

108TH CONGRESS
2D SESSION

S. 2767

To provide an economic stimulus.

IN THE SENATE OF THE UNITED STATES

JULY 22, 2004

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

A BILL

To provide an economic stimulus.

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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Small Business Economic Stimulus Act of 2004”.

6 (b) TABLE OF CONTENTS.—The table of contents of
7 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—ECONOMIC STIMULUS

Sec. 101. Permanent extension of research credit.

Sec. 102. Extension of bonus depreciation.

Sec. 103. Extension of increased limitation for expensing depreciable business assets.

Sec. 104. Export enhancement.

Sec. 105. Trade development.

TITLE II—SMALL BUSINESS HEALTH FAIRNESS

- Sec. 201. Short title.
 Sec. 202. Rules governing association health plans.
 Sec. 203. Clarification of treatment of single employer arrangements.
 Sec. 204. Clarification of treatment of certain collectively bargained arrangements.
 Sec. 205. Enforcement provisions relating to association health plans.
 Sec. 206. Cooperation between Federal and State authorities.
 Sec. 207. Effective date and transitional and other rules.

1 **TITLE I—ECONOMIC STIMULUS**2 **SEC. 101. PERMANENT EXTENSION OF RESEARCH CREDIT.**

3 (a) IN GENERAL.—Section 41 of the Internal Rev-
 4 enue Code of 1986 (relating to credit for increasing re-
 5 search activities) is amended by striking subsection (h).

6 (b) CONFORMING AMENDMENT.—Paragraph (1) of
 7 section 45C(b) of such Code is amended by striking sub-
 8 paragraph (D).

9 (c) EFFECTIVE DATE.—The amendments made by
 10 this section shall apply to amounts paid or incurred after
 11 the date of the enactment of this Act.

12 **SEC. 102. EXTENSION OF BONUS DEPRECIATION.**

13 (a) IN GENERAL.—Section 168(k) of the Internal
 14 Revenue Code of 1986 (relating to special allowance for
 15 certain property acquired after September 10, 2001, and
 16 before January 1, 2005) is amended—

17 (1) by striking “2006” each place it appears
 18 and inserting “2007”, and

19 (2) by striking “2005” each place it appears in
 20 the text and in the headings and inserting “2006”.

1 (b) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to taxable years ending after the
3 date of the enactment of this Act.

4 **SEC. 103. EXTENSION OF INCREASED LIMITATION FOR EX-**
5 **PENSING DEPRECIABLE BUSINESS ASSETS.**

6 (a) IN GENERAL.—Section 179 of the Internal Rev-
7 enue Code of 1986 is amended by striking “2006” each
8 place it appears and inserting “2007”.

9 (b) EFFECTIVE DATE.—The amendments made by
10 this section shall apply to taxable years beginning after
11 the date of the enactment of this Act.

12 **SEC. 104. EXPORT ENHANCEMENT.**

13 There are authorized to be appropriated to the De-
14 partment of Commerce \$5,000,000 for each of fiscal years
15 2005 and 2006 for use by the Office of Export Trading
16 Company Affairs to carry out the Export Trading Com-
17 pany Act of 1982 (15 U.S.C. 4001 et seq.).

18 **SEC. 105. TRADE DEVELOPMENT.**

19 Section 661(f) of the Foreign Assistance Act of 1961
20 (22 U.S.C. 2421(f)) is amended by striking “\$48,000,000
21 for fiscal year 2000” and inserting “\$75,000,000 for each
22 of fiscal years 2005 and 2006”.

1 **TITLE II—SMALL BUSINESS**
 2 **HEALTH FAIRNESS**

3 **SEC. 201. SHORT TITLE.**

4 This title may be cited as the “Small Business Health
 5 Fairness Act of 2004”.

6 **SEC. 202. RULES GOVERNING ASSOCIATION HEALTH**
 7 **PLANS.**

8 (a) **IN GENERAL.**—Subtitle B of title I of the Em-
 9 ployee Retirement Income Security Act of 1974 is amend-
 10 ed by adding after part 7 the following new part:

11 “**PART 8—RULES GOVERNING ASSOCIATION HEALTH**
 12 **PLANS**

13 “**SEC. 801. ASSOCIATION HEALTH PLANS.**

14 “(a) **IN GENERAL.**—For purposes of this part, the
 15 term ‘association health plan’ means a group health plan
 16 whose sponsor is (or is deemed under this part to be) de-
 17 scribed in subsection (b).

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

20 “(1) is organized and maintained in good faith,
 21 with a constitution and bylaws specifically stating its
 22 purpose and providing for periodic meetings on at
 23 least an annual basis, as a bona fide trade associa-
 24 tion, a bona fide industry association (including a
 25 rural electric cooperative association or a rural tele-

1 phone cooperative association), a bona fide profes-
2 sional association, or a bona fide chamber of com-
3 merce (or similar bona fide business association, in-
4 cluding a corporation or similar organization that
5 operates on a cooperative basis (within the meaning
6 of section 1381 of the Internal Revenue Code of
7 1986)), for substantial purposes other than that of
8 obtaining or providing medical care;

9 “(2) is established as a permanent entity which
10 receives the active support of its members and re-
11 quires for membership payment on a periodic basis
12 of dues or payments necessary to maintain eligibility
13 for membership in the sponsor; and

14 “(3) does not condition membership, such dues
15 or payments, or coverage under the plan on the
16 basis of health status-related factors with respect to
17 the employees of its members (or affiliated mem-
18 bers), or the dependents of such employees, and does
19 not condition such dues or payments on the basis of
20 group health plan participation.

21 Any sponsor consisting of an association of entities which
22 meet the requirements of paragraphs (1), (2), and (3)
23 shall be deemed to be a sponsor described in this sub-
24 section.

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

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

9 “(b) STANDARDS.—Under the procedure prescribed
10 pursuant to subsection (a), in the case of an association
11 health plan that provides at least one benefit option which
12 does not consist of health insurance coverage, the applica-
13 ble authority shall certify such plan as meeting the re-
14 quirements of this part only if the applicable authority is
15 satisfied that the applicable requirements of this part are
16 met (or, upon the date on which the plan is to commence
17 operations, will be met) with respect to the plan.

18 “(c) REQUIREMENTS APPLICABLE TO CERTIFIED
19 PLANS.—An association health plan with respect to which
20 certification under this part is in effect shall meet the ap-
21 plicable requirements of this part, effective on the date
22 of certification (or, if later, on the date on which the plan
23 is to commence operations).

24 “(d) REQUIREMENTS FOR CONTINUED CERTIFI-
25 CATION.—The applicable authority may provide by regula-

1 tion, through negotiated rulemaking, for continued certifi-
2 cation of association health plans under this part.

3 “(e) CLASS CERTIFICATION FOR FULLY INSURED
4 PLANS.—The applicable authority shall establish a class
5 certification procedure for association health plans under
6 which all benefits consist of health insurance coverage.
7 Under such procedure, the applicable authority shall pro-
8 vide for the granting of certification under this part to
9 the plans in each class of such association health plans
10 upon appropriate filing under such procedure in connec-
11 tion with plans in such class and payment of the pre-
12 scribed fee under section 807(a).

13 “(f) CERTIFICATION OF SELF-INSURED ASSOCIATION
14 HEALTH PLANS.—An association health plan which offers
15 one or more benefit options which do not consist of health
16 insurance coverage may be certified under this part only
17 if such plan consists of any of the following:

18 “(1) a plan which offered such coverage on the
19 date of the enactment of the Small Business Health
20 Fairness Act of 2004,

21 “(2) a plan under which the sponsor does not
22 restrict membership to one or more trades and busi-
23 nesses or industries and whose eligible participating
24 employers represent a broad cross-section of trades
25 and businesses or industries, or

1 “(3) a plan whose eligible participating employ-
2 ers represent one or more trades or businesses, or
3 one or more industries, consisting of any of the fol-
4 lowing: agriculture; equipment and automobile deal-
5 erships; barbering and cosmetology; certified public
6 accounting practices; child care; construction; dance,
7 theatrical and orchestra productions; disinfecting
8 and pest control; financial services; fishing;
9 foodservice establishments; hospitals; labor organiza-
10 tions; logging; manufacturing (metals); mining; med-
11 ical and dental practices; medical laboratories; pro-
12 fessional consulting services; sanitary services; trans-
13 portation (local and freight); warehousing; whole-
14 saling/distributing; or any other trade or business or
15 industry which has been indicated as having average
16 or above-average risk or health claims experience by
17 reason of State rate filings, denials of coverage, pro-
18 posed premium rate levels, or other means dem-
19 onstrated by such plan in accordance with regula-
20 tions which the Secretary shall prescribe through ne-
21 gotiated rulemaking.

