

109TH CONGRESS  
1ST SESSION

# H. R. 2073

To amend the Internal Revenue Code of 1986 to provide tax subsidies to encourage small employers to offer affordable health coverage to their employees through qualified health pooling arrangements, to encourage the establishment and operation of these arrangements, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 4, 2005

Mr. BARROW (for himself, Mr. DINGELL, Mr. RANGEL, Mr. STARK, Mr. BROWN of Ohio, Mr. WAXMAN, Ms. PELOSI, Mr. GEORGE MILLER of California, Mr. PALLONE, Mr. ACKERMAN, Mr. ALLEN, Mr. ANDREWS, Mr. BACA, Ms. BALDWIN, Mr. BERMAN, Mr. BLUMENAUER, Mr. BOUCHER, Ms. CORRINE BROWN of Florida, Mr. BUTTERFIELD, Mr. CARNAHAN, Ms. CARSON, Mr. CLEAVER, Mr. CROWLEY, Mr. CUMMINGS, Mrs. DAVIS of California, Mr. DEFazio, Ms. DEGETTE, Ms. DELAURO, Mr. DOGGETT, Mr. ENGEL, Ms. ESHOO, Mr. FARR, Mr. FORD, Mr. GONZALEZ, Mr. AL GREEN of Texas, Mr. GENE GREEN of Texas, Mr. GRIJALVA, Mr. HASTINGS of Florida, Ms. HERSETH, Mr. HIGGINS, Mr. HINCHEY, Mr. HINOJOSA, Ms. NORTON, Mr. HOLT, Mr. HONDA, Mr. HOYER, Ms. JACKSON-LEE of Texas, Mr. JEFFERSON, Mr. KILDEE, Ms. KILPATRICK of Michigan, Mr. LANGEVIN, Mr. LANTOS, Mr. LARSEN of Washington, Mr. LARSON of Connecticut, Mr. LEWIS of Georgia, Mr. LYNCH, Mrs. MALONEY, Mr. MARKEY, Mrs. MCCARTHY, Ms. MCCOLLUM of Minnesota, Mr. McDERMOTT, Mr. McGOVERN, Mr. McNULTY, Mr. MEEKS of New York, Mr. MELANCON, Mr. MENENDEZ, Mr. MICHAUD, Ms. MILLENDER-McDONALD, Mr. MURTHA, Mr. NADLER, Mr. OBERSTAR, Mr. OLVER, Mr. ORTIZ, Mr. OWENS, Mr. PASCRELL, Mr. PAYNE, Mr. REYES, Mr. ROSS, Ms. ROYBAL-ALLARD, Mr. RUPPERSBERGER, Mr. RYAN of Ohio, Mr. SALAZAR, Ms. LINDA T. SÁNCHEZ of California, Ms. SCHAKOWSKY, Mr. SCHIFF, Ms. SCHWARTZ of Pennsylvania, Mr. SCOTT of Georgia, Mr. SERRANO, Ms. SLAUGHTER, Mr. STRICKLAND, Mr. STUPAK, Mr. TIERNEY, Mr. VAN HOLLEN, Ms. WASSERMAN SCHULTZ, Mr. WEINER, and Ms. WOOLSEY) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committees on Energy and Commerce and Education and the Workforce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

# A BILL

To amend the Internal Revenue Code of 1986 to provide tax subsidies to encourage small employers to offer affordable health coverage to their employees through qualified health pooling arrangements, to encourage the establishment and operation of these arrangements, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

## 3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Small Business Health Insurance Promotion Act of  
6 2005”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Temporary tax credit for small employers offering health coverage through a qualified health pooling arrangement.
- Sec. 3. Qualified State health pooling arrangements.
- Sec. 4. Establishment of national health pooling arrangement.
- Sec. 5. Funding of pooling arrangements.
- Sec. 6. Institute of Medicine study and report.

## 9 **SEC. 2. TEMPORARY TAX CREDIT FOR SMALL EMPLOYERS**

10 **OFFERING HEALTH COVERAGE THROUGH A**  
11 **QUALIFIED HEALTH POOLING ARRANGE-**  
12 **MENT.**

13 (a) IN GENERAL.—Subpart D of part IV of sub-  
14 chapter A of chapter 1 of the Internal Revenue Code of  
15 1986 (relating to business-related credits) is amended by  
16 adding at the end the following:

1 **“SEC. 45J. SMALL BUSINESS HEALTH POOL ARRANGE-**  
2 **MENTS.**

3 “(a) GENERAL RULE.—For purposes of section 38,  
4 in the case of an eligible small employer, the health pool  
5 arrangement credit determined under this section for the  
6 taxable year is an amount equal to 50 percent of amounts  
7 paid or incurred by the employer during the taxable year  
8 as premiums for self-only or family coverage for health  
9 benefits under a qualified health pooling arrangement for  
10 employees of such employer.

