (B) by adding at the end the following new
 7 clause:

8 “(iii) subject to subparagraph (E), in the
 9 case of any other employee welfare benefit plan
 10 which is a multiple employer welfare arrange-
 11 ment and which provides medical care (within
 12 the meaning of section 733(a)(2)), any law of
 13 any State which regulates insurance may
 14 apply.”.

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

20 (d) SAVINGS CLAUSE.—Section 731(c) of such Act
 21 is amended by inserting “or part 8” after “this part”.

22 (e) CLERICAL AMENDMENT.—The table of contents
 23 in section 1 of the Employee Retirement Income Security
 24 Act of 1974 is amended by inserting after the item relat-
 25 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 providing health benefits in addition to health insurance coverage.
- “Sec. 807. Requirements for application and related requirements.
- “Sec. 808. Notice requirements for voluntary termination.
- “Sec. 809. Corrective actions and mandatory termination.
- “Sec. 810. Special rules for church plans.
- “Sec. 811. Definitions and rules of construction.”

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

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

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

11 (2) in clause (iii)—

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

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

1 (3) by redesignating clauses (iv) and (v) as
2 clauses (v) and (vi), respectively; and

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

5 “(iv) in determining, after the application of
6 clause (i), whether benefits are provided to employ-
7 ees of two or more employers, the arrangement shall
8 be treated as having only 1 participating employer
9 if, after the application of clause (i), the number of
10 individuals who are employees and former employees
11 of any one participating employer and who are cov-
12 ered under the arrangement is greater than 75 per-
13 cent of the aggregate number of all individuals who
14 are employees or former employees of participating
15 employers and who are covered under the arrange-
16 ment,”.

17 **SEC. 4. CLARIFICATION OF TREATMENT OF CERTAIN COL-**
18 **LECTIVELY BARGAINED ARRANGEMENTS.**

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

22 “(i)(I) under or pursuant to one or more collec-
23 tive bargaining agreements which are reached pursu-
24 ant to collective bargaining described in section 8(d)
25 of the National Labor Relations Act (29 U.S.C.

1 158(d)) or paragraph Fourth of section 2 of the
 2 Railway Labor Act (45 U.S.C. 152, paragraph
 3 Fourth) or which are reached pursuant to labor-
 4 management negotiations under similar provisions of
 5 State public employee relations laws, and (II) in ac-
 6 cordance with subparagraphs (C), (D), and (E),”.

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

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

13 “(i) The plan or other arrangement, and the
 14 employee organization or any other entity sponsoring
 15 the plan or other arrangement, do not—

16 “(I) utilize the services of any licensed in-
 17 surance agent or broker for soliciting or enroll-
 18 ing employers or individuals as participating
 19 employers or covered individuals under the plan
 20 or other arrangement, or

21 “(II) pay a commission or any other type
 22 of compensation to a person, other than a full
 23 time employee of the employee organization (or
 24 a member of the organization to the extent pro-
 25 vided in regulations of the Secretary), that is

1 related either to the volume or number of em-
2 ployers or individuals solicited or enrolled as
3 participating employers or covered individuals
4 under the plan or other arrangement, or to the
5 dollar amount or size of the contributions made
6 by participating employers or covered individ-
7 uals to the plan or other arrangement,
8 except to the extent that the services used by the
9 plan, arrangement, organization, or other entity con-
10 sist solely of preparation of documents necessary for
11 compliance with the reporting and disclosure re-
12 quirements of part 1 or administrative, investment,
13 or consulting services unrelated to solicitation or en-
14 rollment of covered individuals.

15 “(ii) As of the end of the preceding plan year,
16 the number of covered individuals under the plan or
17 other arrangement who are identified to the plan or
18 arrangement and who are neither—

19 “(I) employed within a bargaining unit
20 covered by any of the collective bargaining
21 agreements with a participating employer (nor
22 covered on the basis of an individual’s employ-
23 ment in such a bargaining unit), nor

24 “(II) present employees (or former employ-
25 ees who were covered while employed) of the

1 sponsoring employee organization, of an em-
2 ployer who is or was a party to any of the col-
3 lective bargaining agreements, or of the plan or
4 other arrangement or a related plan or arrange-
5 ment (nor covered on the basis of such present
6 or former employment),

7 does not exceed 15 percent of the total number of
8 individuals who are covered under the plan or ar-
9 rangement and who are present or former employees
10 who are or were covered under the plan or arrange-
11 ment pursuant to a collective bargaining agreement
12 with a participating employer. The requirements of
13 the preceding provisions of this clause shall be treat-
14 ed as satisfied if, as of the end of the preceding plan
15 year, such covered individuals are comprised solely
16 of individuals who were covered individuals under
17 the plan or other arrangement as of the date of the
18 enactment of the Expansion of Portability and
19 Health Insurance Coverage Act of 1997 and, as of
20 the end of the preceding plan year, the number of
21 such covered individuals does not exceed 25 percent
22 of the total number of present and former employees
23 enrolled under the plan or other arrangement.