22 **“SEC. 803. REQUIREMENTS RELATING TO SPONSORS AND**
23 **BOARDS OF TRUSTEES.**

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

1 sponsor has met (or is deemed under this part to have
2 met) the requirements of section 801(b) for a continuous
3 period of not less than 3 years ending with the date of
4 the application for certification under this part.

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

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

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

19 “(3) RULES GOVERNING RELATIONSHIP TO
20 PARTICIPATING EMPLOYERS AND TO CONTRAC-
21 TORS.—

22 “(A) IN GENERAL.—Except as provided in
23 subparagraphs (B) and (C), the members of the
24 board of trustees are individuals selected from
25 individuals who are the owners, officers, direc-

1 tours, or employees of the participating employ-
2 ers or who are partners in the participating em-
3 ployers and actively participate in the business.

4 “(B) LIMITATION.—

5 “(i) GENERAL RULE.—Except as pro-
6 vided in clauses (ii) and (iii), no such
7 member is an owner, officer, director, or
8 employee of, or partner in, a contract ad-
9 ministrators or other service provider to the
10 plan.

11 “(ii) LIMITED EXCEPTION FOR PRO-
12 VIDERS OF SERVICES SOLELY ON BEHALF
13 OF THE SPONSOR.—Officers or employees
14 of a sponsor which is a service provider
15 (other than a contract administrator) to
16 the plan may be members of the board if
17 they constitute not more than 25 percent
18 of the membership of the board and they
19 do not provide services to the plan other
20 than on behalf of the sponsor.

21 “(iii) TREATMENT OF PROVIDERS OF
22 MEDICAL CARE.—In the case of a sponsor
23 which is an association whose membership
24 consists primarily of providers of medical
25 care, clause (i) shall not apply in the case

1 of any service provider described in sub-
2 paragraph (A) who is a provider of medical
3 care under the plan.

4 “(C) CERTAIN PLANS EXCLUDED.—Sub-
5 paragraph (A) shall not apply to an association
6 health plan which is in existence on the date of
7 the enactment of the Small Business Health
8 Fairness Act of 2004.

9 “(D) SOLE AUTHORITY.—The board has
10 sole authority under the plan to approve appli-
11 cations for participation in the plan and to con-
12 tract with a service provider to administer the
13 day-to-day affairs of the plan.

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

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

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

3 The Secretary may by regulation, through negotiated rule-
4 making, define for purposes of this subsection the terms
5 ‘franchiser’, ‘franchise network’, and ‘franchisee’.

6 “(d) CERTAIN COLLECTIVELY BARGAINED PLANS.—

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

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

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

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

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

19 “(A) the plan is a multiemployer plan; or

20 “(B) the plan is in existence on April 1,
21 2004, and would be described in section
22 3(40)(A)(i) but solely for the failure to meet
23 the requirements of section 3(40)(C)(ii).

24 “(3) CONSTRUCTION.—A group health plan de-
25 scribed in paragraph (2) shall only be treated as an

1 association health plan under this part if the spon-
2 sor of the plan applies for, and obtains, certification
3 of the plan as an association health plan under this
4 part.

5 **“SEC. 804. PARTICIPATION AND COVERAGE REQUIRE-**
6 **MENTS.**

7 “(a) COVERED EMPLOYERS AND INDIVIDUALS.—The
8 requirements of this subsection are met with respect to
9 an association health plan if, under the terms of the
10 plan—

11 “(1) each participating employer must be—

12 “(A) a member of the sponsor,

13 “(B) the sponsor, or

14 “(C) an affiliated member of the sponsor
15 with respect to which the requirements of sub-
16 section (b) are met,

17 except that, in the case of a sponsor which is a pro-
18 fessional association or other individual-based asso-
19 ciation, if at least one of the officers, directors, or
20 employees of an employer, or at least one of the in-
21 dividuals who are partners in an employer and who
22 actively participates in the business, is a member or
23 such an affiliated member of the sponsor, partici-
24 pating employers may also include such employer;
25 and

1 “(2) all individuals commencing coverage under
2 the plan after certification under this part must
3 be—

4 “(A) active or retired owners (including
5 self-employed individuals), officers, directors, or
6 employees of, or partners in, participating em-
7 ployers; or

8 “(B) the beneficiaries of individuals de-
9 scribed in subparagraph (A).

10 “(b) COVERAGE OF PREVIOUSLY UNINSURED EM-
11 PLOYEES.—In the case of an association health plan in
12 existence on the date of the enactment of the Small Busi-
13 ness Health Fairness Act of 2004, an affiliated member
14 of the sponsor of the plan may be offered coverage under
15 the plan as a participating employer only if—

16 “(1) the affiliated member was an affiliated
17 member on the date of certification under this part;
18 or

19 “(2) during the 12-month period preceding the
20 date of the offering of such coverage, the affiliated
21 member has not maintained or contributed to a
22 group health plan with respect to any of its employ-
23 ees who would otherwise be eligible to participate in
24 such association health plan.

1 “(c) INDIVIDUAL MARKET UNAFFECTED.—The re-
2 quirements of this subsection are met with respect to an
3 association health plan if, under the terms of the plan,
4 no participating employer may provide health insurance
5 coverage in the individual market for any employee not
6 covered under the plan which is similar to the coverage
7 contemporaneously provided to employees of the employer
8 under the plan, if such exclusion of the employee from cov-
9 erage under the plan is based on a health status-related
10 factor with respect to the employee and such employee
11 would, but for such exclusion on such basis, be eligible
12 for coverage under the plan.

13 “(d) PROHIBITION OF DISCRIMINATION AGAINST
14 EMPLOYERS AND EMPLOYEES ELIGIBLE TO PARTICI-
15 PATE.—The requirements of this subsection are met with
16 respect to an association health plan if—

17 “(1) under the terms of the plan, all employers
18 meeting the preceding requirements of this section
19 are eligible to qualify as participating employers for
20 all geographically available coverage options, unless,
21 in the case of any such employer, participation or
22 contribution requirements of the type referred to in
23 section 2711 of the Public Health Service Act are
24 not met;

1 “(2) upon request, any employer eligible to par-
2 ticipate is furnished information regarding all cov-
3 erage options available under the plan; and

4 “(3) the applicable requirements of sections
5 701, 702, and 703 are met with respect to the plan.

6 **“SEC. 805. OTHER REQUIREMENTS RELATING TO PLAN**
7 **DOCUMENTS, CONTRIBUTION RATES, AND**
8 **BENEFIT OPTIONS.**

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

12 “(1) CONTENTS OF GOVERNING INSTRU-
13 MENTS.—The instruments governing the plan in-
14 clude a written instrument, meeting the require-
15 ments of an instrument required under section
16 402(a)(1), which—

17 “(A) provides that the board of trustees
18 serves as the named fiduciary required for plans
19 under section 402(a)(1) and serves in the ca-
20 pacity of a plan administrator (referred to in
21 section 3(16)(A));

22 “(B) provides that the sponsor of the plan
23 is to serve as plan sponsor (referred to in sec-
24 tion 3(16)(B)); and

1 “(C) incorporates the requirements of sec-
2 tion 806.

3 “(2) CONTRIBUTION RATES MUST BE NON-
4 DISCRIMINATORY.—

5 “(A) The contribution rates for any par-
6 ticipating small employer do not vary on the
7 basis of any health status-related factor in rela-
8 tion to employees of such employer or their
9 beneficiaries and do not vary on the basis of the
10 type of business or industry in which such em-
11 ployer is engaged.

12 “(B) Nothing in this title or any other pro-
13 vision of law shall be construed to preclude an
14 association health plan, or a health insurance
15 issuer offering health insurance coverage in
16 connection with an association health plan,
17 from—

18 “(i) setting contribution rates based
19 on the claims experience of the plan; or

20 “(ii) varying contribution rates for
21 small employers in a State to the extent
22 that such rates could vary using the same
23 methodology employed in such State for
24 regulating premium rates in the small
25 group market with respect to health insur-

1 ance coverage offered in connection with
2 bona fide associations (within the meaning
3 of section 2791(d)(3) of the Public Health
4 Service Act),
5 subject to the requirements of section 702(b)
6 relating to contribution rates.

