

118TH CONGRESS
1ST SESSION

H. R. 2868

To amend the Employee Retirement Income Security Act of 1974 to clarify the treatment of certain association health plans as employers, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 25, 2023

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

A BILL

To amend the Employee Retirement Income Security Act of 1974 to clarify the treatment of certain association health plans as employers, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Association Health
5 Plans Act”.

1 **SEC. 2. TREATMENT OF GROUP OR ASSOCIATION OF EM-**
2 **LOYERS.**

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

6 (1) by striking “The term” and inserting “(A)
7 The term”; and

8 (2) by adding at the end the following:

9 “(B) For purposes of subparagraph (A), a group or
10 association of employers shall be treated as an ‘employer’,
11 regardless of whether the employers composing such group
12 or association are in the same industry, trade, or profes-
13 sion, if such group or association—

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

17 “(II) provides coverage under such plan to at
18 least 51 employees after all of the employees em-
19 ployed by all of the employer members of such group
20 or association have been aggregated and counted to-
21 gether as described in subparagraph (D);

22 “(III) has been actively in existence for at least
23 2 years;

24 “(IV) has been formed and maintained in good
25 faith for purposes other than providing medical care

1 (as defined in section 733(a)(2)) through the pur-
2 chase of insurance or otherwise;

3 “(V) does not condition membership in the
4 group or association on any health status-related
5 factor (as described in section 702(a)(1)) relating to
6 any individual;

7 “(VI) makes coverage under such plan available
8 to all employer members of such group or associa-
9 tion regardless of any health status-related factor
10 (as described in section 702(a)(1)) relating to such
11 employer members;

12 “(VII) does not provide coverage under such
13 plan to any individual other than an employee of an
14 employer member of such group or association;

15 “(VIII) has established a governing board with
16 by-laws or other similar indications of formality to
17 manage and operate such plan in both form and
18 substance, of which at least 75 percent of the board
19 members shall be made up of employer members of
20 such group or association participating in the plan
21 that are duly elected by each participating employer
22 member casting 1 vote during a scheduled election;
23 and

24 “(IX) is not a health insurance issuer (as de-
25 fined in section 733(b)(2)), and is not owned or con-

1 trolled by such a health insurance issuer or by a
2 subsidiary or affiliate of such a health insurance
3 issuer, other than to the extent such a health insur-
4 ance issuer—

5 “(aa) may participate in the group or asso-
6 ciation as a member; and

7 “(bb) may provide services such as assist-
8 ance with plan development, marketing, and ad-
9 ministrative services to such group or associa-
10 tion;

11 “(ii) meets any set of criteria to qualify for
12 such treatment in an advisory opinion issued by the
13 Secretary prior to the date of enactment of the As-
14 sociation Health Plans Act; or

15 “(iii) meets any other set of criteria to qualify
16 for such treatment that the Secretary by regulation
17 may provide.

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

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

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

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

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

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

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

10 “(III) earns wages (as defined in section
11 3121(a) of the Internal Revenue Code of 1986) or
12 self-employment income (as defined in section
13 1402(b) of such Code) from such trade or business;
14 and

15 “(IV) works at least 10 hours per week or 40
16 hours per month providing personal services to such
17 trade or business.

18 “(iii) The board of a group or association of employ-
19 ers shall—

20 “(I) initially determine whether an individual
21 meets the requirements under clause (ii) to be con-
22 sidered a self-employed individual for the purposes
23 of being treated as an—

1 “(aa) employer member of such group or
2 association (in accordance with clause (i)(I));
3 and

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

8 “(II) through reasonable monitoring proce-
9 dures, periodically determine whether the individual
10 continues to meet such requirements; and

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

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

1 “(i) treated as employed by a single employer;
2 and

3 “(ii) aggregated and counted together for pur-
4 poses of any regulation of an employee welfare ben-
5 efit plan established and maintained by such group
6 or association.”.

7 (b) DETERMINATION OF EMPLOYER OR JOINT EM-
8 PLOYER STATUS.—The provision of employee welfare ben-
9 efit plan coverage by a group or association of employers
10 shall not be construed as evidence for establishing an em-
11 ployer or joint employer relationship under any Federal
12 or State law.

13 **SEC. 3. RULES APPLICABLE TO EMPLOYEE WELFARE BEN-**
14 **EFIT PLANS ESTABLISHED AND MAINTAINED**
15 **BY A GROUP OR ASSOCIATION OF EMPLOY-**
16 **ERS.**

17 Part 7 of subtitle B of title I of the Employee Retire-
18 ment Income Security Act of 1974 (29 U.S.C. 1181, et
19 seq.) is amended by adding at the end the following:

20 **“SEC. 736. RULES APPLICABLE TO EMPLOYEE WELFARE**
21 **BENEFIT PLANS ESTABLISHED AND MAIN-**
22 **TAINED BY A GROUP OR ASSOCIATION OF**
23 **EMPLOYERS.**

24 “(a) PREMIUM RATES FOR A GROUP OR ASSOCIA-
25 TION OF EMPLOYERS.—

1 “(1)(A) In the case of an employee welfare ben-
2 efit plan established and maintained by a group or
3 association of employers described in section
4 3(5)(B), such plan may—

5 “(i) establish base premium rates formed
6 on an actuarially sound, modified community
7 rating methodology that considers the pooling
8 of all plan participant claims; and

9 “(ii) utilize the specific risk profile of each
10 employer member of such group or association
11 to determine contribution rates for each such
12 employer member’s share of a premium by ac-
13 tuarily adjusting above or below the estab-
14 lished base premium rates.

15 “(B) For purposes of paragraph (1), the term
16 ‘employer member’ means—

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

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

1 cludes at least 20 self-employed individual
2 members.

3 “(2) In the event a group or association is
4 made up solely of self-employed individuals (and no
5 employers with at least 1 common law employee are
6 members of such group or association), the employee
7 welfare benefit plan established by such group or as-
8 sociation shall—

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

12 “(B) pool all plan participant claims; and

13 “(C) charge each plan participant the
14 same premium rate.

15 “(b) DISCRIMINATION AND PRE-EXISTING CONDI-
16 TION PROTECTIONS.—An employee welfare benefit plan
17 established and maintained by a group or association of
18 employers described in section 3(5)(B) shall be prohibited
19 from—

20 “(1) establishing any rule for eligibility (includ-
21 ing continued eligibility) of any individual (including
22 an employee of an employer member or a self-em-
23 ployed individual, or a dependent of such employee
24 or self-employed individual) to enroll for benefits
25 under the terms of the plan that discriminates based

1 on any health status-related factor that relates to
2 such individual (consistent with the rules under sec-
3 tion 702(a)(1));

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

15 “(3) denying coverage under such plan on the
16 basis of a pre-existing condition (consistent with the
17 rules under section 2704 of the Public Health Serv-
18 ice Act).”.

19 **SEC. 4. RULE OF CONSTRUCTION.**

20 Nothing in this Act shall be construed to exempt a
21 group health plan which is an employee welfare benefit
22 plan offered through a group or association of employers
23 from the requirements of part 7 of subtitle B of title I
24 of the Employee Retirement Income Security Act of 1974
25 (29 U.S.C. 1181 et seq.), including the provisions of part

1 A of title XXVII of the Public Health Service Act as incor-
2 porated by reference into this Act through section 715.

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