

[COMMITTEE PRINT]

MAY 2, 2003

**(Showing the text of H.R. 660 as Reported by the  
Subcommittee on Employer-Employee Relations)**

1 **SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the  
3 “Small Business Health Fairness Act of 2003”.

4 (b) TABLE OF CONTENTS.—The table of contents is  
5 as follows:

Sec. 1. Short title and table of contents.

Sec. 2. Rules governing association health plans.

“PART 8—RULES GOVERNING ASSOCIATION HEALTH PLANS

“Sec. 801. Association health plans.

“Sec. 802. Certification of association health plans.

“Sec. 803. Requirements relating to sponsors and boards of trustees.

“Sec. 804. Participation and coverage requirements.

“Sec. 805. Other requirements relating to plan documents, contribution rates, and benefit options.

“Sec. 806. Maintenance of reserves and provisions for solvency for plans providing health benefits in addition to health insurance coverage.

“Sec. 807. Requirements for application and related requirements.

“Sec. 808. Notice requirements for voluntary termination.

“Sec. 809. Corrective actions and mandatory termination.

“Sec. 810. Trusteeship by the Secretary of insolvent association health plans providing health benefits in addition to health insurance coverage.

“Sec. 811. State assessment authority.

“Sec. 812. Definitions and rules of construction.

Sec. 3. Clarification of treatment of single employer arrangements.

Sec. 4. Enforcement provisions relating to association health plans.

Sec. 5. Cooperation between Federal and State authorities.

Sec. 6. Effective date and transitional and other rules.

1 **SEC. 2. RULES GOVERNING ASSOCIATION HEALTH PLANS.**

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

5 “PART 8—RULES GOVERNING ASSOCIATION HEALTH  
6 PLANS

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

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

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

14 “(1) is organized and maintained in good faith,  
15 with a constitution and bylaws specifically stating its  
16 purpose and providing for periodic meetings on at  
17 least an annual basis, as a bona fide trade associa-  
18 tion, a bona fide industry association (including a  
19 rural electric cooperative association or a rural tele-  
20 phone cooperative association), a bona fide profes-  
21 sional association, or a bona fide chamber of com-  
22 merce (or similar bona fide business association, in-  
23 cluding a corporation or similar organization that  
24 operates on a cooperative basis (within the meaning  
25 of section 1381 of the Internal Revenue Code of

1 1986)), for substantial purposes other than that of  
2 obtaining or providing medical care;

3 “(2) is established as a permanent entity which  
4 receives the active support of its members and re-  
5 quires for membership payment on a periodic basis  
6 of dues or payments necessary to maintain eligibility  
7 for membership in the sponsor; and

8 “(3) does not condition membership, such dues  
9 or payments, or coverage under the plan on the  
10 basis of health status-related factors with respect to  
11 the employees of its members (or affiliated mem-  
12 bers), or the dependents of such employees, and does  
13 not condition such dues or payments on the basis of  
14 group health plan participation.

15 Any sponsor consisting of an association of entities which  
16 meet the requirements of paragraphs (1), (2), and (3)  
17 shall be deemed to be a sponsor described in this sub-  
18 section.

19 **“SEC. 802. CERTIFICATION OF ASSOCIATION HEALTH**  
20 **PLANS.**

21 “(a) IN GENERAL.—The applicable authority shall  
22 prescribe by regulation a procedure under which, subject  
23 to subsection (b), the applicable authority shall certify as-  
24 sociation health plans which apply for certification as  
25 meeting the requirements of this part.

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

10           “(c) REQUIREMENTS APPLICABLE TO CERTIFIED  
11 PLANS.—An association health plan with respect to which  
12 certification under this part is in effect shall meet the ap-  
13 plicable requirements of this part, effective on the date  
14 of certification (or, if later, on the date on which the plan  
15 is to commence operations).

16           “(d) REQUIREMENTS FOR CONTINUED CERTIFI-  
17 CATION.—The applicable authority may provide by regula-  
18 tion for continued certification of association health plans  
19 under this part.

20           “(e) CLASS CERTIFICATION FOR FULLY INSURED  
21 PLANS.—The applicable authority shall establish a class  
22 certification procedure for association health plans under  
23 which all benefits consist of health insurance coverage.  
24 Under such procedure, the applicable authority shall pro-  
25 vide for the granting of certification under this part to

1 the plans in each class of such association health plans  
2 upon appropriate filing under such procedure in connec-  
3 tion with plans in such class and payment of the pre-  
4 scribed fee under section 807(a).

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

10 “(1) a plan which offered such coverage on the  
11 date of the enactment of the Small Business Health  
12 Fairness Act of 2003,

13 “(2) a plan under which the sponsor does not  
14 restrict membership to one or more trades and busi-  
15 nesses or industries and whose eligible participating  
16 employers represent a broad cross-section of trades  
17 and businesses or industries, or

18 “(3) a plan whose eligible participating employ-  
19 ers represent one or more trades or businesses, or  
20 one or more industries, consisting of any of the fol-  
21 lowing: agriculture; equipment and automobile deal-  
22 erships; barbering and cosmetology; certified public  
23 accounting practices; child care; construction; dance,  
24 theatrical and orchestra productions; disinfecting  
25 and pest control; financial services; fishing;

1 foodservice establishments; hospitals; labor organiza-  
2 tions; logging; manufacturing (metals); mining; med-  
3 ical and dental practices; medical laboratories; pro-  
4 fessional consulting services; sanitary services; trans-  
5 portation (local and freight); warehousing; whole-  
6 saling/distributing; or any other trade or business or  
7 industry which has been indicated as having average  
8 or above-average risk or health claims experience by  
9 reason of State rate filings, denials of coverage, pro-  
10 posed premium rate levels, or other means dem-  
11 onstrated by such plan in accordance with regula-  
12 tions.