7 “(3) FLOOR FOR NUMBER OF COVERED INDI-
8 VIDUALS WITH RESPECT TO CERTAIN PLANS.—If
9 any benefit option under the plan does not consist
10 of health insurance coverage, the plan has as of the
11 beginning of the plan year not fewer than 1,000 par-
12 ticipants and beneficiaries.

13 “(4) MARKETING REQUIREMENTS.—

14 “(A) IN GENERAL.—If a benefit option
15 which consists of health insurance coverage is
16 offered under the plan, State-licensed insurance
17 agents shall be used to distribute to small em-
18 ployers coverage which does not consist of
19 health insurance coverage in a manner com-
20 parable to the manner in which such agents are
21 used to distribute health insurance coverage.

22 “(B) STATE-LICENSED INSURANCE
23 AGENTS.—For purposes of subparagraph (A),
24 the term ‘State-licensed insurance agents’
25 means one or more agents who are licensed in

1 a State and are subject to the laws of such
2 State relating to licensure, qualification, test-
3 ing, examination, and continuing education of
4 persons authorized to offer, sell, or solicit
5 health insurance coverage in such State.

6 “(5) REGULATORY REQUIREMENTS.—Such
7 other requirements as the applicable authority deter-
8 mines are necessary to carry out the purposes of this
9 part, which shall be prescribed by the applicable au-
10 thority by regulation through negotiated rulemaking.

11 “(b) ABILITY OF ASSOCIATION HEALTH PLANS TO
12 DESIGN BENEFIT OPTIONS.—Subject to section 514(d),
13 nothing in this part or any provision of State law (as de-
14 fined in section 514(e)(1)) shall be construed to preclude
15 an association health plan, or a health insurance issuer
16 offering health insurance coverage in connection with an
17 association health plan, from exercising its sole discretion
18 in selecting the specific items and services consisting of
19 medical care to be included as benefits under such plan
20 or coverage, except (subject to section 514) in the case
21 of any law to the extent that it (1) prohibits an exclusion
22 of a specific disease from such coverage, or (2) is not pre-
23 empted under section 731(a)(1) with respect to matters
24 governed by section 711 or 712.

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

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

7 “(1) the benefits under the plan consist solely
8 of health insurance coverage; or

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

12 “(A) establishes and maintains reserves
13 with respect to such additional benefit options,
14 in amounts recommended by the qualified actu-
15 ary, consisting of—

16 “(i) a reserve sufficient for unearned
17 contributions;

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

24 “(iii) a reserve sufficient for any other
25 obligations of the plan; and

1 “(iv) a reserve sufficient for a margin
2 of error and other fluctuations, taking into
3 account the specific circumstances of the
4 plan; and

5 “(B) establishes and maintains aggregate
6 and specific excess/stop loss insurance and sol-
7 vency indemnification, with respect to such ad-
8 ditional benefit options for which risk of loss
9 has not yet been transferred, as follows:

10 “(i) The plan shall secure aggregate
11 excess/stop loss insurance for the plan
12 with an attachment point which is not
13 greater than 125 percent of expected gross
14 annual claims. The applicable authority
15 may by regulation, through negotiated
16 rulemaking, provide for upward adjust-
17 ments in the amount of such percentage in
18 specified circumstances in which the plan
19 specifically provides for and maintains re-
20 serves in excess of the amounts required
21 under subparagraph (A).

22 “(ii) The plan shall secure specific ex-
23 cess/stop loss insurance for the plan with
24 an attachment point which is at least equal
25 to an amount recommended by the plan’s

1 qualified actuary. The applicable authority
2 may by regulation, through negotiated
3 rulemaking, provide for adjustments in the
4 amount of such insurance in specified cir-
5 cumstances in which the plan specifically
6 provides for and maintains reserves in ex-
7 cess of the amounts required under sub-
8 paragraph (A).

9 “(iii) The plan shall secure indem-
10 nification insurance for any claims which
11 the plan is unable to satisfy by reason of
12 a plan termination.

13 Any regulations prescribed by the applicable authority
14 pursuant to clause (i) or (ii) of subparagraph (B) may
15 allow for such adjustments in the required levels of excess/
16 stop loss insurance as the qualified actuary may rec-
17 ommend, taking into account the specific circumstances
18 of the plan.

19 “(b) MINIMUM SURPLUS IN ADDITION TO CLAIMS
20 RESERVES.—In the case of any association health plan de-
21 scribed in subsection (a)(2), the requirements of this sub-
22 section are met if the plan establishes and maintains sur-
23 plus in an amount at least equal to—

24 “(1) \$500,000, or

1 “(2) such greater amount (but not greater than
2 \$2,000,000) as may be set forth in regulations pre-
3 scribed by the applicable authority through nego-
4 tiated rulemaking, based on the level of aggregate
5 and specific excess/stop loss insurance provided with
6 respect to such plan.

7 “(c) ADDITIONAL REQUIREMENTS.—In the case of
8 any association health plan described in subsection (a)(2),
9 the applicable authority may provide such additional re-
10 quirements relating to reserves and excess/stop loss insur-
11 ance as the applicable authority considers appropriate.
12 Such requirements may be provided by regulation, through
13 negotiated rulemaking, with respect to any such plan or
14 any class of such plans.

15 “(d) ADJUSTMENTS FOR EXCESS/STOP LOSS INSUR-
16 ANCE.—The applicable authority may provide for adjust-
17 ments to the levels of reserves otherwise required under
18 subsections (a) and (b) with respect to any plan or class
19 of plans to take into account excess/stop loss insurance
20 provided with respect to such plan or plans.

21 “(e) ALTERNATIVE MEANS OF COMPLIANCE.—The
22 applicable authority may permit an association health plan
23 described in subsection (a)(2) to substitute, for all or part
24 of the requirements of this section (except subsection
25 (a)(2)(B)(iii)), such security, guarantee, hold-harmless ar-

1 rangement, or other financial arrangement as the applica-
2 ble authority determines to be adequate to enable the plan
3 to fully meet all its financial obligations on a timely basis
4 and is otherwise no less protective of the interests of par-
5 ticipants and beneficiaries than the requirements for
6 which it is substituted. The applicable authority may take
7 into account, for purposes of this subsection, evidence pro-
8 vided by the plan or sponsor which demonstrates an as-
9 sumption of liability with respect to the plan. Such evi-
10 dence may be in the form of a contract of indemnification,
11 lien, bonding, insurance, letter of credit, recourse under
12 applicable terms of the plan in the form of assessments
13 of participating employers, security, or other financial ar-
14 rangement.

15 “(f) MEASURES TO ENSURE CONTINUED PAYMENT
16 OF BENEFITS BY CERTAIN PLANS IN DISTRESS.—

17 “(1) PAYMENTS BY CERTAIN PLANS TO ASSO-
18 CIATION HEALTH PLAN FUND.—

19 “(A) IN GENERAL.—In the case of an as-
20 sociation health plan described in subsection
21 (a)(2), the requirements of this subsection are
22 met if the plan makes payments into the Asso-
23 ciation Health Plan Fund under this subpara-
24 graph when they are due. Such payments shall
25 consist of annual payments in the amount of

1 \$5,000, and, in addition to such annual pay-
2 ments, such supplemental payments as the Sec-
3 retary may determine to be necessary under
4 paragraph (2). Payments under this paragraph
5 are payable to the Fund at the time determined
6 by the Secretary. Initial payments are due in
7 advance of certification under this part. Pay-
8 ments shall continue to accrue until a plan's as-
9 sets are distributed pursuant to a termination
10 procedure.

11 “(B) PENALTIES FOR FAILURE TO MAKE
12 PAYMENTS.—If any payment is not made by a
13 plan when it is due, a late payment charge of
14 not more than 100 percent of the payment
15 which was not timely paid shall be payable by
16 the plan to the Fund.

17 “(C) CONTINUED DUTY OF THE SEC-
18 RETARY.—The Secretary shall not cease to
19 carry out the provisions of paragraph (2) on ac-
20 count of the failure of a plan to pay any pay-
21 ment when due.

