

108TH CONGRESS  
1ST SESSION

# S. 1901

To amend the Internal Revenue Code of 1986 to provide for a tax credit for offering employer-based health insurance coverage and to provide for the establishment of health insurance purchasing pools.

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## IN THE SENATE OF THE UNITED STATES

NOVEMBER 20, 2003

Mr. BAYH introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Internal Revenue Code of 1986 to provide for a tax credit for offering employer-based health insurance coverage and to provide for the establishment of health insurance purchasing pools.

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 “Small Business Health  
5       Care Act of 2003”.

1 **SEC. 2. CREDIT FOR EMPLOYEE HEALTH INSURANCE EX-**  
 2 **PENSES.**

3 (a) IN GENERAL.—Subpart D of part IV of sub-  
 4 chapter A of chapter 1 of the Internal Revenue Code of  
 5 1986 (relating to business-related credits) is amended by  
 6 adding at the end the following:

7 **“SEC. 45G. EMPLOYEE HEALTH INSURANCE EXPENSES.**

8 “(a) GENERAL RULE.—For purposes of section 38,  
 9 in the case of a qualified small employer, the employee  
 10 health insurance expenses credit determined under this  
 11 section is an amount equal to the applicable percentage  
 12 of the amount paid by the taxpayer during the taxable  
 13 year for qualified employee health insurance expenses.

14 “(b) APPLICABLE PERCENTAGE.—

15 “(1) IN GENERAL.—For purposes of subsection  
 16 (a), the applicable percentage is—

17 “(A) 50 percent in the case of an employer  
 18 with less than 26 qualified employees,

19 “(B) 40 percent in the case of an employer  
 20 with more than 25 but less than 36 qualified  
 21 employees,

22 “(C) 30 percent in the case of an employer  
 23 with more than 35 but less than 51 qualified  
 24 employees,

1           “(D) 20 percent in the case of an employer  
2           with more than 50 but less than 76 qualified  
3           employees, and

4           “(E) 10 percent in the case of an employer  
5           with more than 75 but less than 101 qualified  
6           employees.

7           “(2) HIGH CONTRIBUTION BONUS.—With re-  
8           spect to any taxable year during which a qualified  
9           small employer pays 100 percent of qualified em-  
10          ployee health insurance expenses for the qualified  
11          employees of the small employer, the applicable per-  
12          centage otherwise determined for such taxable year  
13          under the preceding paragraph shall be increased by  
14          5 percentage points.

15          “(c) PER EMPLOYEE DOLLAR LIMITATION.—The  
16          amount of qualified employee health insurance expenses  
17          taken into account under subsection (a) with respect to  
18          any qualified employee for any taxable year shall not ex-  
19          ceed the maximum employer contribution for self-only cov-  
20          erage or family coverage (as applicable) determined under  
21          section 8906(a) of title 5, United States Code, for the cal-  
22          endar year in which such taxable year begins.

23          “(d) DEFINITIONS AND SPECIAL RULES.—For pur-  
24          poses of this section—

25                 “(1) QUALIFIED SMALL EMPLOYER.—

“(A) IN GENERAL.—The term ‘qualified small employer’ means any small employer which—

“(i) provides eligibility for health insurance coverage (after any waiting period (as defined in section 9801(b)(4))) to all qualified employees of the employer,

“(ii) pays at least 70 percent of the cost of such coverage (60 percent in the case of family coverage) for each qualified employee, and

“(iii) in the case of a small employer which is located in a State which has established a health insurance purchasing pool under section 3 of the Small Business Health Care Act of 2003, joins such pool.

“(B) TRANSITION RULE FOR NEW PLANS.—

“(i) IN GENERAL.—If a small employer (or any predecessor) did not provide health insurance coverage to the qualified employees of the employer during the employer’s precompliance period, then subparagraph (A) shall be applied to such employer for the first 5 taxable years fol-

lowing such period by substituting ‘50 per-  
cent’ for ‘70 percent’ in clause (ii) (or for  
‘60 percent’ in such clause, in the case of  
family coverage).