11 “(b) LIMITATIONS.—

12 “(1) EMPLOYER MUST BEAR 50 PERCENT OF  
13 COST.—Expenses may be taken into account under  
14 subsection (a) only if at least 50 percent of the pre-  
15 miums under the qualified health pooling arrange-  
16 ment are paid by the employer.

17 “(2) PERIOD OF COVERAGE.—Expenses may be  
18 taken into account under subsection (a) only with  
19 respect to coverage for the 4-year period beginning  
20 on the date the employer first begins participating in  
21 a qualified health pooling arrangement.

22 “(3) EMPLOYERS OFFERING OTHER HEALTH  
23 BENEFITS.—In the case of an employer who paid or  
24 incurred any expenses for health benefits for the em-  
25 ployees of such employer during the first taxable  
26 year ending on or after the date of the enactment

1 of this section, subsection (a) shall apply to such  
2 employer only if such employer begins participating  
3 in a qualified health pooling arrangement during the  
4 2-year period beginning on the later of—

5 “(A) the date of the enactment of this sec-  
6 tion, or

7 “(B) the first date that a qualified health  
8 pooling arrangement exists which allows such  
9 employer to participate.

10 “(4) NO EMPLOYEES EXCLUDED.—Subsection  
11 (a) shall not apply to an employer for any period un-  
12 less at all times during such period coverage for  
13 health benefits under a qualified health pooling ar-  
14 rangement is available to all employees of such em-  
15 ployer under similar terms.

16 “(5) AMOUNTS PAID UNDER SALARY REDUC-  
17 TION ARRANGEMENTS.—No amount paid or incurred  
18 pursuant to a salary reduction arrangement shall be  
19 taken into account under subsection (a).

20 “(c) DEFINITIONS AND SPECIAL RULES.—For pur-  
21 poses of this section—

22 “(1) ELIGIBLE SMALL EMPLOYER.—

23 “(A) IN GENERAL.—The term ‘eligible  
24 small employer’ means an employer who em-  
25 ployed, with respect to the calendar year in

1           which such employer first begins participating  
2           in a qualified health pooling arrangement, an  
3           average of not more than 50 employees on busi-  
4           ness days during the preceding calendar year.

5           “(B) EMPLOYERS NOT IN EXISTENCE IN  
6           PRECEDING YEAR.—In the case of an employer  
7           which was not in existence throughout the pre-  
8           ceding calendar year, the determination of  
9           whether such employer is an eligible small em-  
10          ployer shall be based on the average number of  
11          employees that it is reasonably expected such  
12          employer will employ on business days in the  
13          current calendar year.

14          “(C) PERMANENT STATUS AS ELIGIBLE  
15          SMALL EMPLOYER.—In the case of an employer  
16          who meets the requirements of this subsection  
17          with respect to the calendar year in which such  
18          employer first begins participating in a quali-  
19          fied health pooling arrangement, such employer  
20          shall not fail to be treated as an eligible small  
21          employer for any subsequent calendar year.

22          “(D) PREDECESSORS.—The Secretary may  
23          prescribe regulations which provide for ref-  
24          erences in this paragraph to an employer to be

1 treated as including references to predecessors  
2 of such employer.

3 “(2) SELF-EMPLOYED INDIVIDUALS.—

4 “(A) TREATMENT AS EMPLOYEE.—The  
5 term ‘employee’ includes an individual who is  
6 an employee within the meaning of section  
7 401(c)(1) (relating to self-employed individ-  
8 uals).

9 “(B) TREATMENT AS EMPLOYER.—An in-  
10 dividual who owns the entire interest in an un-  
11 incorporated trade or business shall be treated  
12 as his own employer. A partnership shall be  
13 treated as the employer of each partner who is  
14 an employee within the meaning of subpara-  
15 graph (A).