22 “(2) PAYMENTS BY SECRETARY TO CONTINUE
23 EXCESS/STOP LOSS INSURANCE COVERAGE AND IN-
24 DEMNIFICATION INSURANCE COVERAGE FOR CER-
25 TAIN PLANS.—In any case in which the applicable

1 authority determines that there is, or that there is
2 reason to believe that there will be: (A) a failure to
3 take necessary corrective actions under section
4 809(a) with respect to an association health plan de-
5 scribed in subsection (a)(2); or (B) a termination of
6 such a plan under section 809(b) or 810(b)(8) (and,
7 if the applicable authority is not the Secretary, cer-
8 tifies such determination to the Secretary), the Sec-
9 retary shall determine the amounts necessary to
10 make payments to an insurer (designated by the
11 Secretary) to maintain in force excess/stop loss in-
12 surance coverage or indemnification insurance cov-
13 erage for such plan, if the Secretary determines that
14 there is a reasonable expectation that, without such
15 payments, claims would not be satisfied by reason
16 of termination of such coverage. The Secretary shall,
17 to the extent provided in advance in appropriation
18 Acts, pay such amounts so determined to the insurer
19 designated by the Secretary.

20 “(3) ASSOCIATION HEALTH PLAN FUND.—

21 “(A) IN GENERAL.—There is established
22 on the books of the Treasury a fund to be
23 known as the ‘Association Health Plan Fund’.
24 The Fund shall be available for making pay-
25 ments pursuant to paragraph (2). The Fund

1 shall be credited with payments received pursu-
2 ant to paragraph (1)(A), penalties received pur-
3 suant to paragraph (1)(B); and earnings on in-
4 vestments of amounts of the Fund under sub-
5 paragraph (B).

6 “(B) INVESTMENT.—Whenever the Sec-
7 retary determines that the moneys of the fund
8 are in excess of current needs, the Secretary
9 may request the investment of such amounts as
10 the Secretary determines advisable by the Sec-
11 retary of the Treasury in obligations issued or
12 guaranteed by the United States.

13 “(g) EXCESS/STOP LOSS INSURANCE.—For pur-
14 poses of this section—

15 “(1) AGGREGATE EXCESS/STOP LOSS INSUR-
16 ANCE.—The term ‘aggregate excess/stop loss insur-
17 ance’ means, in connection with an association
18 health plan, a contract—

19 “(A) under which an insurer (meeting such
20 minimum standards as the applicable authority
21 may prescribe by regulation through negotiated
22 rulemaking) provides for payment to the plan
23 with respect to aggregate claims under the plan
24 in excess of an amount or amounts specified in
25 such contract;

1 “(B) which is guaranteed renewable; and

2 “(C) which allows for payment of pre-
3 miums by any third party on behalf of the in-
4 sured plan.

5 “(2) SPECIFIC EXCESS/STOP LOSS INSUR-
6 ANCE.—The term ‘specific excess/stop loss insur-
7 ance’ means, in connection with an association
8 health plan, a contract—

9 “(A) under which an insurer (meeting such
10 minimum standards as the applicable authority
11 may prescribe by regulation through negotiated
12 rulemaking) provides for payment to the plan
13 with respect to claims under the plan in connec-
14 tion with a covered individual in excess of an
15 amount or amounts specified in such contract
16 in connection with such covered individual;

17 “(B) which is guaranteed renewable; and

18 “(C) which allows for payment of pre-
19 miums by any third party on behalf of the in-
20 sured plan.

21 “(h) INDEMNIFICATION INSURANCE.—For purposes
22 of this section, the term ‘indemnification insurance’
23 means, in connection with an association health plan, a
24 contract—

1 “(1) under which an insurer (meeting such min-
2 imum standards as the applicable authority may pre-
3 scribe through negotiated rulemaking) provides for
4 payment to the plan with respect to claims under the
5 plan which the plan is unable to satisfy by reason
6 of a termination pursuant to section 809(b) (relating
7 to mandatory termination);

8 “(2) which is guaranteed renewable and
9 noncancellable for any reason (except as the applica-
10 ble authority may prescribe by regulation through
11 negotiated rulemaking); and

12 “(3) which allows for payment of premiums by
13 any third party on behalf of the insured plan.

14 “(i) RESERVES.—For purposes of this section, the
15 term ‘reserves’ means, in connection with an association
16 health plan, plan assets which meet the fiduciary stand-
17 ards under part 4 and such additional requirements re-
18 garding liquidity as the applicable authority may prescribe
19 through negotiated rulemaking.

20 “(j) SOLVENCY STANDARDS WORKING GROUP.—

21 “(1) IN GENERAL.—Within 90 days after the
22 date of the enactment of the Small Business Health
23 Fairness Act of 2004, the applicable authority shall
24 establish a Solvency Standards Working Group. In
25 prescribing the initial regulations under this section,

1 the applicable authority shall take into account the
2 recommendations of such Working Group.

3 “(2) MEMBERSHIP.—The Working Group shall
4 consist of not more than 15 members appointed by
5 the applicable authority. The applicable authority
6 shall include among persons invited to membership
7 on the Working Group at least one of each of the
8 following:

9 “(A) a representative of the National Asso-
10 ciation of Insurance Commissioners;

11 “(B) a representative of the American
12 Academy of Actuaries;

13 “(C) a representative of the State govern-
14 ments, or their interests;

15 “(D) a representative of existing self-in-
16 sured arrangements, or their interests;

17 “(E) a representative of associations of the
18 type referred to in section 801(b)(1), or their
19 interests; and

20 “(F) a representative of multiemployer
21 plans that are group health plans, or their in-
22 terests.

1 **“SEC. 807. REQUIREMENTS FOR APPLICATION AND RE-**
2 **LATED REQUIREMENTS.**

3 “(a) **FILING FEE.**—Under the procedure prescribed
4 pursuant to section 802(a), an association health plan
5 shall pay to the applicable authority at the time of filing
6 an application for certification under this part a filing fee
7 in the amount of \$5,000, which shall be available in the
8 case of the Secretary, to the extent provided in appropria-
9 tion Acts, for the sole purpose of administering the certifi-
10 cation procedures applicable with respect to association
11 health plans.

12 “(b) **INFORMATION TO BE INCLUDED IN APPLICA-**
13 **TION FOR CERTIFICATION.**—An application for certifi-
14 cation under this part meets the requirements of this sec-
15 tion only if it includes, in a manner and form which shall
16 be prescribed by the applicable authority through nego-
17 tiated rulemaking, at least the following information:

18 “(1) **IDENTIFYING INFORMATION.**—The names
19 and addresses of—

20 “(A) the sponsor; and

21 “(B) the members of the board of trustees
22 of the plan.

23 “(2) **STATES IN WHICH PLAN INTENDS TO DO**
24 **BUSINESS.**—The States in which participants and
25 beneficiaries under the plan are to be located and

1 the number of them expected to be located in each
2 such State.

3 “(3) BONDING REQUIREMENTS.—Evidence pro-
4 vided by the board of trustees that the bonding re-
5 quirements of section 412 will be met as of the date
6 of the application or (if later) commencement of op-
7 erations.

8 “(4) PLAN DOCUMENTS.—A copy of the docu-
9 ments governing the plan (including any bylaws and
10 trust agreements), the summary plan description,
11 and other material describing the benefits that will
12 be provided to participants and beneficiaries under
13 the plan.

14 “(5) AGREEMENTS WITH SERVICE PRO-
15 VIDERS.—A copy of any agreements between the
16 plan and contract administrators and other service
17 providers.

18 “(6) FUNDING REPORT.—In the case of asso-
19 ciation health plans providing benefits options in ad-
20 dition to health insurance coverage, a report setting
21 forth information with respect to such additional
22 benefit options determined as of a date within the
23 120-day period ending with the date of the applica-
24 tion, including the following:

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

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

23 “(C) CURRENT AND PROJECTED VALUE OF
24 ASSETS AND LIABILITIES.—A statement of ac-
25 tuarial opinion signed by a qualified actuary,

1 which sets forth the current value of the assets
2 and liabilities accumulated under the plan and
3 a projection of the assets, liabilities, income,
4 and expenses of the plan for the 12-month pe-
5 riod referred to in subparagraph (B). The in-
6 come statement shall identify separately the
7 plan’s administrative expenses and claims.

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

14 “(E) OTHER INFORMATION.—Any other
15 information as may be determined by the appli-
16 cable authority, by regulation through nego-
17 tiated rulemaking, as necessary to carry out the
18 purposes of this part.

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

1 shall be considered to be located in the State in which a
2 known address of such individual is located or in which
3 such individual is employed.

4 “(d) NOTICE OF MATERIAL CHANGES.—In the case
5 of any association health plan certified under this part,
6 descriptions of material changes in any information which
7 was required to be submitted with the application for the
8 certification under this part shall be filed in such form
9 and manner as shall be prescribed by the applicable au-
10 thority by regulation through negotiated rulemaking. The
11 applicable authority may require by regulation, through
12 negotiated rulemaking, prior notice of material changes
13 with respect to specified matters which might serve as the
14 basis for suspension or revocation of the certification.