24 “(iii) The employee organization or other entity
25 sponsoring the plan or other arrangement certifies

1 to the Secretary each year, in a form and manner
 2 which shall be prescribed in regulations of the Sec-
 3 retary that the plan or other arrangement meets the
 4 requirements of clauses (i) and (ii).

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

7 “(i) all of the benefits provided under the plan
 8 or arrangement consist of health insurance coverage,
 9 or

10 “(ii)(I) the plan or arrangement is a multiem-
 11 ployer plan, and

12 “(II) the requirements of clause (B) of the pro-
 13 viso to clause (5) of section 302(c) of the Labor
 14 Management Relations Act, 1947 (29 U.S.C.
 15 186(c)) are met with respect to such plan or other
 16 arrangement.

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

19 “(i) the plan or arrangement is in effect as of
 20 the date of the enactment of the Expansion of Port-
 21 ability and Health Insurance Coverage Act of 1997,
 22 or

23 “(ii) the employee organization or other entity
 24 sponsoring the plan or arrangement—

“(I) has been in existence for at least 3 years or is affiliated with another employee organization which has been in existence for at least 3 years, or

“(II) demonstrates to the satisfaction of the Secretary that the requirements of subparagraphs (C) and (D) are met with respect to the plan or other arrangement.”.

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

15 SEC. 5. ENFORCEMENT PROVISIONS RELATING TO ASSO-
16 CIATION HEALTH PLANS.

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

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

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

24 “(b) Any person who, either willfully or with willful
25 blindness, falsely represents, to any employee, any employ-

1 ee’s beneficiary, any employer, the Secretary, or any State,
 2 a plan or other arrangement established or maintained for
 3 the purpose of offering or providing any benefit described
 4 in section 3(1) to employees or their beneficiaries as—

5 “(1) being an association health plan which has
 6 been certified under part 8,

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

17 “(3) being a plan or arrangement with respect
 18 to which the requirements of subparagraph (C), (D),
 19 or (E) of section 3(40) are met,

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

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

1 “(n)(1) Subject to paragraph (2), upon application
2 by the Secretary showing the operation, promotion, or
3 marketing of an association health plan (or similar ar-
4 rangement providing benefits consisting of medical care
5 (as defined in section 733(a)(2))) that—

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

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

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

20 “(A) all benefits under it referred to in para-
21 graph (1) consist of health insurance coverage, and

22 “(B) with respect to each State in which the
23 plan or arrangement offers or provides benefits, the
24 plan or arrangement is operating in accordance with

1 applicable State laws that are not superseded under
2 section 514.

3 “(3) The court may grant such additional equitable
4 relief, including any relief available under this title, as it
5 deems necessary to protect the interests of the public and
6 of persons having claims for benefits against the plan.”.

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

16 **SEC. 6. COOPERATION BETWEEN FEDERAL AND STATE AU-**
17 **THORITIES.**

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

21 “(c) RESPONSIBILITY OF STATES WITH RESPECT TO
22 ASSOCIATION HEALTH PLANS.—

23 “(1) AGREEMENTS WITH STATES.—A State
24 may enter into an agreement with the Secretary for
25 delegation to the State of some or all of the Sec-

1 retary’s authority under sections 502 and 504 to en-
 2 force the requirements for certification under part 8.
 3 The Secretary shall enter into the agreement if the
 4 Secretary determines that the delegation provided
 5 for therein would not result in a lower level or qual-
 6 ity of enforcement of the provisions of this title.

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

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

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

24 (a) EFFECTIVE DATE.—The amendments made by
 25 sections 2, 5, and 6 of this Act shall take effect on Janu-

1 ary 1, 1999. The amendments made by sections 3 and
2 4 of this Act shall take effect on the date of the enactment
3 of this Act. The Secretary shall issue all regulations nec-
4 essary to carry out the amendments made by this Act be-
5 fore January 1, 1999.

6 (b) EXCEPTION.—Section 801(a)(2) of the Employee
7 Retirement Income Security Act of 1974 (added by section
8 2) does not apply with respect to group health plans (as
9 defined in section 733(a)(1) of such Act) existing on April
10 1, 1997, which do not provide health insurance coverage
11 (as defined in section 733(b)(1) of such Act) on such date.

○