13 **“SEC. 803. REQUIREMENTS RELATING TO SPONSORS AND**  
14 **BOARDS OF TRUSTEES.**

15 “(a) SPONSOR.—The requirements of this subsection  
16 are met with respect to an association health plan if the  
17 sponsor has met (or is deemed under this part to have  
18 met) the requirements of section 801(b) for a continuous  
19 period of not less than 3 years ending with the date of  
20 the application for certification under this part.

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

24 “(1) FISCAL CONTROL.—The plan is operated,  
25 pursuant to a trust agreement, by a board of trust-

1       ees which has complete fiscal control over the plan  
2       and which is responsible for all operations of the  
3       plan.

4           “(2) RULES OF OPERATION AND FINANCIAL  
5       CONTROLS.—The board of trustees has in effect  
6       rules of operation and financial controls, based on a  
7       3-year plan of operation, adequate to carry out the  
8       terms of the plan and to meet all requirements of  
9       this title applicable to the plan.

10          “(3) RULES GOVERNING RELATIONSHIP TO  
11       PARTICIPATING EMPLOYERS AND TO CONTRAC-  
12       TORS.—

13           “(A) BOARD MEMBERSHIP.—

14           “(i) IN GENERAL.—Except as pro-  
15       vided in clauses (ii) and (iii), the members  
16       of the board of trustees are individuals se-  
17       lected from individuals who are the owners,  
18       officers, directors, or employees of the par-  
19       ticipating employers or who are partners in  
20       the participating employers and actively  
21       participate in the business.

22           “(ii) LIMITATION.—

23           “(I) GENERAL RULE.—Except as  
24       provided in subclauses (II) and (III),  
25       no such member is an owner, officer,

1 director, or employee of, or partner in,  
2 a contract administrator or other  
3 service provider to the plan.

4 “(II) LIMITED EXCEPTION FOR  
5 PROVIDERS OF SERVICES SOLELY ON  
6 BEHALF OF THE SPONSOR.—Officers  
7 or employees of a sponsor which is a  
8 service provider (other than a contract  
9 administrator) to the plan may be  
10 members of the board if they con-  
11 stitute not more than 25 percent of  
12 the membership of the board and they  
13 do not provide services to the plan  
14 other than on behalf of the sponsor.

15 “(III) TREATMENT OF PRO-  
16 VIDERS OF MEDICAL CARE.—In the  
17 case of a sponsor which is an associa-  
18 tion whose membership consists pri-  
19 marily of providers of medical care,  
20 subclause (I) shall not apply in the  
21 case of any service provider described  
22 in subclause (I) who is a provider of  
23 medical care under the plan.

24 “(iii) CERTAIN PLANS EXCLUDED.—  
25 Clause (i) shall not apply to an association

1 health plan which is in existence on the  
2 date of the enactment of the Small Busi-  
3 ness Health Fairness Act of 2003.

4 “(B) SOLE AUTHORITY.—The board has  
5 sole authority under the plan to approve appli-  
6 cations for participation in the plan and to con-  
7 tract with a service provider to administer the  
8 day-to-day affairs of the plan.

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

13 “(1) the requirements of subsection (a) and sec-  
14 tion 801(a) shall be deemed met if such require-  
15 ments would otherwise be met if the franchiser were  
16 deemed to be the sponsor referred to in section  
17 801(b), such network were deemed to be an associa-  
18 tion described in section 801(b), and each franchisee  
19 were deemed to be a member (of the association and  
20 the sponsor) referred to in section 801(b); and

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

23 The Secretary may by regulation define for purposes of  
24 this subsection the terms ‘franchiser’, ‘franchise network’,  
25 and ‘franchisee’.

1 **“SEC. 804. PARTICIPATION AND COVERAGE REQUIRE-**  
2 **MENTS.**

3 “(a) COVERED EMPLOYERS AND INDIVIDUALS.—The  
4 requirements of this subsection are met with respect to  
5 an association health plan if, under the terms of the  
6 plan—

7 “(1) each participating employer must be—

8 “(A) a member of the sponsor,

9 “(B) the sponsor, or

10 “(C) an affiliated member of the sponsor  
11 with respect to which the requirements of sub-  
12 section (b) are met,

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

22 “(2) all individuals commencing coverage under  
23 the plan after certification under this part must  
24 be—

25 “(A) active or retired owners (including  
26 self-employed individuals), officers, directors, or

1 employees of, or partners in, participating em-  
2 ployers; or

3 “(B) the beneficiaries of individuals de-  
4 scribed in subparagraph (A).

5 “(b) COVERAGE OF PREVIOUSLY UNINSURED EM-  
6 PLOYEES.—In the case of an association health plan in  
7 existence on the date of the enactment of the Small Busi-  
8 ness Health Fairness Act of 2003, an affiliated member  
9 of the sponsor of the plan may be offered coverage under  
10 the plan as a participating employer only if—

11 “(1) the affiliated member was an affiliated  
12 member on the date of certification under this part;  
13 or

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

20 “(c) INDIVIDUAL MARKET UNAFFECTED.—The re-  
21 quirements of this subsection are met with respect to an  
22 association health plan if, under the terms of the plan,  
23 no participating employer may provide health insurance  
24 coverage in the individual market for any employee not  
25 covered under the plan which is similar to the coverage

1 contemporaneously provided to employees of the employer  
2 under the plan, if such exclusion of the employee from cov-  
3 erage under the plan is based on a health status-related  
4 factor with respect to the employee and such employee  
5 would, but for such exclusion on such basis, be eligible  
6 for coverage under the plan.

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

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

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

22 “(3) the applicable requirements of sections  
23 701, 702, and 703 are met with respect to the plan.