15 “(e) REPORTING REQUIREMENTS FOR CERTAIN AS-
16 SOCIATION HEALTH PLANS.—An association health plan
17 certified under this part which provides benefit options in
18 addition to health insurance coverage for such plan year
19 shall meet the requirements of section 503B by filing an
20 annual report under such section which shall include infor-
21 mation described in subsection (b)(6) with respect to the
22 plan year and, notwithstanding section 503C(a)(1)(A),
23 shall be filed with the applicable authority not later than
24 90 days after the close of the plan year (or on such later
25 date as may be prescribed by the applicable authority).

1 The applicable authority may require by regulation
2 through negotiated rulemaking such interim reports as it
3 considers appropriate.

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

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

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

22 The opinion by the qualified actuary shall be made with
23 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 appli-
 17 cable authority.

18 Actions required under this section shall be taken in such
 19 form and manner as may be prescribed by the applicable
 20 authority by regulation through negotiated rulemaking.

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 applicable authority makes such a determination and so
8 notifies the board, the board shall immediately notify the
9 qualified actuary engaged by the plan, and such actuary
10 shall, not later than the end of the next following month,
11 make such recommendations to the board for corrective
12 action as the actuary determines necessary to ensure com-
13 pliance with section 806. Not later than 30 days after re-
14 ceiving from the actuary recommendations for corrective
15 actions, the board shall notify the applicable authority (in
16 such form and manner as the applicable authority may
17 prescribe by regulation through negotiated rulemaking) of
18 such recommendations of the actuary for corrective action,
19 together with a description of the actions (if any) that the
20 board has taken or plans to take in response to such rec-
21 ommendations. The board shall thereafter report to the
22 applicable authority, in such form and frequency as the
23 applicable authority may specify to the board, regarding
24 corrective action taken by the board until the requirements
25 of section 806 are met.

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

3 “(1) the applicable authority has been notified
4 under subsection (a) of a failure of an association
5 health plan which is or has been certified under this
6 part and is described in section 806(a)(2) to meet
7 the requirements of section 806 and has not been
8 notified by the board of trustees of the plan that
9 corrective action has restored compliance with such
10 requirements; and

11 “(2) the applicable authority determines that
12 there is a reasonable expectation that the plan will
13 continue to fail to meet the requirements of section
14 806,

15 the board of trustees of the plan shall, at the direction
16 of the applicable authority, terminate the plan and, in the
17 course of the termination, take such actions as the appli-
18 cable authority may require, including satisfying any
19 claims referred to in section 806(a)(2)(B)(iii) and recov-
20 ering for the plan any liability under subsection
21 (a)(2)(B)(iii) or (e) of section 806, as necessary to ensure
22 that the affairs of the plan will be, to the maximum extent
23 possible, wound up in a manner which will result in timely
24 provision of all benefits for which the plan is obligated.

1 **“SEC. 810. TRUSTEESHIP BY THE SECRETARY OF INSOL-**
2 **VENT ASSOCIATION HEALTH PLANS PRO-**
3 **VIDING HEALTH BENEFITS IN ADDITION TO**
4 **HEALTH INSURANCE COVERAGE.**

5 “(a) APPOINTMENT OF SECRETARY AS TRUSTEE FOR
6 INSOLVENT PLANS.—Whenever the Secretary determines
7 that an association health plan which is or has been cer-
8 tified under this part and which is described in section
9 806(a)(2) will be unable to provide benefits when due or
10 is otherwise in a financially hazardous condition, as shall
11 be defined by the Secretary by regulation through nego-
12 tiated rulemaking, the Secretary shall, upon notice to the
13 plan, apply to the appropriate United States district court
14 for appointment of the Secretary as trustee to administer
15 the plan for the duration of the insolvency. The plan may
16 appear as a party and other interested persons may inter-
17 vene in the proceedings at the discretion of the court. The
18 court shall appoint such Secretary trustee if the court de-
19 termines that the trusteeship is necessary to protect the
20 interests of the participants and beneficiaries or providers
21 of medical care or to avoid any unreasonable deterioration
22 of the financial condition of the plan. The trusteeship of
23 such Secretary shall continue until the conditions de-
24 scribed in the first sentence of this subsection are rem-
25 edied or the plan is terminated.

1 “(b) POWERS AS TRUSTEE.—The Secretary, upon
2 appointment as trustee under subsection (a), shall have
3 the power—

4 “(1) to do any act authorized by the plan, this
5 title, or other applicable provisions of law to be done
6 by the plan administrator or any trustee of the plan;

7 “(2) to require the transfer of all (or any part)
8 of the assets and records of the plan to the Sec-
9 retary as trustee;

10 “(3) to invest any assets of the plan which the
11 Secretary holds in accordance with the provisions of
12 the plan, regulations prescribed by the Secretary
13 through negotiated rulemaking, and applicable provi-
14 sions of law;

15 “(4) to require the sponsor, the plan adminis-
16 trator, any participating employer, and any employee
17 organization representing plan participants to fur-
18 nish any information with respect to the plan which
19 the Secretary as trustee may reasonably need in
20 order to administer the plan;

21 “(5) to collect for the plan any amounts due the
22 plan and to recover reasonable expenses of the trust-
23 eeship;

1 “(6) to commence, prosecute, or defend on be-
2 half of the plan any suit or proceeding involving the
3 plan;

4 “(7) to issue, publish, or file such notices, state-
5 ments, and reports as may be required by the Sec-
6 retary by regulation through negotiated rulemaking
7 or required by any order of the court;

8 “(8) to terminate the plan (or provide for its
9 termination in accordance with section 809(b)) and
10 liquidate the plan assets, to restore the plan to the
11 responsibility of the sponsor, or to continue the
12 trusteeship;

13 “(9) to provide for the enrollment of plan par-
14 ticipants and beneficiaries under appropriate cov-
15 erage options; and

16 “(10) to do such other acts as may be nec-
17 essary to comply with this title or any order of the
18 court and to protect the interests of plan partici-
19 pants and beneficiaries and providers of medical
20 care.

21 “(c) NOTICE OF APPOINTMENT.—As soon as prac-
22 ticable after the Secretary’s appointment as trustee, the
23 Secretary shall give notice of such appointment to—

24 “(1) the sponsor and plan administrator;

25 “(2) each participant;

1 “(3) each participating employer; and

2 “(4) if applicable, each employee organization
3 which, for purposes of collective bargaining, rep-
4 resents plan participants.

5 “(d) ADDITIONAL DUTIES.—Except to the extent in-
6 consistent with the provisions of this title, or as may be
7 otherwise ordered by the court, the Secretary, upon ap-
8 pointment as trustee under this section, shall be subject
9 to the same duties as those of a trustee under section 704
10 of title 11, United States Code, and shall have the duties
11 of a fiduciary for purposes of this title.

12 “(e) OTHER PROCEEDINGS.—An application by the
13 Secretary under this subsection may be filed notwith-
14 standing the pendency in the same or any other court of
15 any bankruptcy, mortgage foreclosure, or equity receiver-
16 ship proceeding, or any proceeding to reorganize, conserve,
17 or liquidate such plan or its property, or any proceeding
18 to enforce a lien against property of the plan.

19 “(f) JURISDICTION OF COURT.—

20 “(1) IN GENERAL.—Upon the filing of an appli-
21 cation for the appointment as trustee or the issuance
22 of a decree under this section, the court to which the
23 application is made shall have exclusive jurisdiction
24 of the plan involved and its property wherever lo-
25 cated with the powers, to the extent consistent with

1 the purposes of this section, of a court of the United
2 States having jurisdiction over cases under chapter
3 11 of title 11, United States Code. Pending an adju-
4 dication under this section such court shall stay, and
5 upon appointment by it of the Secretary as trustee,
6 such court shall continue the stay of, any pending
7 mortgage foreclosure, equity receivership, or other
8 proceeding to reorganize, conserve, or liquidate the
9 plan, the sponsor, or property of such plan or spon-
10 sor, and any other suit against any receiver, conser-
11 vator, or trustee of the plan, the sponsor, or prop-
12 erty of the plan or sponsor. Pending such adjudica-
13 tion and upon the appointment by it of the Sec-
14 retary as trustee, the court may stay any proceeding
15 to enforce a lien against property of the plan or the
16 sponsor or any other suit against the plan or the
17 sponsor.