16 “(3) FAMILY COVERAGE.—The term ‘family  
17 coverage’ means coverage for health benefits of the  
18 employee and qualified family members of the em-  
19 ployee (as defined in section 35(d), but without re-  
20 gard to the last sentence of paragraph (1) thereof).

21 “(4) QUALIFIED HEALTH POOLING ARRANGE-  
22 MENT.—The term ‘qualified health pooling arrange-  
23 ment’ means a qualified State health pooling ar-  
24 rangement described in section 3 of the Small Busi-  
25 ness Health Insurance Promotion Act of 2005 or the

1 national health pooling arrangement described in  
2 section 4 of such Act.

3 “(5) CERTAIN RULES MADE APPLICABLE.—  
4 Rules similar to the rules of section 52 shall apply  
5 for purposes of this section.”.

6 (b) CREDIT TO BE PART OF GENERAL BUSINESS  
7 CREDIT.—Section 38(b) of such Code (relating to current  
8 year business credit) is amended by striking “plus” at the  
9 end of paragraph (18), by striking the period at the end  
10 of paragraph (19) and inserting “, plus”, and by adding  
11 at the end the following:

12 “(20) in the case of an eligible small employer  
13 (as defined in section 45J(c)), the health pool ar-  
14 rangement credit determined under section 45J(a).”.

15 (c) DENIAL OF DOUBLE BENEFIT.—Section 280C of  
16 such Code is amended by adding at the end the following  
17 new subsection:

18 “(e) CREDIT FOR SMALL BUSINESS HEALTH POOL  
19 ARRANGEMENTS.—

20 “(1) IN GENERAL.—No deduction shall be al-  
21 lowed for that portion of the expenses (otherwise al-  
22 lowable as a deduction) taken into account in deter-  
23 mining the credit under section 45J for the taxable  
24 year which is equal to the amount of the credit de-  
25 termined for such taxable year under section 45J(a).

1           “(2) CONTROLLED GROUPS.—Persons treated  
2           as a single employer under subsection (a) or (b) of  
3           section 52 shall be treated as 1 person for purposes  
4           of this section.”.

5           (d) CLERICAL AMENDMENT.—The table of sections  
6           for subpart D of part IV of subchapter A of chapter 1  
7           of such Code is amended by adding at the end the fol-  
8           lowing:

          “Sec. 45J. Small business health pool arrangements.”.

9           (e) EFFECTIVE DATE.—The amendments made by  
10          this section shall apply to amounts paid or incurred in tax-  
11          able years beginning after December 31, 2004, for ar-  
12          rangements established after the date of the enactment  
13          of this Act.

14       **SEC. 3. QUALIFIED STATE HEALTH POOLING ARRANGE-**  
15                               **MENTS.**

16          (a) DEFINED.—For purposes of this Act, the term  
17          “qualified State health pooling arrangement” means an  
18          arrangement established by a State which meets the fol-  
19          lowing requirements:

20               (1) HEALTH BENEFITS COVERAGE.—The ar-  
21          rangement provides health benefits coverage that the  
22          Secretaries of Health and Human Services and  
23          Labor jointly determine is substantially similar to  
24          the health benefits coverage in any of the four larg-  
25          est health benefits plans (determined by enrollment)



1       offered under chapter 89 of title 5, United States  
2       Code.

3               (2) GROUP HEALTH PLAN REQUIREMENTS.—

4       The health benefits coverage provided under the ar-  
5       rangement meets the requirements applicable to a  
6       group health plan under chapter 100 of the Internal  
7       Revenue Code of 1986, part 7 of subtitle B of title  
8       I of the Employee Retirement Income Security Act  
9       of 1974, and State law.

10              (3) GUARANTEED ISSUE AND RENEWABLE.—

11       The arrangement does not deny coverage (including  
12       renewal of coverage) with respect to employees of  
13       any eligible small employer or qualifying family  
14       members of such employees on the basis of health  
15       status of such employees or family members or any  
16       other condition or requirement that the Secretaries  
17       of Health and Human Services and Labor jointly de-  
18       termine constitutes health underwriting.

19              (4) NO PREEXISTING CONDITION EXCLUSION.—

20       The arrangement does not permit a preexisting con-  
21       dition exclusion as defined under section 9801(b)(1)  
22       of the Internal Revenue Code of 1986 and under  
23       section 701(b)(1) of the Employee Retirement In-  
24       come Security Act of 1974 (29 U.S.C. 11(b)(1)).