1 **“SEC. 805. OTHER REQUIREMENTS RELATING TO PLAN**  
2 **DOCUMENTS, CONTRIBUTION RATES, AND**  
3 **BENEFIT OPTIONS.**

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

7 “(1) CONTENTS OF GOVERNING INSTRU-  
8 MENTS.—The instruments governing the plan in-  
9 clude a written instrument, meeting the require-  
10 ments of an instrument required under section  
11 402(a)(1), which—

12 “(A) provides that the board of trustees  
13 serves as the named fiduciary required for plans  
14 under section 402(a)(1) and serves in the ca-  
15 pacity of a plan administrator (referred to in  
16 section 3(16)(A));

17 “(B) provides that the sponsor of the plan  
18 is to serve as plan sponsor (referred to in sec-  
19 tion 3(16)(B)); and

20 “(C) incorporates the requirements of sec-  
21 tion 806.

22 “(2) CONTRIBUTION RATES MUST BE NON-  
23 DISCRIMINATORY.—

24 “(A) The contribution rates for any par-  
25 ticipating small employer do not vary on the  
26 basis of any health status-related factor in rela-

1           tion to employees of such employer or their  
2           beneficiaries and do not vary on the basis of the  
3           type of business or industry in which such em-  
4           ployer is engaged.

5           “(B) Nothing in this title or any other pro-  
6           vision of law shall be construed to preclude an  
7           association health plan, or a health insurance  
8           issuer offering health insurance coverage in  
9           connection with an association health plan,  
10          from—

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

13                   “(ii) varying contribution rates for  
14                   small employers in a State to the extent  
15                   that such rates could vary using the same  
16                   methodology employed in such State for  
17                   regulating premium rates in the small  
18                   group market with respect to health insur-  
19                   ance coverage offered in connection with  
20                   bona fide associations (within the meaning  
21                   of section 2791(d)(3) of the Public Health  
22                   Service Act),

23           subject to the requirements of section 702(b)  
24           relating to contribution rates.

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

7           “(4) MARKETING REQUIREMENTS.—

8           “(A) IN GENERAL.—If a benefit option  
9           which consists of health insurance coverage is  
10          offered under the plan, State-licensed insurance  
11          agents shall be used to distribute to small em-  
12          ployers coverage which does not consist of  
13          health insurance coverage in a manner com-  
14          parable to the manner in which such agents are  
15          used to distribute health insurance coverage.

16          “(B) STATE-LICENSED INSURANCE  
17          AGENTS.—For purposes of subparagraph (A),  
18          the term ‘State-licensed insurance agents’  
19          means one or more agents who are licensed in  
20          a State and are subject to the laws of such  
21          State relating to licensure, qualification, test-  
22          ing, examination, and continuing education of  
23          persons authorized to offer, sell, or solicit  
24          health insurance coverage in such State.

1           “(5) REGULATORY REQUIREMENTS.—Such  
2 other requirements as the applicable authority deter-  
3 mines are necessary to carry out the purposes of this  
4 part, which shall be prescribed by the applicable au-  
5 thority by regulation.

6           “(b) ABILITY OF ASSOCIATION HEALTH PLANS TO  
7 DESIGN BENEFIT OPTIONS.—Subject to section 514(d),  
8 nothing in this part or any provision of State law (as de-  
9 fined in section 514(c)(1)) shall be construed to preclude  
10 an association health plan, or a health insurance issuer  
11 offering health insurance coverage in connection with an  
12 association health plan, from exercising its sole discretion  
13 in selecting the specific items and services consisting of  
14 medical care to be included as benefits under such plan  
15 or coverage, except (subject to section 514) in the case  
16 of (1) any law to the extent that it is not preempted under  
17 section 731(a)(1) with respect to matters governed by sec-  
18 tion 711, 712, or 713, or (2) any law of the State with  
19 which filing and approval of a policy type offered by the  
20 plan was initially obtained to the extent that such law pro-  
21 hibits an exclusion of a specific disease from such cov-  
22 erage.

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 provide for upward ad-  
16                   justments in the amount of such percent-  
17                   age in specified circumstances in which the  
18                   plan specifically provides for and maintains  
19                   reserves in excess of the amounts required  
20                   under subparagraph (A).

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

1           may by regulation provide for adjustments  
2           in the amount of such insurance in speci-  
3           fied circumstances in which the plan spe-  
4           cifically provides for and maintains re-  
5           serves in excess of the amounts required  
6           under subparagraph (A).

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

11 Any person issuing to a plan insurance described in clause  
12 (i), (ii), or (iii) shall notify the Secretary of any failure  
13 of premium payment meriting cancellation of the policy  
14 prior to undertaking such a cancellation. Any regulations  
15 prescribed by the applicable authority pursuant to clause  
16 (i) or (ii) of subparagraph (B) may allow for such adjust-  
17 ments in the required levels of excess/stop loss insurance  
18 as the qualified actuary may recommend, taking into ac-  
19 count the specific circumstances of the plan.

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

25           “(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, considering the  
4           level of aggregate and specific excess/stop loss insur-  
5           ance provided with respect to such plan and other  
6           factors related to solvency risk, such as the plan’s  
7           projected levels of participation or claims, the nature  
8           of the plan’s liabilities, and the types of assets avail-  
9           able to assure that such liabilities are met.

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

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

24          “(e) ALTERNATIVE MEANS OF COMPLIANCE.—The  
25 applicable authority may permit an association health plan

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

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

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

22 “(A) IN GENERAL.—In the case of an as-  
23 sociation health plan described in subsection  
24 (a)(2), the requirements of this subsection are  
25 met if the plan makes payments into the Asso-

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

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

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

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

24           “(3) ASSOCIATION HEALTH PLAN FUND.—

1           “(A) IN GENERAL.—There is established  
2           on the books of the Treasury a fund to be  
3           known as the ‘Association Health Plan Fund’.  
4           The Fund shall be available for making pay-  
5           ments pursuant to paragraph (2). The Fund  
6           shall be credited with payments received pursu-  
7           ant to paragraph (1)(A), penalties received pur-  
8           suant to paragraph (1)(B); and earnings on in-  
9           vestments of amounts of the Fund under sub-  
10          paragraph (B).