18 “(2) VENUE.—An action under this section
19 may be brought in the judicial district where the
20 sponsor or the plan administrator resides or does
21 business or where any asset of the plan is situated.
22 A district court in which such action is brought may
23 issue process with respect to such action in any
24 other judicial district.

1 “(g) PERSONNEL.—In accordance with regulations
2 which shall be prescribed by the Secretary through nego-
3 tiated rulemaking, the Secretary shall appoint, retain, and
4 compensate accountants, actuaries, and other professional
5 service personnel as may be necessary in connection with
6 the Secretary’s service as trustee under this section.

7 **“SEC. 811. STATE ASSESSMENT AUTHORITY.**

8 “(a) IN GENERAL.—Notwithstanding section 514, a
9 State may impose by law a contribution tax on an associa-
10 tion health plan described in section 806(a)(2), if the plan
11 commenced operations in such State after the date of the
12 enactment of the Small Business Health Fairness Act of
13 2004.

14 “(b) CONTRIBUTION TAX.—For purposes of this sec-
15 tion, the term ‘contribution tax’ imposed by a State on
16 an association health plan means any tax imposed by such
17 State if—

18 “(1) such tax is computed by applying a rate to
19 the amount of premiums or contributions, with re-
20 spect to individuals covered under the plan who are
21 residents of such State, which are received by the
22 plan from participating employers located in such
23 State or from such individuals;

24 “(2) the rate of such tax does not exceed the
25 rate of any tax imposed by such State on premiums

1 or contributions received by insurers or health main-
2 tenance organizations for health insurance coverage
3 offered in such State in connection with a group
4 health plan;

5 “(3) such tax is otherwise nondiscriminatory;
6 and

7 “(4) the amount of any such tax assessed on
8 the plan is reduced by the amount of any tax or as-
9 sessment otherwise imposed by the State on pre-
10 miums, contributions, or both received by insurers or
11 health maintenance organizations for health insur-
12 ance coverage, aggregate excess/stop loss insurance
13 (as defined in section 806(g)(1)), specific excess/
14 stop loss insurance (as defined in section 806(g)(2)),
15 other insurance related to the provision of medical
16 care under the plan, or any combination thereof pro-
17 vided by such insurers or health maintenance organi-
18 zations in such State in connection with such plan.

19 **“SEC. 812. DEFINITIONS AND RULES OF CONSTRUCTION.**

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

21 “(1) GROUP HEALTH PLAN.—The term ‘group
22 health plan’ has the meaning provided in section
23 733(a)(1) (after applying subsection (b) of this sec-
24 tion).

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

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

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

9 “(5) APPLICABLE AUTHORITY.—

10 “(A) IN GENERAL.—Except as provided in
11 subparagraph (B), the term ‘applicable author-
12 ity’ means, in connection with an association
13 health plan—

14 “(i) the State recognized pursuant to
15 subsection (c) of section 506 as the State
16 to which authority has been delegated in
17 connection with such plan; or

18 “(ii) if there if no State referred to in
19 clause (i), the Secretary.

20 “(B) EXCEPTIONS.—

21 “(i) JOINT AUTHORITIES.—Where
22 such term appears in section 808(3), sec-
23 tion 807(e) (in the first instance), section
24 809(a) (in the second instance), section
25 809(a) (in the fourth instance), and sec-

1 tion 809(b)(1), such term means, in con-
2 nection with an association health plan, the
3 Secretary and the State referred to in sub-
4 paragraph (A)(i) (if any) in connection
5 with such plan.

6 “(ii) REGULATORY AUTHORITIES.—

7 Where such term appears in section 802(a)
8 (in the first instance), section 802(d), sec-
9 tion 802(e), section 803(d), section
10 805(a)(5), section 806(a)(2), section
11 806(b), section 806(c), section 806(d),
12 paragraphs (1)(A) and (2)(A) of section
13 806(g), section 806(h), section 806(i), sec-
14 tion 806(j), section 807(a) (in the second
15 instance), section 807(b), section 807(d),
16 section 807(e) (in the second instance),
17 section 808 (in the matter after paragraph
18 (3)), and section 809(a) (in the third in-
19 stance), such term means, in connection
20 with an association health plan, the Sec-
21 retary.

22 “(6) HEALTH STATUS-RELATED FACTOR.—The

23 term ‘health status-related factor’ has the meaning
24 provided in section 733(d)(2).

25 “(7) INDIVIDUAL MARKET.—

1 “(A) IN GENERAL.—The term ‘individual
2 market’ means the market for health insurance
3 coverage offered to individuals other than in
4 connection with a group health plan.

5 “(B) TREATMENT OF VERY SMALL
6 GROUPS.—

7 “(i) IN GENERAL.—Subject to clause
8 (ii), such term includes coverage offered in
9 connection with a group health plan that
10 has fewer than 2 participants as current
11 employees or participants described in sec-
12 tion 732(d)(3) on the first day of the plan
13 year.

14 “(ii) STATE EXCEPTION.—Clause (i)
15 shall not apply in the case of health insur-
16 ance coverage offered in a State if such
17 State regulates the coverage described in
18 such clause in the same manner and to the
19 same extent as coverage in the small group
20 market (as defined in section 2791(e)(5) of
21 the Public Health Service Act) is regulated
22 by such State.

23 “(8) PARTICIPATING EMPLOYER.—The term
24 ‘participating employer’ means, in connection with
25 an association health plan, any employer, if any indi-

1 vidual who is an employee of such employer, a part-
2 ner in such employer, or a self-employed individual
3 who is such employer (or any dependent, as defined
4 under the terms of the plan, of such individual) is
5 or was covered under such plan in connection with
6 the status of such individual as such an employee,
7 partner, or self-employed individual in relation to the
8 plan.

9 “(9) APPLICABLE STATE AUTHORITY.—The
10 term ‘applicable State authority’ means, with respect
11 to a health insurance issuer in a State, the State in-
12 surance commissioner or official or officials des-
13 ignated by the State to enforce the requirements of
14 title XXVII of the Public Health Service Act for the
15 State involved with respect to such issuer.

16 “(10) QUALIFIED ACTUARY.—The term ‘quali-
17 fied actuary’ means an individual who is a member
18 of the American Academy of Actuaries or meets
19 such reasonable standards and qualifications as the
20 Secretary may provide by regulation through nego-
21 tiated rulemaking.

22 “(11) AFFILIATED MEMBER.—The term ‘affili-
23 ated member’ means, in connection with a sponsor—

1 “(A) a person who is otherwise eligible to
2 be a member of the sponsor but who elects an
3 affiliated status with the sponsor,

4 “(B) in the case of a sponsor with mem-
5 bers which consist of associations, a person who
6 is a member of any such association and elects
7 an affiliated status with the sponsor, or

8 “(C) in the case of an association health
9 plan in existence on the date of the enactment
10 of the Small Business Health Fairness Act of
11 2004, a person eligible to be a member of the
12 sponsor or one of its member associations.

13 “(12) LARGE EMPLOYER.—The term ‘large em-
14 ployer’ means, in connection with a group health
15 plan with respect to a plan year, an employer who
16 employed an average of at least 51 employees on
17 business days during the preceding calendar year
18 and who employs at least 2 employees on the first
19 day of the plan year.

20 “(13) SMALL EMPLOYER.—The term ‘small em-
21 ployer’ means, in connection with a group health
22 plan with respect to a plan year, an employer who
23 is not a large employer.

24 “(b) RULES OF CONSTRUCTION.—

1 “(1) EMPLOYERS AND EMPLOYEES.—For pur-
2 poses of determining whether a plan, fund, or pro-
3 gram is an employee welfare benefit plan which is an
4 association health plan, and for purposes of applying
5 this title in connection with such plan, fund, or pro-
6 gram so determined to be such an employee welfare
7 benefit plan—

8 “(A) in the case of a partnership, the term
9 ‘employer’ (as defined in section 3(5)) includes
10 the partnership in relation to the partners, and
11 the term ‘employee’ (as defined in section 3(6))
12 includes any partner in relation to the partner-
13 ship; and

14 “(B) in the case of a self-employed indi-
15 vidual, the term ‘employer’ (as defined in sec-
16 tion 3(5)) and the term ‘employee’ (as defined
17 in section 3(6)) shall include such individual.