1           (5) NO UNDERWRITING; COMMUNITY-RATED  
2     PREMIUMS.—(A) Subject to subparagraph (B), the  
3     arrangement does not permit underwriting, through  
4     a preexisting condition limitation, differential bene-  
5     fits, or different premium levels, or otherwise, with  
6     respect to such coverage for employees or their  
7     qualifying family members.

8           (B) The premiums charged for such coverage  
9     are community-rated for individuals without regard  
10    to health status.

11          (6) NO RIDERS.—The arrangement does not  
12    permit riders to the health benefits coverage.

13          (7) ACCESSIBILITY TO ELIGIBLE SMALL EM-  
14    PLOYERS.—The arrangement makes such coverage  
15    available to an eligible small employer without re-  
16    gard to whether a credit is available under section  
17    45J of the Internal Revenue Code of 1986 with re-  
18    spect to such employer.

19          (8) MINIMUM OF TWO PLANS OFFERED UNDER  
20    THE ARRANGEMENT.—The arrangement makes  
21    available at least two plans for health benefits cov-  
22    erage.

23          (b) ELIGIBLE SMALL EMPLOYER; SELF-EMPLOYED  
24    INDIVIDUAL.—For purposes of this Act, the terms “eligi-  
25    ble small employer” and “employee” have the same mean-

1 ings as when such terms are used in section 45J of the  
2 Internal Revenue Code of 1986 and rules similar to the  
3 rules of subsection (c) of such section shall apply for pur-  
4 poses of this Act.

5 (c) QUALIFYING FAMILY MEMBER.—For purposes of  
6 this Act, the term “qualifying family member” has the  
7 meaning given such term in section 35(d) of the Internal  
8 Revenue Code of 1986, applied without regard to the last  
9 sentence of paragraph (1) thereof.

10 (d) STATE DEFINED.—For purposes of this Act, the  
11 term “State” includes the District of Columbia, Puerto  
12 Rico, the Virgin Islands of the United States, Guam,  
13 American Samoa, and the Northern Mariana Islands.

14 (e) CONSTRUCTION.—Nothing in this section shall be  
15 construed as requiring a State to establish or maintain  
16 a qualified State health pooling arrangement.

17 (f) CREDITABLE COVERAGE FOR PURPOSES OF  
18 HIPAA.—Health benefits coverage provided under a  
19 qualified State health pooling arrangement under this sec-  
20 tion (and coverage provided under a National Pooling Ar-  
21 rangement under section 4 of this title) shall be treated  
22 as creditable coverage for purposes of part 7 of subtitle  
23 B of title I of the Employee Retirement Income Security  
24 Act of 1974 (29 U.S.C. 1181 et seq.), title XXVII of the

1 Public Health Service Act (42 U.S.C. 300gg et seq.), and  
2 subtitle K of the Internal Revenue Code of 1986.

3 (g) OVERSIGHT AND ACCOUNTABILITY.—

4 (1) OVERSIGHT.—The Secretaries of Health  
5 and Human Services and Labor shall jointly oversee  
6 the offering of health benefits coverage under quali-  
7 fied State health pooling arrangements to eligible  
8 small employers.

9 (2) ANNUAL REPORTS.—

10 (A) IN GENERAL.—Each State that offers  
11 a qualified State health pooling arrangement  
12 under this section in a year shall submit, in a  
13 form and manner specified jointly by the Secre-  
14 taries of Health and Human Services and  
15 Labor, a report on the operation of the ar-  
16 rangement in that year.

17 (B) CONTENTS OF REPORT.—Reports re-  
18 quired under subparagraph (A) shall include  
19 the following:

20 (i) A description of the health benefits  
21 coverage offered under the arrangement.

22 (ii) The number of employers that  
23 participated in the arrangement.

24 (iii) The number of employees and  
25 qualifying family members of employees

1                   who received health benefits coverage  
2                   under the arrangement.

3                   (iv) The premiums charged for the  
4                   health benefits coverage under the arrange-  
5                   ment.

6                   (3) CERTIFICATION.—Each State that offers a  
7                   qualified State health pooling arrangement under  
8                   this section in a year shall submit, in a form and  
9                   manner specified jointly by the Secretaries of Health  
10                  and Human Services and Labor, a certification that  
11                  the arrangement meets the requirements of this Act.