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

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

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

24                         “(A) under which an insurer (meeting such  
25                         minimum standards as the applicable authority

1           may prescribe by regulation) provides for pay-  
2           ment to the plan with respect to aggregate  
3           claims under the plan in excess of an amount  
4           or amounts specified in such contract;

5                   “(B) which is guaranteed renewable; and

6                   “(C) which allows for payment of pre-  
7           miums by any third party on behalf of the in-  
8           sured plan.

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

13                   “(A) under which an insurer (meeting such  
14           minimum standards as the applicable authority  
15           may prescribe by regulation) provides for pay-  
16           ment to the plan with respect to claims under  
17           the plan in connection with a covered individual  
18           in excess of an amount or amounts specified in  
19           such contract in connection with such covered  
20           individual;

21                   “(B) which is guaranteed renewable; and

22                   “(C) which allows for payment of pre-  
23           miums by any third party on behalf of the in-  
24           sured plan.

1       “(h) INDEMNIFICATION INSURANCE.—For purposes  
2 of this section, the term ‘indemnification insurance’  
3 means, in connection with an association health plan, a  
4 contract—

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

12               “(2) which is guaranteed renewable and  
13 noncancellable for any reason (except as the applica-  
14 ble authority may prescribe by regulation); and

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

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

23       “(j) SOLVENCY STANDARDS WORKING GROUP.—

24               “(1) IN GENERAL.—Within 90 days after the  
25 date of the enactment of the Small Business Health

1 Fairness Act of 2003, the applicable authority shall  
2 establish a Solvency Standards Working Group. In  
3 prescribing the initial regulations under this section,  
4 the applicable authority shall take into account the  
5 recommendations of such Working Group.

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

12 “(A) a representative of the National Asso-  
13 ciation of Insurance Commissioners;

14 “(B) a representative of the American  
15 Academy of Actuaries;

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

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

20 “(E) a representative of associations of the  
21 type referred to in section 801(b)(1), or their  
22 interests; and

23 “(F) a representative of multiemployer  
24 plans that are group health plans, or their in-  
25 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 by regulation, at  
17 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.

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

22          “(C) CURRENT AND PROJECTED VALUE OF  
23          ASSETS AND LIABILITIES.—A statement of ac-  
24          tuarial opinion signed by a qualified actuary,  
25          which sets forth the current value of the assets

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

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

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

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

1 known address of such individual is located or in which  
2 such individual is employed.

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

13       “(e) REPORTING REQUIREMENTS FOR CERTAIN AS-  
14 SOCIATION HEALTH PLANS.—An association health plan  
15 certified under this part which provides benefit options in  
16 addition to health insurance coverage for such plan year  
17 shall meet the requirements of section 103 by filing an  
18 annual report under such section which shall include infor-  
19 mation described in subsection (b)(6) with respect to the  
20 plan year and, notwithstanding section 104(a)(1)(A), shall  
21 be filed with the applicable authority not later than 90  
22 days after the close of the plan year (or on such later date  
23 as may be prescribed by the applicable authority). The ap-  
24 plicable authority may require by regulation such interim  
25 reports as it considers appropriate.

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

14           “(1) are in the aggregate reasonably related to  
15 the experience of the plan and to reasonable expecta-  
16 tions; and

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

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

21 **“SEC. 808. NOTICE REQUIREMENTS FOR VOLUNTARY TER-**  
22 **MINATION.**

23           “Except as provided in section 809(b), an association  
24 health plan which is or has been certified under this part  
25 may terminate (upon or at any time after cessation of ac-

1 cruals in benefit liabilities) only if the board of trustees,  
2 not less than 60 days before the proposed termination  
3 date—

4 “(1) provides to the participants and bene-  
5 ficiaries a written notice of intent to terminate stat-  
6 ing that such termination is intended and the pro-  
7 posed termination date;

8 “(2) develops a plan for winding up the affairs  
9 of the plan in connection with such termination in  
10 a manner which will result in timely payment of all  
11 benefits for which the plan is obligated; and

12 “(3) submits such plan in writing to the appli-  
13 cable authority.

14 Actions required under this section shall be taken in such  
15 form and manner as may be prescribed by the applicable  
16 authority by regulation.

17 **“SEC. 809. CORRECTIVE ACTIONS AND MANDATORY TERMI-**  
18 **NATION.**

19 “(a) ACTIONS TO AVOID DEPLETION OF RE-  
20 SERVES.—An association health plan which is certified  
21 under this part and which provides benefits other than  
22 health insurance coverage shall continue to meet the re-  
23 quirements of section 806, irrespective of whether such  
24 certification continues in effect. The board of trustees of  
25 such plan shall determine quarterly whether the require-

1 ments of section 806 are met. In any case in which the  
2 board determines that there is reason to believe that there  
3 is or will be a failure to meet such requirements, or the  
4 applicable authority makes such a determination and so  
5 notifies the board, the board shall immediately notify the  
6 qualified actuary engaged by the plan, and such actuary  
7 shall, not later than the end of the next following month,  
8 make such recommendations to the board for corrective  
9 action as the actuary determines necessary to ensure com-  
10 pliance with section 806. Not later than 30 days after re-  
11 ceiving from the actuary recommendations for corrective  
12 actions, the board shall notify the applicable authority (in  
13 such form and manner as the applicable authority may  
14 prescribe by regulation) of such recommendations of the  
15 actuary for corrective action, together with a description  
16 of the actions (if any) that the board has taken or plans  
17 to take in response to such recommendations. The board  
18 shall thereafter report to the applicable authority, in such  
19 form and frequency as the applicable authority may speci-  
20 fy to the board, regarding corrective action taken by the  
21 board until the requirements of section 806 are met.