18 “(2) PLANS, FUNDS, AND PROGRAMS TREATED
19 AS EMPLOYEE WELFARE BENEFIT PLANS.—In the
20 case of any plan, fund, or program which was estab-
21 lished or is maintained for the purpose of providing
22 medical care (through the purchase of insurance or
23 otherwise) for employees (or their dependents) cov-
24 ered thereunder and which demonstrates to the Sec-
25 retary that all requirements for certification under

1 this part would be met with respect to such plan,
2 fund, or program if such plan, fund, or program
3 were a group health plan, such plan, fund, or pro-
4 gram shall be treated for purposes of this title as an
5 employee welfare benefit plan on and after the date
6 of such demonstration.”.

7 (b) CONFORMING AMENDMENTS TO PREEMPTION
8 RULES.—

9 (1) Section 514(b)(6) of such Act (29 U.S.C.
10 1144(b)(6)) is amended by adding at the end the
11 following new subparagraph:

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

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

18 (A) in subsection (b)(4), by striking “Sub-
19 section (a)” and inserting “Subsections (a) and
20 (e)”;

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

1 inserting “subsection (a) of this section or sub-
2 section (a)(2)(B) or (b) of section 805”;

3 (C) by redesignating subsection (d) as sub-
4 section (e); and

5 (D) by inserting after subsection (c) the
6 following new subsection:

7 “(d)(1) Except as provided in subsection (b)(4), the
8 provisions of this title shall supersede any and all State
9 laws insofar as they may now or hereafter preclude, or
10 have the effect of precluding, a health insurance issuer
11 from offering health insurance coverage in connection with
12 an association health plan which is certified under part
13 8.

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

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

1 such other employers are participating employers in
2 such plan.

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

15 “(3) For additional provisions relating to association
16 health plans, see subsections (a)(2)(B) and (b) of section
17 805.

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

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

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

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

8 (C) by adding at the end the following new
9 clause:

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

16 (4) Section 514(e) of such Act (as redesignated
17 by paragraph (2)(C)) is amended—

18 (A) by striking “Nothing” and inserting
19 “(1) Except as provided in paragraph (2), noth-
20 ing”; and

21 (B) by adding at the end the following new
22 paragraph:

23 “(2) Nothing in any other provision of law enacted
24 on or after the date of the enactment of the Small Busi-
25 ness Health Fairness Act of 2004 shall be construed to

1 alter, amend, modify, invalidate, impair, or supersede any
2 provision of this title, except by specific cross-reference to
3 the affected section.”.

4 (c) PLAN SPONSOR.—Section 3(16)(B) of such Act
5 (29 U.S.C. 102(16)(B)) is amended by adding at the end
6 the following new sentence: “Such term also includes a
7 person serving as the sponsor of an association health plan
8 under part 8.”.

9 (d) DISCLOSURE OF SOLVENCY PROTECTIONS RE-
10 LATED TO SELF-INSURED AND FULLY INSURED OPTIONS
11 UNDER ASSOCIATION HEALTH PLANS.—Section 102(b)
12 of such Act (29 U.S.C. 102(b)) is amended by adding at
13 the end the following: “An association health plan shall
14 include in its summary plan description, in connection
15 with each benefit option, a description of the form of sol-
16 vency or guarantee fund protection secured pursuant to
17 this Act or applicable State law, if any.”.

18 (e) SAVINGS CLAUSE.—Section 731(c) of such Act is
19 amended by inserting “or part 8” after “this part”.

20 (f) REPORT TO THE CONGRESS REGARDING CERTIFI-
21 CATION OF SELF-INSURED ASSOCIATION HEALTH
22 PLANS.—Not later than January 1, 2009, the Secretary
23 of Labor shall report to the Committee on Education and
24 the Workforce of the House of Representatives and the
25 Committee on Health, Education, Labor, and Pensions of

1 the Senate the effect association health plans have had,
 2 if any, on reducing the number of uninsured individuals.

3 (g) CLERICAL AMENDMENT.—The table of contents
 4 in section 1 of the Employee Retirement Income Security
 5 Act of 1974 is amended by inserting after the item relat-
 6 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 pro-
viding 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. Trusteeship by the Secretary of insolvent association health plans
providing health benefits in addition to health insurance cov-
erage.
- “Sec. 811. State assessment authority.
- “Sec. 812. Definitions and rules of construction.”.

7 **SEC. 203. CLARIFICATION OF TREATMENT OF SINGLE EM-**
 8 **PLOYER ARRANGEMENTS.**

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

12 (1) in clause (i), by inserting “for any plan year
 13 of any such plan, or any fiscal year of any such
 14 other arrangement;” after “single employer”, and by
 15 inserting “during such year or at any time during
 16 the preceding 1-year period” after “control group”;

17 (2) in clause (iii)—

1 (A) by striking “common control shall not
2 be based on an interest of less than 25 percent”
3 and inserting “an interest of greater than 25
4 percent may not be required as the minimum
5 interest necessary for common control”; and

6 (B) by striking “similar to” and inserting
7 “consistent and coextensive with”;

8 (3) by redesignating clauses (iv) and (v) as
9 clauses (v) and (vi), respectively; and

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

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

1 **SEC. 204. CLARIFICATION OF TREATMENT OF CERTAIN**
2 **COLLECTIVELY BARGAINED ARRANGE-**
3 **MENTS.**

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

7 “(i)(I) under or pursuant to one or more collec-
8 tive bargaining agreements which are reached pursu-
9 ant to collective bargaining described in section 8(d)
10 of the National Labor Relations Act (29 U.S.C.
11 158(d)) or paragraph Fourth of section 2 of the
12 Railway Labor Act (45 U.S.C. 152, paragraph
13 Fourth) or which are reached pursuant to labor-
14 management negotiations under similar provisions of
15 State public employee relations laws, and (II) in ac-
16 cordance with subparagraphs (C), (D), and (E);”.

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

20 “(C) For purposes of subparagraph (A)(i)(II), a plan
21 or other arrangement shall be treated as established or
22 maintained in accordance with this subparagraph only if
23 the following requirements are met:

24 “(i) The plan or other arrangement, and the
25 employee organization or any other entity sponsoring
26 the plan or other arrangement, do not—

1 “(I) utilize the services of any licensed in-
2 surance agent or broker for soliciting or enroll-
3 ing employers or individuals as participating
4 employers or covered individuals under the plan
5 or other arrangement; or

6 “(II) pay any type of compensation to a
7 person, other than a full time employee of the
8 employee organization (or a member of the or-
9 ganization to the extent provided in regulations
10 prescribed by the Secretary through negotiated
11 rulemaking), that is related either to the volume
12 or number of employers or individuals solicited
13 or enrolled as participating employers or cov-
14 ered individuals under the plan or other ar-
15 rangement, or to the dollar amount or size of
16 the contributions made by participating employ-
17 ers or covered individuals to the plan or other
18 arrangement;

19 except to the extent that the services used by the
20 plan, arrangement, organization, or other entity con-
21 sist solely of preparation of documents necessary for
22 compliance with the reporting and disclosure re-
23 quirements of part 1 or administrative, investment,
24 or consulting services unrelated to solicitation or en-
25 rollment of covered individuals.

1 “(ii) As of the end of the preceding plan year,
2 the number of covered individuals under the plan or
3 other arrangement who are neither—

4 “(I) employed within a bargaining unit
5 covered by any of the collective bargaining
6 agreements with a participating employer (nor
7 covered on the basis of an individual’s employ-
8 ment in such a bargaining unit); nor

9 “(II) present employees (or former employ-
10 ees who were covered while employed) of the
11 sponsoring employee organization, of an em-
12 ployer who is or was a party to any of the col-
13 lective bargaining agreements, or of the plan or
14 other arrangement or a related plan or arrange-
15 ment (nor covered on the basis of such present
16 or former employment),

17 does not exceed 15 percent of the total number of
18 individuals who are covered under the plan or ar-
19 rangement and who are present or former employees
20 who are or were covered under the plan or arrange-
21 ment pursuant to a collective bargaining agreement
22 with a participating employer. The requirements of
23 the preceding provisions of this clause shall be treat-
24 ed as satisfied if, as of the end of the preceding plan
25 year, such covered individuals are comprised solely

1 of individuals who were covered individuals under
2 the plan or other arrangement as of the date of the
3 enactment of the Small Business Health Fairness
4 Act of 2004 and, as of the end of the preceding plan
5 year, the number of such covered individuals does
6 not exceed 25 percent of the total number of present
7 and former employees enrolled under the plan or
8 other arrangement.

9 “(iii) The employee organization or other entity
10 sponsoring the plan or other arrangement certifies
11 to the Secretary each year, in a form and manner
12 which shall be prescribed by the Secretary through
13 negotiated rulemaking that the plan or other ar-
14 rangement meets the requirements of clauses (i) and
15 (ii).