12                  (h) COORDINATION OF COMPLAINTS WITH STATE  
13 INSURANCE COMMISSIONERS.—The Secretaries of Health  
14 and Human Services and Labor shall coordinate with the  
15 insurance commissioners for the various States in estab-  
16 lishing a process for handling and resolving any com-  
17 plaints relating to health benefits coverage offered under  
18 this Act, to the extent necessary to augment processes oth-  
19 erwise available under State law.

20                  (i) NO PREEMPTION OF STATE LAW.—Nothing in  
21 this section shall be construed as preempting provisions  
22 of State law that provide protections in excess of the pro-  
23 tections required under this section.

1 **SEC. 4. ESTABLISHMENT OF NATIONAL HEALTH POOLING**  
2 **ARRANGEMENT.**

3 (a) IN GENERAL.—The Secretaries of Health and  
4 Human Services and Labor, jointly in consultation with  
5 the Director of the Office of Personnel Management, shall  
6 provide for the offering and oversight of a national health  
7 pooling arrangement to eligible small employers.

8 (b) NATIONAL HEALTH POOLING ARRANGEMENT  
9 DEFINED.—For purposes of this section, the term “na-  
10 tional health pooling arrangement” means an arrange-  
11 ment under which health plans are offered under terms  
12 and conditions that meet the requirements of section 3(a).

13 (c) USE OF FEHBP MODEL.—The Secretaries of  
14 Health and Human Services and Labor shall jointly pro-  
15 vide for the national health pooling arrangement using the  
16 model of the Federal employees health benefits program  
17 under chapter 89 of title 5, United States Code, to the  
18 extent practicable and consistent with the provisions of  
19 this Act. In carrying out such model, the Secretaries shall,  
20 to the maximum extent practicable, negotiate the most af-  
21 fordable and substantial coverage possible for small em-  
22 ployers.

23 **SEC. 5. FUNDING OF POOLING ARRANGEMENTS.**

24 (a) FUNDING OF STATES TO ESTABLISH AND OPER-  
25 ATE QUALIFIED STATE HEALTH POOLING ARRANGE-  
26 MENTS.—There are authorized to be appropriated to the

1 Secretaries of Health and Human Services and Labor  
2 such sums as may be necessary to provide grants to States  
3 to establish and operate qualified State health pooling ar-  
4 rangements described in section 3.

5 (b) FUNDING OF NATIONAL HEALTH POOLING AR-  
6 RANGEMENT.—There are authorized to be appropriated to  
7 the Secretaries of Health and Human Services and Labor  
8 such sums as may be necessary to provide for the offering  
9 and operation of the national health pooling arrangement  
10 under section 4.

11 **SEC. 6. INSTITUTE OF MEDICINE STUDY AND REPORT.**

12 (a) STUDY.—The Secretaries of Health and Human  
13 Services and Labor shall jointly enter into an arrangement  
14 under which the Institute of Medicine of the National  
15 Academy of Sciences shall conduct a study on the oper-  
16 ation of qualified State health pooling arrangements under  
17 section 3 and the national health pooling arrangement  
18 under section 4.

19 (b) MATTERS STUDIED.—The study conducted under  
20 subsection (a) shall include the following:

- 21 (1) An assessment of the success of the ar-  
22 rangements.
- 23 (2) A determination of the affordability of  
24 health benefits coverage under the arrangements for  
25 employers and employees.

1           (3) A determination of the access of small em-  
2           ployers to health benefits coverage.

3           (4) A determination of the extent to which the  
4           tax credit under section 45J of the Internal Revenue  
5           Code of 1986 provides a subsidy for eligible small  
6           employers that provided (or would have provided)  
7           health benefits coverage in the absence of such cred-  
8           it.

9           (5) Recommendations with respect to—

10                 (A) extension of the period for which the  
11                 tax credit under section 45J of the Internal  
12                 Revenue Code of 1986 is available to employers  
13                 or an appropriate phase-out of such credit over  
14                 time;

15                 (B) expansion of categories of persons eli-  
16                 gible for such tax credit;

17                 (C) expansion of persons eligible for health  
18                 benefits coverage under the arrangements; and

19                 (D) such other matters as the Institute de-  
20                 termines appropriate.

21           (c) REPORT.—Not later than January 1, 2010, the  
22           Comptroller General shall submit to Congress a report on  
23           the study conducted under subsection (a).

○