22 “(b) MANDATORY TERMINATION.—In any case in  
23 which—

24 “(1) the applicable authority has been notified  
25 under subsection (a) (or by an issuer of excess/stop

1 loss insurance or indemnity insurance pursuant to  
2 section 806(a)) of a failure of an association health  
3 plan which is or has been certified under this part  
4 and is described in section 806(a)(2) to meet the re-  
5 quirements of section 806 and has not been notified  
6 by the board of trustees of the plan that corrective  
7 action has restored compliance with such require-  
8 ments; and

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

13 the board of trustees of the plan shall, at the direction  
14 of the applicable authority, terminate the plan and, in the  
15 course of the termination, take such actions as the appli-  
16 cable authority may require, including satisfying any  
17 claims referred to in section 806(a)(2)(B)(iii) and recov-  
18 ering for the plan any liability under subsection  
19 (a)(2)(B)(iii) or (e) of section 806, as necessary to ensure  
20 that the affairs of the plan will be, to the maximum extent  
21 possible, wound up in a manner which will result in timely  
22 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, the Secretary  
12 shall, upon notice to the plan, apply to the appropriate  
13 United States district court for appointment of the Sec-  
14 retary as trustee to administer the plan for the duration  
15 of the insolvency. The plan may appear as a party and  
16 other interested persons may intervene in the proceedings  
17 at the discretion of the court. The court shall appoint such  
18 Secretary trustee if the court determines that the trustee-  
19 ship is necessary to protect the interests of the partici-  
20 pants and beneficiaries or providers of medical care or to  
21 avoid any unreasonable deterioration of the financial con-  
22 dition of the plan. The trusteeship of such Secretary shall  
23 continue until the conditions described in the first sen-  
24 tence of this subsection are remedied or the plan is termi-  
25 nated.

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 and applicable provisions of law;

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

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

23           “(6) to commence, prosecute, or defend on be-  
24 half of the plan any suit or proceeding involving the  
25 plan;

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

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

10           “(9) to provide for the enrollment of plan par-  
11           ticipants and beneficiaries under appropriate cov-  
12           erage options; and

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

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

21           “(1) the sponsor and plan administrator;

22           “(2) each participant;

23           “(3) each participating employer; and

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

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

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

18          “(f) JURISDICTION OF COURT.—

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

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

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

24 “(g) PERSONNEL.—In accordance with regulations  
25 which shall be prescribed by the Secretary, the Secretary

1 shall appoint, retain, and compensate accountants, actu-  
2 aries, and other professional service personnel as may be  
3 necessary in connection with the Secretary's service as  
4 trustee under this section.

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

6 “(a) IN GENERAL.—Notwithstanding section 514, a  
7 State may impose by law a contribution tax on an associa-  
8 tion health plan described in section 806(a)(2), if the plan  
9 commenced operations in such State after the date of the  
10 enactment of the Small Business Health Fairness Act of  
11 2003.

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

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

22 “(2) the rate of such tax does not exceed the  
23 rate of any tax imposed by such State on premiums  
24 or contributions received by insurers or health main-  
25 tenance organizations for health insurance coverage

1 offered in such State in connection with a group  
2 health plan;

3 “(3) such tax is otherwise nondiscriminatory;  
4 and

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

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

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

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

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

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

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

7           “(5) APPLICABLE AUTHORITY.—The term ‘ap-  
8 plicable authority’ means the Secretary, except that,  
9 in connection with any exercise of the Secretary’s  
10 authority regarding which the Secretary is required  
11 under section 506(d) to consult with a State, such  
12 term means the Secretary, in consultation with such  
13 State.

14           “(6) HEALTH STATUS-RELATED FACTOR.—The  
15 term ‘health status-related factor’ has the meaning  
16 provided in section 733(d)(2).

17           “(7) INDIVIDUAL MARKET.—

18           “(A) IN GENERAL.—The term ‘individual  
19 market’ means the market for health insurance  
20 coverage offered to individuals other than in  
21 connection with a group health plan.

22           “(B) TREATMENT OF VERY SMALL  
23 GROUPS.—

24           “(i) IN GENERAL.—Subject to clause  
25 (ii), such term includes coverage offered in

1 connection with a group health plan that  
2 has fewer than 2 participants as current  
3 employees or participants described in sec-  
4 tion 732(d)(3) on the first day of the plan  
5 year.

6 “(ii) STATE EXCEPTION.—Clause (i)  
7 shall not apply in the case of health insur-  
8 ance coverage offered in a State if such  
9 State regulates the coverage described in  
10 such clause in the same manner and to the  
11 same extent as coverage in the small group  
12 market (as defined in section 2791(e)(5) of  
13 the Public Health Service Act) is regulated  
14 by such State.

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

1           “(9) APPLICABLE STATE AUTHORITY.—The  
2           term ‘applicable State authority’ means, with respect  
3           to a health insurance issuer in a State, the State in-  
4           surance commissioner or official or officials des-  
5           ignated by the State to enforce the requirements of  
6           title XXVII of the Public Health Service Act for the  
7           State involved with respect to such issuer.

8           “(10) QUALIFIED ACTUARY.—The term ‘quali-  
9           fied actuary’ means an individual who is a member  
10          of the American Academy of Actuaries.

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

13               “(A) a person who is otherwise eligible to  
14               be a member of the sponsor but who elects an  
15               affiliated status with the sponsor,

16               “(B) in the case of a sponsor with mem-  
17               bers which consist of associations, a person who  
18               is a member of any such association and elects  
19               an affiliated status with the sponsor, or

20               “(C) in the case of an association health  
21               plan in existence on the date of the enactment  
22               of the Small Business Health Fairness Act of  
23               2003, a person eligible to be a member of the  
24               sponsor or one of its member associations.

