

118TH CONGRESS
1ST SESSION

S. 3167

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

IN THE SENATE OF THE UNITED STATES

OCTOBER 30, 2023

Mr. BRAUN introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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 “Multiple Employer
5 Welfare Arrangement Act” or the “MEWA Act”.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 subsidiary or affiliate of such a health insurance
2 issuer, other than to the extent such a health insur-
3 ance issuer may participate in the group or associa-
4 tion as a member;

5 “(ii) is structured in good faith with any set of
6 criteria to qualify for such treatment in any advisory
7 opinion issued prior to the date of enactment of the
8 Multiple Employer Welfare Arrangement Act; or

9 “(iii) meets any other set of criteria to qualify
10 for such treatment that the Secretary by regulation
11 may provide.

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

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

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

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

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

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

1 “(II) has a bona fide ownership right in a trade
2 or business, regardless of whether such trade or
3 business is incorporated or unincorporated;

4 “(III) earns wages (as defined in section
5 3121(a) of the Internal Revenue Code of 1986) or
6 self-employment income (as defined in section
7 1402(b) of such Code) from such trade or business;
8 and

9 “(IV) works at least 10 hours a week or 40
10 hours per month providing personal services to such
11 trade or business.

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

14 “(I) initially determine whether an individual
15 meets the requirements under clause (ii) to be con-
16 sidered to a self-employed individual for the pur-
17 poses of being treated as an—

18 “(aa) employer member of such group or
19 association (in accordance with clause (i)(I));
20 and

21 “(bb) employee who may participate in the
22 employee welfare benefit plan established and
23 maintained by such group or association (in ac-
24 cordance with clause (i)(II));

1 “(II) through reasonable monitoring proce-
2 dures, periodically determine whether the individual
3 continues to meet such requirements; and

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

14 “(D) For purposes of subparagraph (B), all of the
15 employees (including self-employed individuals) employed
16 by all of the employer members (including self-employed
17 individuals) of a group or association of employers shall
18 be—

19 “(i) treated as participants in a single plan
20 multiple employer welfare arrangement; and

21 “(ii) aggregated and counted together for pur-
22 poses of any regulation of an employee welfare ben-
23 efit plan established and maintained by such group
24 or association.”.

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

7 **SEC. 3. RULES APPLICABLE TO EMPLOYEE WELFARE BEN-**
 8 **EFIT PLANS ESTABLISHED AND MAINTAINED**
 9 **BY A GROUP OR ASSOCIATION OF EMPLOY-**
 10 **ERS.**

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

14 **“SEC. 736. RULES APPLICABLE TO EMPLOYEE WELFARE**
 15 **BENEFIT PLANS ESTABLISHED AND MAIN-**
 16 **TAINED BY A GROUP OR ASSOCIATION OF**
 17 **EMPLOYERS.**

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

20 “(1)(A) In the case of an employee welfare ben-
 21 efit plan established and maintained by a group or
 22 association of employers described in section
 23 3(5)(B), such plan may, to the extent not prohibited
 24 under State law—

1 “(i) establish base premium rates formed
2 on an actuarially sound, modified community
3 rating methodology that considers the pooling
4 of all plan participant claims; and

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

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

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

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

23 “(2) In the event a group or association is
24 made up solely of self-employed individuals (and no
25 employers with at least 1 common law employee are

1 members of such group or association), the employee
2 welfare benefit plan established by such group or as-
3 sociation shall—

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

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

8 “(C) charge each plan participant the
9 same premium rate.

10 “(b) DISCRIMINATION AND PRE-EXISTING CONDI-
11 TION PROTECTIONS.—An employee welfare benefit plan
12 established and maintained by a group or association of
13 employers described in section 3(5)(B) shall be prohibited
14 from—

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

24 “(2) requiring an individual (including an em-
25 ployee of an employer member or a self-employed in-

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

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

14 **SEC. 4. RULE OF CONSTRUCTION.**

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

○