

## Union Calendar No.

118TH CONGRESS  
1ST SESSION

# H. R. 2868

[Report No. 118-]

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.

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### 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

JUNE --, 2023

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italics]

[For text of introduced bill, see copy of bill as introduced on April 25, 2023]

# **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”.*

6 **SEC. 2. TREATMENT OF GROUP OR ASSOCIATION OF EM-**  
7 **PLOYERS.**

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

11 *(1) by striking “The term” and inserting “(A)*  
12 *The term”; and*

13 *(2) by adding at the end the following:*

14 *“(B) For purposes of subparagraph (A), a group or*  
15 *association of employers shall be treated as an ‘employer’,*  
16 *regardless of whether the employers composing such group*  
17 *or association are in the same industry, trade, or profes-*  
18 *sion, if such group or association—*

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

22 *“(II) provides coverage under such plan to at*  
23 *least 51 employees after all of the employees employed*  
24 *by all of the employer members of such group or asso-*

1        *ciation have been aggregated and counted together as*  
2        *described in subparagraph (D);*

3            *“(III) has been actively in existence for at least*  
4        *2 years prior to establishing and maintaining an em-*  
5        *ployer welfare benefit plan that is a group health*  
6        *plan (as defined in section 733(a)(1));*

7            *“(IV) has been formed and maintained in good*  
8        *faith for purposes other than providing medical care*  
9        *(as defined in section 733(a)(2)) through the purchase*  
10       *of insurance or otherwise;*

11           *“(V) does not condition membership in the group*  
12       *or association on any health status-related factor (as*  
13       *described in section 702(a)(1)) relating to any indi-*  
14       *vidual;*

15           *“(VI) makes coverage under such plan available*  
16       *to all employer members of such group or association*  
17       *regardless of any health status-related factor (as de-*  
18       *scribed in section 702(a)(1)) relating to such em-*  
19       *ployer members;*

20           *“(VII) does not provide coverage under such plan*  
21       *to any individual other than an employee of an em-*  
22       *ployer member of such group or association;*

23           *“(VIII) has established a governing board with*  
24       *by-laws or other similar indications of formality to*  
25       *manage and operate such plan in both form and sub-*

1        *stance, of which at least 75 percent of the board mem-*  
2        *bers shall be made up of employer members of such*  
3        *group or association participating in the plan that*  
4        *are duly elected by each participating employer mem-*  
5        *ber casting 1 vote during a scheduled election;*

6            *“(IX) is not a health insurance issuer (as defined*  
7        *in section 733(b)(2)), and is not owned or controlled*  
8        *by such a health insurance issuer or by a subsidiary*  
9        *or affiliate of such a health insurance issuer, other*  
10       *than to the extent such a health insurance issuer—*

11            *“(aa) may participate in the group or asso-*  
12        *ciation as a member; and*

13            *“(bb) may provide services such as assist-*  
14        *ance with plan development, marketing, and ad-*  
15        *ministrative services to such group or associa-*  
16        *tion;*

17            *“(ii) meets any set of criteria to qualify for such*  
18        *treatment in an advisory opinion issued by the Sec-*  
19        *retary prior to the date of enactment of the Associa-*  
20        *tion Health Plans Act; or*

21            *“(iii) meets any other set of criteria to qualify*  
22        *for such treatment that the Secretary by regulation*  
23        *may provide.*

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

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

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

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

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

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

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

15           “(III) earns wages (as defined in section 3121(a)  
16 of the Internal Revenue Code of 1986) or self-employ-  
17 ment income (as defined in section 1402(b) of such  
18 Code) from such trade or business; and

19           “(IV) works at least 10 hours per week or 40  
20 hours per month providing personal services to such  
21 trade or business.

22           “(iii) The board of a group or association of employers  
23 shall—

24           “(I) initially determine whether an individual  
25 meets the requirements under clause (ii) to be consid-

1        *ered a self-employed individual for the purposes of*  
2        *being treated as an—*

3                *“(aa) employer member of such group or as-*  
4                *sociation (in accordance with clause (i)(I)); and*

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

9                *“(II) through reasonable monitoring procedures,*  
10               *periodically determine whether the individual con-*  
11               *tinues to meet such requirements; and*

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

22               *“(D) For purposes of subparagraph (B), all of the em-*  
23               *ployees (including self-employed individuals) employed by*  
24               *all of the employer members (including self-employed indi-*  
25               *viduals) of a group or association of employers shall 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 benefit*  
5           *plan established and maintained by such group or as-*  
6           *sociation.”.*

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 or*  
12          *State law.*

13          **SEC. 3. RULES APPLICABLE TO GROUP HEALTH PLANS ES-**  
14                            **TABLISHED AND MAINTAINED BY A GROUP**  
15                            **OR ASSOCIATION OF EMPLOYERS.**

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

19          **“SEC. 736. RULES APPLICABLE TO GROUP HEALTH PLANS**  
20                            **ESTABLISHED AND MAINTAINED BY A GROUP**  
21                            **OR ASSOCIATION OF EMPLOYERS.**

22           “(a) **PREMIUM RATES FOR A GROUP OR ASSOCIATION**  
23          **OF EMPLOYERS.—**

24           “(1)(A) *In the case of a group health plan estab-*  
25          *lished and maintained by a group or association of*



1        *employers described in section 3(5)(B), such plan*  
2        *may—*

3                *“(i) establish base premium rates formed on*  
4                *an actuarially sound, modified community rat-*  
5                *ing methodology that considers the pooling of all*  
6                *plan participant claims; and*

7                *“(ii) utilize the specific risk profile of each*  
8                *employer member of such group or association to*  
9                *determine contribution rates for each such em-*  
10               *ployer member’s share of a premium by actuari-*  
11               *ally adjusting above or below the established base*  
12               *premium rates.*

13               *“(B) For purposes of paragraph (1), the term*  
14        *‘employer member’ means—*

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

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

1           “(2) *In the event a group or association is made*  
2 *up solely of self-employed individuals (and no em-*  
3 *ployers with at least 1 common law employee are*  
4 *members of such group or association), the group*  
5 *health plan established by such group or association*  
6 *shall—*

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

10           “(B) *pool all plan participant claims; and*

11           “(C) *charge each plan participant the same*  
12 *premium rate.*

13           “(b) *DISCRIMINATION AND PRE-EXISTING CONDITION*  
14 *PROTECTIONS.—A group health plan established and main-*  
15 *tained by a group or association of employers described in*  
16 *section 3(5)(B) shall be prohibited from—*

17           “(1) *establishing any rule for eligibility (includ-*  
18 *ing continued eligibility) of any individual (includ-*  
19 *ing an employee of an employer member or a self-em-*  
20 *ployed individual, or a dependent of such employee or*  
21 *self-employed individual) to enroll for benefits under*  
22 *the terms of the plan that discriminates based on any*  
23 *health status-related factor that relates to such indi-*  
24 *vidual (consistent with the rules under section*  
25 *702(a)(1));*

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

11           “(3) denying coverage under such plan on the  
12          basis of a pre-existing condition (consistent with the  
13          rules under section 2704 of the Public Health Service  
14          Act).”.

15   **SEC. 4. RULE OF CONSTRUCTION.**

16          Nothing in this Act shall be construed to exempt a  
17          group health plan which is an employee welfare benefit plan  
18          offered through a group or association of employers from  
19          the requirements of part 7 of subtitle B of title I of the  
20          Employee Retirement Income Security Act of 1974 (29  
21          U.S.C. 1181 et. seq.), including the provisions of part A  
22          of title XXVII of the Public Health Service Act as incor-  
23          porated by reference into this Act through section 715.