1           “(12) LARGE EMPLOYER.—The term ‘large em-  
2           ployer’ means, in connection with a group health  
3           plan with respect to a plan year, an employer who  
4           employed an average of at least 51 employees on  
5           business days during the preceding calendar year  
6           and who employs at least 2 employees on the first  
7           day of the plan year.

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

12          “(b) RULES OF CONSTRUCTION.—

13                 “(1) EMPLOYERS AND EMPLOYEES.—For pur-  
14                 poses of determining whether a plan, fund, or pro-  
15                 gram is an employee welfare benefit plan which is an  
16                 association health plan, and for purposes of applying  
17                 this title in connection with such plan, fund, or pro-  
18                 gram so determined to be such an employee welfare  
19                 benefit plan—

20                         “(A) in the case of a partnership, the term  
21                         ‘employer’ (as defined in section 3(5)) includes  
22                         the partnership in relation to the partners, and  
23                         the term ‘employee’ (as defined in section 3(6))  
24                         includes any partner in relation to the partner-  
25                         ship; and

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

5           “(2) PLANS, FUNDS, AND PROGRAMS TREATED  
6           AS EMPLOYEE WELFARE BENEFIT PLANS.—In the  
7           case of any plan, fund, or program which was estab-  
8           lished or is maintained for the purpose of providing  
9           medical care (through the purchase of insurance or  
10          otherwise) for employees (or their dependents) cov-  
11          ered thereunder and which demonstrates to the Sec-  
12          retary that all requirements for certification under  
13          this part would be met with respect to such plan,  
14          fund, or program if such plan, fund, or program  
15          were a group health plan, such plan, fund, or pro-  
16          gram shall be treated for purposes of this title as an  
17          employee welfare benefit plan on and after the date  
18          of such demonstration.”.

19          (b) CONFORMING AMENDMENTS TO PREEMPTION  
20          RULES.—

21                 (1) Section 514(b)(6) of such Act (29 U.S.C.  
22                 1144(b)(6)) is amended by adding at the end the  
23                 following new subparagraph:

24                 “(E) The preceding subparagraphs of this paragraph  
25                 do not apply with respect to any State law in the case

1 of an association health plan which is certified under part  
2 8.”.

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

5 (A) in subsection (b)(4), by striking “Sub-  
6 section (a)” and inserting “Subsections (a) and  
7 (d)”;

8 (B) in subsection (b)(5), by striking “sub-  
9 section (a)” in subparagraph (A) and inserting  
10 “subsection (a) of this section and subsections  
11 (a)(2)(B) and (b) of section 805”, and by strik-  
12 ing “subsection (a)” in subparagraph (B) and  
13 inserting “subsection (a) of this section or sub-  
14 section (a)(2)(B) or (b) of section 805”;

15 (C) by redesignating subsection (d) as sub-  
16 section (e); and

17 (D) by inserting after subsection (c) the  
18 following new subsection:

19 “(d)(1) Except as provided in subsection (b)(4), the  
20 provisions of this title shall supersede any and all State  
21 laws insofar as they may now or hereafter preclude, or  
22 have the effect of precluding, a health insurance issuer  
23 from offering health insurance coverage in connection with  
24 an association health plan which is certified under part  
25 8.

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

3           “(A) In any case in which health insurance cov-  
4 erage of any policy type is offered under an associa-  
5 tion health plan certified under part 8 to a partici-  
6 pating employer operating in such State, the provi-  
7 sions of this title shall supersede any and all laws  
8 of such State insofar as they may preclude a health  
9 insurance issuer from offering health insurance cov-  
10 erage of the same policy type to other employers op-  
11 erating in the State which are eligible for coverage  
12 under such association health plan, whether or not  
13 such other employers are participating employers in  
14 such plan.

15           “(B) In any case in which health insurance cov-  
16 erage of any policy type is offered in a State under  
17 an association health plan certified under part 8 and  
18 the filing, with the applicable State authority (as de-  
19 fined in section 812(a)(9)), of the policy form in  
20 connection with such policy type is approved by such  
21 State authority, the provisions of this title shall su-  
22 persede any and all laws of any other State in which  
23 health insurance coverage of such type is offered, in-  
24 sofar as they may preclude, upon the filing in the  
25 same form and manner of such policy form with the

1 applicable State authority in such other State, the  
2 approval of the filing in such other State.

3 “(3) Nothing in subsection (b)(6)(E) or the preceding  
4 provisions of this subsection shall be construed to super-  
5 sede or impair the law of any State providing, with respect  
6 to health insurance issuers or health insurance coverage,  
7 solvency standards or similar standards regarding the ade-  
8 quacy of insurer capital, surplus, reserves, or contribu-  
9 tions.

10 “(4) For additional provisions relating to association  
11 health plans, see subsections (a)(2)(B) and (b) of section  
12 805.

13 “(5) For purposes of this subsection, the term ‘asso-  
14 ciation health plan’ has the meaning provided in section  
15 801(a), and the terms ‘health insurance coverage’, ‘par-  
16 ticipating employer’, and ‘health insurance issuer’ have  
17 the meanings provided such terms in section 812, respec-  
18 tively.”.

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

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

23 (B) in clause (ii), by inserting “and which  
24 does not provide medical care (within the mean-  
25 ing of section 733(a)(2)),” after “arrange-

1           ment,” and by striking “title.” and inserting  
2           “title, and”; and

3           (C) by adding at the end the following new  
4           clause:

5           “(iii) subject to subparagraph (E), in the case  
6           of any other employee welfare benefit plan which is  
7           a multiple employer welfare arrangement and which  
8           provides medical care (within the meaning of section  
9           733(a)(2)), any law of any State which regulates in-  
10          surance may apply.”.