“(ii) PRECOMPLIANCE PERIOD.—For  
purposes of clause (i), the precompliance  
periods are—

“(I) the period beginning with  
the small employer’s taxable year pre-  
ceding its first taxable year beginning  
after the date of the enactment of this  
section, and

“(II) the period beginning with  
the small employer’s taxable year pre-  
ceding the first taxable year for which  
the employer meets the requirement of  
subparagraph (A)(i).

An employer not in existence for any pe-  
riod shall be treated in the same manner  
as an employer which is in existence and  
not providing coverage.

“(C) SMALL EMPLOYER.—

“(i) IN GENERAL.—For purposes of  
this paragraph, the term ‘small employer’  
means, with respect to any calendar year,

any employer if such employer employed an average of not less than 2 and not more than 100 qualified employees on business days during either of the 2 preceding calendar years. For purposes of the preceding sentence, a preceding calendar year may be taken into account only if the employer was in existence throughout such year.

“(ii) EMPLOYERS NOT IN EXISTENCE IN PRECEDING YEAR.—In the case of an employer which was not in existence throughout the 1st preceding calendar year, the determination under clause (i) shall be based on the average number of qualified employees that it is reasonably expected such employer will employ on business days in the current calendar year.

“(2) QUALIFIED EMPLOYEE HEALTH INSURANCE EXPENSES.—

“(A) IN GENERAL.—The term ‘qualified employee health insurance expenses’ means any amount paid by an employer for health insurance coverage to the extent such amount is attributable to coverage provided to any employee while such employee is a qualified employee.

1           “(B) EXCEPTION FOR AMOUNTS PAID  
 2           UNDER SALARY REDUCTION ARRANGEMENTS.—  
 3           No amount paid or incurred for health insur-  
 4           ance coverage pursuant to a salary reduction  
 5           arrangement shall be taken into account under  
 6           subparagraph (A).

7           “(C) HEALTH INSURANCE COVERAGE.—  
 8           The term ‘health insurance coverage’ has the  
 9           meaning given such term by section 9832(b)(1).

10          “(3) QUALIFIED EMPLOYEE.—The term ‘quali-  
 11          fied employee’ means an employee of an employer  
 12          who, with respect to any period, is not provided  
 13          health insurance coverage under—

14               “(A) a health plan of the employee’s  
 15               spouse,

16               “(B) title XVIII, XIX, or XXI of the So-  
 17               cial Security Act,

18               “(C) chapter 17 of title 38, United States  
 19               Code,

20               “(D) chapter 55 of title 10, United States  
 21               Code,

22               “(E) chapter 89 of title 5, United States  
 23               Code, or

24               “(F) any other provision of law.

25          “(4) EMPLOYEE—The term ‘employee’—

1           “(A) means any individual, with respect to  
 2           any calendar year, who is reasonably expected  
 3           to receive at least \$5,000 and not more than  
 4           \$100,000 of compensation from the employer  
 5           during such year,

6           “(B) does not include an employee within  
 7           the meaning of section 401(c)(1), and

8           “(C) includes a leased employee within the  
 9           meaning of section 414(n).

10          “(5) COMPENSATION.—The term ‘compensa-  
 11          tion’ means amounts described in section  
 12          6051(a)(3).

13          “(e) CERTAIN RULES MADE APPLICABLE.—For pur-  
 14          poses of this section, rules similar to the rules of section  
 15          52 shall apply.

16          “(f) DENIAL OF DOUBLE BENEFIT.—No deduction  
 17          or credit under any other provision of this chapter shall  
 18          be allowed with respect to qualified employee health insur-  
 19          ance expenses taken into account under subsection (a).”.