16 “(D) For purposes of subparagraph (A)(i)(II), a plan
17 or arrangement shall be treated as established or main-
18 tained in accordance with this subparagraph only if—

19 “(i) all of the benefits provided under the plan
20 or arrangement consist of health insurance coverage;
21 or

22 “(ii)(I) the plan or arrangement is a multiem-
23 ployer plan; and

24 “(II) the requirements of clause (B) of the pro-
25 viso to clause (5) of section 302(c) of the Labor

1 Management Relations Act, 1947 (29 U.S.C.
2 186(c)) are met with respect to such plan or other
3 arrangement.

4 “(E) For purposes of subparagraph (A)(i)(II), a plan
5 or arrangement shall be treated as established or main-
6 tained in accordance with this subparagraph only if—

7 “(i) the plan or arrangement is in effect as of
8 the date of the enactment of the Small Business
9 Health Fairness Act of 2004; or

10 “(ii) the employee organization or other entity
11 sponsoring the plan or arrangement—

12 “(I) has been in existence for at least 3
13 years; or

14 “(II) demonstrates to the satisfaction of
15 the Secretary that the requirements of subpara-
16 graphs (C) and (D) are met with respect to the
17 plan or other arrangement.”.

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

1 **SEC. 205. ENFORCEMENT PROVISIONS RELATING TO ASSO-**
2 **CIATION HEALTH PLANS.**

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

7 (1) by inserting “(a)” after “SEC. 501.”; and
8 (2) by adding at the end the following new sub-
9 section:

10 “(b) Any person who willfully falsely represents, to
11 any employee, any employee’s beneficiary, any employer,
12 the Secretary, or any State, a plan or other arrangement
13 established or maintained for the purpose of offering or
14 providing any benefit described in section 3(1) to employ-
15 ees or their beneficiaries as—

16 “(1) being an association health plan which has
17 been certified under part 8;

18 “(2) having been established or maintained
19 under or pursuant to one or more collective bar-
20 gaining agreements which are reached pursuant to
21 collective bargaining described in section 8(d) of the
22 National Labor Relations Act (29 U.S.C. 158(d)) or
23 paragraph Fourth of section 2 of the Railway Labor
24 Act (45 U.S.C. 152, paragraph Fourth) or which are
25 reached pursuant to labor-management negotiations

1 under similar provisions of State public employee re-
2 lations laws; or

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

6 shall, upon conviction, be imprisoned not more than 5
7 years, be fined under title 18, United States Code, or
8 both.”.

9 (b) CEASE ACTIVITIES ORDERS.—Section 502 of
10 such Act (29 U.S.C. 1132), as amended by sections 141
11 and 143, is further amended by adding at the end the
12 following new subsection:

13 “(p) ASSOCIATION HEALTH PLAN CEASE AND DE-
14 SIST ORDERS.—

15 “(1) IN GENERAL.—Subject to paragraph (2),
16 upon application by the Secretary showing the oper-
17 ation, promotion, or marketing of an association
18 health plan (or similar arrangement providing bene-
19 fits consisting of medical care (as defined in section
20 733(a)(2))) that—

21 “(A) is not certified under part 8, is sub-
22 ject under section 514(b)(6) to the insurance
23 laws of any State in which the plan or arrange-
24 ment offers or provides benefits, and is not li-

1 censed, registered, or otherwise approved under
2 the insurance laws of such State; or

3 “(B) is an association health plan certified
4 under part 8 and is not operating in accordance
5 with the requirements under part 8 for such
6 certification,

7 a district court of the United States shall enter an
8 order requiring that the plan or arrangement cease
9 activities.

10 “(2) EXCEPTION.—Paragraph (1) shall not
11 apply in the case of an association health plan or
12 other arrangement if the plan or arrangement shows
13 that—

14 “(A) all benefits under it referred to in
15 paragraph (1) consist of health insurance cov-
16 erage; and

17 “(B) with respect to each State in which
18 the plan or arrangement offers or provides ben-
19 efits, the plan or arrangement is operating in
20 accordance with applicable State laws that are
21 not superseded under section 514.

22 “(3) ADDITIONAL EQUITABLE RELIEF.—The
23 court may grant such additional equitable relief, in-
24 cluding any relief available under this title, as it
25 deems necessary to protect the interests of the pub-

1 “(A) the Secretary’s authority under sec-
2 tions 502 and 504 to enforce the requirements
3 for certification under part 8; and

4 “(B) the Secretary’s authority to certify
5 association health plans under part 8 in accord-
6 ance with regulations of the Secretary applica-
7 ble to certification under part 8.

8 “(2) RECOGNITION OF PRIMARY DOMICILE
9 STATE.—In carrying out paragraph (1), the Sec-
10 retary shall ensure that only one State will be recog-
11 nized, with respect to any particular association
12 health plan, as the State to which consultation
13 is required. In carrying out this paragraph, the Sec-
14 retary shall take into account the places of residence
15 of the participants and beneficiaries under the plan
16 and the State in which the trust is maintained.”.

17 **SEC. 207. EFFECTIVE DATE AND TRANSITIONAL AND**
18 **OTHER RULES.**

19 (a) EFFECTIVE DATE.—The amendments made by
20 sections 202, 205, and 206 shall take effect one year from
21 the date of the enactment. The amendments made by sec-
22 tions 203 and 204 shall take effect on the date of the
23 enactment of this Act. The Secretary of Labor shall first
24 issue all regulations necessary to carry out the amend-
25 ments made by this subtitle within one year from the date

1 of the enactment. Such regulations shall be issued through
2 negotiated rulemaking.

3 (b) EXCEPTION.—Section 801(a)(2) of the Employee
4 Retirement Income Security Act of 1974 (added by section
5 202) does not apply in connection with an association
6 health plan (certified under part 8 of subtitle B of title
7 I of such Act) existing on the date of the enactment of
8 this Act, if no benefits provided thereunder as of the date
9 of the enactment of this Act consist of health insurance
10 coverage (as defined in section 733(b)(1) of such Act).

11 (c) TREATMENT OF CERTAIN EXISTING HEALTH
12 BENEFITS PROGRAMS.—

13 (1) IN GENERAL.—In any case in which, as of
14 the date of the enactment of this Act, an arrange-
15 ment is maintained in a State for the purpose of
16 providing benefits consisting of medical care for the
17 employees and beneficiaries of its participating em-
18 ployers, at least 200 participating employers make
19 contributions to such arrangement, such arrange-
20 ment has been in existence for at least 10 years, and
21 such arrangement is licensed under the laws of one
22 or more States to provide such benefits to its par-
23 ticipating employers, upon the filing with the appli-
24 cable authority (as defined in section 812(a)(5) of
25 the Employee Retirement Income Security Act of

1 1974 (as amended by this subtitle)) by the arrange-
2 ment of an application for certification of the ar-
3 rangement under part 8 of subtitle B of title I of
4 such Act—

5 (A) such arrangement shall be deemed to
6 be a group health plan for purposes of title I
7 of such Act;

8 (B) the requirements of sections 801(a)(1)
9 and 803(a)(1) of the Employee Retirement In-
10 come Security Act of 1974 shall be deemed met
11 with respect to such arrangement;

12 (C) the requirements of section 803(b) of
13 such Act shall be deemed met, if the arrange-
14 ment is operated by a board of directors
15 which—

16 (i) is elected by the participating em-
17 ployers, with each employer having one
18 vote; and

19 (ii) has complete fiscal control over
20 the arrangement and which is responsible
21 for all operations of the arrangement;

22 (D) the requirements of section 804(a) of
23 such Act shall be deemed met with respect to
24 such arrangement; and

1 (E) the arrangement may be certified by
2 any applicable authority with respect to its op-
3 erations in any State only if it operates in such
4 State on the date of certification.

5 The provisions of this subsection shall cease to apply
6 with respect to any such arrangement at such time
7 after the date of the enactment of this Act as the
8 applicable requirements of this subsection are not
9 met with respect to such arrangement.

10 (2) DEFINITIONS.—For purposes of this sub-
11 section, the terms “group health plan”, “medical
12 care”, and “participating employer” shall have the
13 meanings provided in section 812 of the Employee
14 Retirement Income Security Act of 1974, except
15 that the reference in paragraph (7) of such section
16 to an “association health plan” shall be deemed a
17 reference to an arrangement referred to in this sub-
18 section.

○