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

13               (A) by striking “Nothing” and inserting  
14               “(1) Except as provided in paragraph (2), noth-  
15               ing”; and

16               (B) by adding at the end the following new  
17               paragraph:

18               “(2) Nothing in any other provision of law enacted  
19               on or after the date of the enactment of the Small Busi-  
20               ness Health Fairness Act of 2003 shall be construed to  
21               alter, amend, modify, invalidate, impair, or supersede any  
22               provision of this title, except by specific cross-reference to  
23               the affected section.”.

24          (c) PLAN SPONSOR.—Section 3(16)(B) of such Act  
25          (29 U.S.C. 102(16)(B)) is amended by adding at the end

1 the following new sentence: “Such term also includes a  
2 person serving as the sponsor of an association health plan  
3 under part 8.”.

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

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

15 (f) REPORT TO THE CONGRESS REGARDING CERTIFI-  
16 CATION OF SELF-INSURED ASSOCIATION HEALTH  
17 PLANS.—Not later than January 1, 2008, the Secretary  
18 of Labor shall report to the Committee on Education and  
19 the Workforce of the House of Representatives and the  
20 Committee on Health, Education, Labor, and Pensions of  
21 the Senate the effect association health plans have had,  
22 if any, on reducing the number of uninsured individuals.

23 (g) CLERICAL AMENDMENT.—The table of contents  
24 in section 1 of the Employee Retirement Income Security

1 Act of 1974 is amended by inserting after the item relat-  
2 ing to section 734 the following new items:

“PART 8—RULES GOVERNING ASSOCIATION HEALTH PLANS

- “Sec. 801. Association health plans.
- “Sec. 802. Certification of association health plans.
- “Sec. 803. Requirements relating to sponsors and boards of trustees.
- “Sec. 804. Participation and coverage requirements.
- “Sec. 805. Other requirements relating to plan documents, contribution rates, and benefit options.
- “Sec. 806. Maintenance of reserves and provisions for solvency for plans providing health benefits in addition to health insurance coverage.
- “Sec. 807. Requirements for application and related requirements.
- “Sec. 808. Notice requirements for voluntary termination.
- “Sec. 809. Corrective actions and mandatory termination.
- “Sec. 810. Trusteeship by the Secretary of insolvent association health plans providing health benefits in addition to health insurance coverage.
- “Sec. 811. State assessment authority.
- “Sec. 812. Definitions and rules of construction.”.

3 **SEC. 3. CLARIFICATION OF TREATMENT OF SINGLE EM-**  
4 **PLOYER ARRANGEMENTS.**

5 Section 3(40)(B) of the Employee Retirement Income  
6 Security Act of 1974 (29 U.S.C. 1002(40)(B)) is  
7 amended—

8 (1) in clause (i), by inserting after “control  
9 group,” the following: “except that, in any case in  
10 which the benefit referred to in subparagraph (A)  
11 consists of medical care (as defined in section  
12 812(a)(2)), two or more trades or businesses, wheth-  
13 er or not incorporated, shall be deemed a single em-  
14 ployer for any plan year of such plan, or any fiscal  
15 year of such other arrangement, if such trades or  
16 businesses are within the same control group during

1 such year or at any time during the preceding 1-year  
2 period,”;

3 (2) in clause (iii), by striking “(iii) the deter-  
4 mination” and inserting the following:

5 “(iii)(I) in any case in which the benefit re-  
6 ferred to in subparagraph (A) consists of medical  
7 care (as defined in section 812(a)(2)), the deter-  
8 mination of whether a trade or business is under  
9 ‘common control’ with another trade or business  
10 shall be determined under regulations of the Sec-  
11 retary applying principles consistent and coextensive  
12 with the principles applied in determining whether  
13 employees of two or more trades or businesses are  
14 treated as employed by a single employer under sec-  
15 tion 4001(b), except that, for purposes of this para-  
16 graph, an interest of greater than 25 percent may  
17 not be required as the minimum interest necessary  
18 for common control, or

19 “(II) in any other case, the determination”;

20 (3) by redesignating clauses (iv) and (v) as  
21 clauses (v) and (vi), respectively; and

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

24 “(iv) in any case in which the benefit referred  
25 to in subparagraph (A) consists of medical care (as

1 defined in section 812(a)(2)), in determining, after  
2 the application of clause (i), whether benefits are  
3 provided to employees of two or more employers, the  
4 arrangement shall be treated as having only one par-  
5 ticipating employer if, after the application of clause  
6 (i), the number of individuals who are employees and  
7 former employees of any one participating employer  
8 and who are covered under the arrangement is  
9 greater than 75 percent of the aggregate number of  
10 all individuals who are employees or former employ-  
11 ees of participating employers and who are covered  
12 under the arrangement.”.

13 **SEC. 4. ENFORCEMENT PROVISIONS RELATING TO ASSO-**  
14 **CIATION HEALTH PLANS.**

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

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

22 “(b) Any person who willfully falsely represents, to  
23 any employee, any employee’s beneficiary, any employer,  
24 the Secretary, or any State, a plan or other arrangement  
25 established or maintained for the purpose of offering or

1 providing any benefit described in section 3(1) to employ-  
2 ees or their beneficiaries as—

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

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

15 “(3) being a plan or arrangement described in  
16 section 3(40)(A)(i),

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

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

23 “(n) ASSOCIATION HEALTH PLAN CEASE AND DE-  
24 SIST ORDERS.—

1           “(1) IN GENERAL.—Subject to paragraph (2),  
2           upon application by the Secretary showing the oper-  
3           ation, promotion, or marketing of an association  
4           health plan (or similar arrangement providing bene-  
5           fits consisting of medical care (as defined in section  
6           733(a)(2))) that—

7                   “(A) is not certified under part 8, is sub-  
8                   ject under section 514(b)(6) to the insurance  
9                   laws of any State in which the plan or arrange-  
10                  ment offers or provides benefits, and is not li-  
11                  censed, registered, or otherwise approved under  
12                  the insurance laws of such State; or

13                  “(B) is an association health plan certified  
14                  under part 8 and is not operating in accordance  
15                  with the requirements under part 8 for such  
16                  certification,

17           a district court of the United States shall enter an  
18           order requiring that the plan or arrangement cease  
19           activities.