20          (b) CREDIT TO BE PART OF GENERAL BUSINESS  
 21          CREDIT.—Section 38(b) of the Internal Revenue Code of  
 22          1986 (relating to current year business credit) is amended  
 23          by striking “plus” at the end of paragraph (14), by strik-  
 24          ing the period at the end of paragraph (15) and inserting  
 25          “, plus”, and by adding at the end the following:



1           “(16) the employee health insurance expenses  
2           credit determined under section 45G.”.

3           (c) NO CARRYBACKS.—Subsection (d) of section 39  
4 of the Internal Revenue Code of 1986 (relating to  
5 carryback and carryforward of unused credits) is amended  
6 by adding at the end the following:

7           “(11) NO CARRYBACK OF SECTION 45G CREDIT  
8 BEFORE EFFECTIVE DATE.—No portion of the un-  
9 used business credit for any taxable year which is  
10 attributable to the employee health insurance ex-  
11 penses credit determined under section 45G may be  
12 carried back to a taxable year ending before the date  
13 of the enactment of section 45G.”.

14          (d) CLERICAL AMENDMENT.—The table of sections  
15 for subpart D of part IV of subchapter A of chapter 1  
16 of the Internal Revenue Code of 1986 is amended by add-  
17 ing at the end the following:

“Sec. 45G. Employee health insurance expenses.”.

18          (e) EMPLOYER OUTREACH.—The Internal Revenue  
19 Service shall, in conjunction with the Small Business Ad-  
20 ministration, develop materials and implement an edu-  
21 cational program to ensure that business personnel are  
22 aware of—

23           (1) the eligibility criteria for the tax credit pro-  
24 vided under section 45G of the Internal Revenue  
25 Code of 1986 (as added by this section),

1           (2) the methods to be used in calculating such  
2       credit, and

3           (3) the documentation needed in order to claim  
4       such credit,  
5       so that the maximum number of eligible businesses may  
6       claim the tax credit.

7       (f) EFFECTIVE DATE.—The amendments made by  
8       this section shall apply to amounts paid or incurred in tax-  
9       able years beginning after the date of the enactment of  
10      this Act.

11   **SEC. 3. HEALTH INSURANCE PURCHASING POOLS.**

12       (a) MATCHING FUNDS FOR OPERATION OF POOLS.—

13           (1) IN GENERAL.—In the case of a State or a  
14       unit of local government that establishes a health in-  
15       surance purchasing pool, the Secretary of Health  
16       and Human Services shall provide, from the funds  
17       allocated under subsection (b), a grant equal to the  
18       applicable percentage of the administrative costs as-  
19       sociated with such pool.

20           (2) APPLICABLE PERCENTAGE.—For purposes  
21       of paragraph (1), the applicable percentage is—

22                (A) 75 percent for the initial year of the  
23                grant;

24                (B) 50 percent for year succeeding the  
25                year to which subparagraph (A) is applicable;

1 (C) 25 percent for the year succeeding the  
 2 year to which subparagraph (B) is applicable;  
 3 and

4 (D) zero thereafter.

5 (3) SPECIAL RULE FOR LOCAL GOVERNMENT  
 6 PURCHASING POOLS.—The Secretary of Health and  
 7 Human Services shall not provide a grant under this  
 8 section to any unit of a local government unless such  
 9 unit of local government submits to the Secretary a  
 10 certificate from the State in which such unit of local  
 11 government is located authorizing such grant.

12 (4) HEALTH INSURANCE PURCHASING POOL.—  
 13 For purposes of this section, the term “health insur-  
 14 ance purchasing pool” means a purchasing pool for  
 15 small employers (as defined under section 45G of  
 16 the Internal Revenue Code of 1986) for the purpose  
 17 of providing health insurance coverage (as defined in  
 18 such section) to qualified employees (as defined in  
 19 such section).

20 (b) FUNDING.—Out of the money in the Treasury of  
 21 the United States not otherwise appropriated, there are  
 22 authorized and appropriated such sums as are necessary  
 23 to carry out this section.

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