20           “(2) EXCEPTION.—Paragraph (1) shall not  
21           apply in the case of an association health plan or  
22           other arrangement if the plan or arrangement shows  
23           that—

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

4           “(B) with respect to each State in which  
5           the plan or arrangement offers or provides ben-  
6           efits, the plan or arrangement is operating in  
7           accordance with applicable State laws that are  
8           not superseded under section 514.

9           “(3) ADDITIONAL EQUITABLE RELIEF.—The  
10          court may grant such additional equitable relief, in-  
11          cluding any relief available under this title, as it  
12          deems necessary to protect the interests of the pub-  
13          lic and of persons having claims for benefits against  
14          the plan.”.

15          (c) RESPONSIBILITY FOR CLAIMS PROCEDURE.—  
16          Section 503 of such Act (29 U.S.C. 1133) is amended by  
17          inserting “(a) IN GENERAL.—” before “In accordance”,  
18          and by adding at the end the following new subsection:

19          “(b) ASSOCIATION HEALTH PLANS.—The terms of  
20          each association health plan which is or has been certified  
21          under part 8 shall require the board of trustees or the  
22          named fiduciary (as applicable) to ensure that the require-  
23          ments of this section are met in connection with claims  
24          filed under the plan.”.

1 **SEC. 5. COOPERATION BETWEEN FEDERAL AND STATE AU-**  
2 **THORITIES.**

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

6 “(d) CONSULTATION WITH STATES WITH RESPECT  
7 TO ASSOCIATION HEALTH PLANS.—

8 “(1) AGREEMENTS WITH STATES.—The Sec-  
9 retary shall consult with the State recognized under  
10 paragraph (2) with respect to an association health  
11 plan regarding the exercise of—

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

15 “(B) the Secretary’s authority to certify  
16 association health plans under part 8 in accord-  
17 ance with regulations of the Secretary applica-  
18 ble to certification under part 8.

19 “(2) RECOGNITION OF PRIMARY DOMICILE  
20 STATE.—In carrying out paragraph (1), the Sec-  
21 retary shall ensure that only one State will be recog-  
22 nized, with respect to any particular association  
23 health plan, as the State to which consultation  
24 is required. In carrying out this paragraph—

25 “(A) in the case of a plan which provides  
26 health insurance coverage (as defined in section

1           812(a)(3)), such State shall be the State with  
2           which filing and approval of a policy type of-  
3           fered by the plan was initially obtained, and

4                   “(B) in any other case, the Secretary shall  
5           take into account the places of residence of the  
6           participants and beneficiaries under the plan  
7           and the State in which the trust is main-  
8           tained.”.

9   **SEC. 6. EFFECTIVE DATE AND TRANSITIONAL AND OTHER**  
10                   **RULES.**

11           (a) **EFFECTIVE DATE.**—The amendments made by  
12 this Act shall take effect one year from the date of the  
13 enactment. The Secretary of Labor shall first issue all reg-  
14 ulations necessary to carry out the amendments made by  
15 this Act within one year after the date of the enactment  
16 of this Act.

17           (b) **TREATMENT OF CERTAIN EXISTING HEALTH**  
18 **BENEFITS PROGRAMS.**—

19                   (1) **IN GENERAL.**—In any case in which, as of  
20 the date of the enactment of this Act, an arrange-  
21 ment is maintained in a State for the purpose of  
22 providing benefits consisting of medical care for the  
23 employees and beneficiaries of its participating em-  
24 ployers, at least 200 participating employers make  
25 contributions to such arrangement, such arrange-

1       ment has been in existence for at least 10 years, and  
2       such arrangement is licensed under the laws of one  
3       or more States to provide such benefits to its par-  
4       ticipating employers, upon the filing with the appli-  
5       cable authority (as defined in section 812(a)(5) of  
6       the Employee Retirement Income Security Act of  
7       1974 (as amended by this subtitle)) by the arrange-  
8       ment of an application for certification of the ar-  
9       rangement under part 8 of subtitle B of title I of  
10      such Act—

11               (A) such arrangement shall be deemed to  
12               be a group health plan for purposes of title I  
13               of such Act;

14               (B) the requirements of sections 801(a)  
15               and 803(a) of the Employee Retirement Income  
16               Security Act of 1974 shall be deemed met with  
17               respect to such arrangement;

18               (C) the requirements of section 803(b) of  
19               such Act shall be deemed met, if the arrange-  
20               ment is operated by a board of directors  
21               which—

22                       (i) is elected by the participating em-  
23                       ployers, with each employer having one  
24                       vote; and

1                   (ii) has complete fiscal control over  
2                   the arrangement and which is responsible  
3                   for all operations of the arrangement;

4                   (D) the requirements of section 804(a) of  
5                   such Act shall be deemed met with respect to  
6                   such arrangement; and

7                   (E) the arrangement may be certified by  
8                   any applicable authority with respect to its op-  
9                   erations in any State only if it operates in such  
10                  State on the date of certification.

11                 The provisions of this subsection shall cease to apply  
12                 with respect to any such arrangement at such time  
13                 after the date of the enactment of this Act as the  
14                 applicable requirements of this subsection are not  
15                 met with respect to such arrangement.

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