

112TH CONGRESS
1ST SESSION

H. R. 3249

To recognize small employer benefit arrangements as employers, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 24, 2011

Mr. ANDREWS introduced the following bill; which was referred to the Committee on Education and the Workforce, and in addition to the Committees on Ways and Means and Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To recognize small employer benefit arrangements 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. SMALL EMPLOYER BENEFIT ARRANGEMENTS.**

4 (a) AMENDMENTS TO IRC.—

5 (1) IN GENERAL.—Section 414 of the Internal
6 Revenue Code of 1986 is amended by adding at the
7 end the following new subsection:

1 “(y) SMALL EMPLOYER BENEFIT ARRANGE-
2 MENTS.—

3 “(1) TREATMENT AS EMPLOYER.—

4 “(A) RETIREMENT, ACCIDENT, AND
5 HEALTH INSURANCE.—A small employer benefit
6 arrangement meeting the requirements of this
7 subsection shall be treated as an ‘employer’ for
8 the purpose of providing qualified retirement
9 and accident and health plans (including a plan
10 qualified under section 105(h) or section 125)
11 or group-term life insurance under section 79.

12 “(B) ALLOCATION OF INCOME.—Notwith-
13 standing subparagraph (A), the shareholder-
14 members of the small employer benefit arrange-
15 ment shall be treated as employers for purposes
16 of administering and allocating items of income,
17 credits, deductions, or exclusions associated
18 with the provision of employee benefits.

19 “(2) CERTAIN ORGANIZATIONS PROHIBITED.—

20 “(A) IN GENERAL.—An organization shall
21 not be treated as a small employer benefit ar-
22 rangement if the small employer benefit ar-
23 rangement or any related entity is owned, in
24 whole or in part, or managed or controlled in
25 whole or in part, by any management agree-

1 ment or certificates of indebtedness, directly or
2 indirectly, or by an agents, brokers or providers
3 of a—

4 “(i) health, life, or disability insurer;

5 “(ii) retirement plan service provider
6 (including persons who provide plan de-
7 sign, administration, and investment advice
8 services to retirement plans);

9 “(iii) claim administrators; and

10 “(iv) investment advisors.

11 “(B) ORDINARY PROVISION OF PRODUCTS
12 AND SERVICES.—Nothing in this paragraph
13 shall be construed—

14 “(i) to prohibit a small employer ben-
15 efit arrangement from contracting for the
16 ordinary provision of products and services
17 from any persons or organizations that
18 might otherwise be prohibited from having
19 an ownership or management interest in a
20 small employer benefit arrangement, or

21 “(ii) to prohibit small employer ben-
22 efit arrangements from creating, by and
23 between themselves, service organizations
24 owned and controlled exclusively by small
25 employer benefit arrangements to provide

1 for such products and services in the ful-
2 fillment of their purposes.

3 “(3) DEFINITION.—The term ‘small employer
4 benefit arrangement’ means a member owned, demo-
5 cratically controlled cooperative organization that—

6 “(A) meets the requirements of subchapter
7 T;

8 “(B) has at least 21 shareholders of whom
9 90 percent are in the same or similar line of
10 business;

11 “(C) sponsors an accident and health plan
12 for shareholder-members and any employees of
13 shareholder-members;

14 “(D) sponsors a qualified retirement plan
15 that meets the requirements of paragraph (12)
16 or (13) of section 401(k) and is available to
17 shareholder-members and any employees of
18 shareholder-members;

19 “(E) provides employee benefits pursuant
20 to a written agreement; and

21 “(F) requires all benefit eligible employees
22 of a shareholder-member to participate accord-
23 ing to the same statutory eligibility criteria nor-
24 mally accorded such persons.”.

1 (2) EFFECTIVE DATE.—The amendments made
2 by this subsection shall apply with respect to plan
3 years beginning on or after the date of the enact-
4 ment of this Act.

5 (b) AMENDMENTS TO ERISA.—

6 (1) TREATMENT AS EMPLOYER.—Section 3 of
7 the Employee Retirement and Income Security Act
8 (29 U.S.C. 1002) is amended—

9 (A) in paragraph (5), by inserting “or a
10 small employer benefit arrangement” after “a
11 group or association of employers”; and

12 (B) by adding at the end the following new
13 paragraph:

14 “(43) The term ‘small employer benefit arrangement’
15 means a member owned, democratically controlled cooper-
16 ative organization that—

17 “(A) meets the requirements of subchapter T of
18 chapter 1 of the Internal Revenue Code of 1986;

19 “(B) has at least 21 shareholders of whom 90
20 percent are in the same or similar line of business;

21 “(C) sponsors an accident and health plan for
22 shareholder-members and any employees of share-
23 holder-members;

24 “(D) sponsors a qualified retirement plan that
25 meets the requirements of paragraph (12) or (13) of

1 section 401(k) of the Internal Revenue Code of 1986
2 and is available to shareholder-members and any
3 employees of shareholder-members;

4 “(E) provides employee benefits pursuant to a
5 written agreement; and

6 “(F) requires all benefit eligible employees of a
7 shareholder-member to participate according to the
8 same statutory eligibility criteria normally accorded
9 such persons.”.

10 (2) SELF-INSURANCE PROHIBITED.—Section
11 609 of such Act (29 U.S.C. 1169) is amended—

12 (A) by redesignating subsection (e) as sub-
13 section (f); and

14 (B) by inserting after subsection (d) the
15 following new subsection:

16 “(e) SMALL EMPLOYER BENEFIT ARRANGE-
17 MENTS.—

18 “(1) SELF-INSURANCE PROHIBITED.—Any
19 group health plan established or maintained by a
20 small employer benefit arrangement shall be fully in-
21 sured.

22 “(2) FULLY INSURED DEFINED.—A group
23 health plan established or maintained by a small em-
24 ployer benefit arrangement shall be considered fully
25 insured only if the terms of the arrangement provide

1 for benefits the amount of all of which the Secretary
2 determines are guaranteed under a contract, or pol-
3 icy of insurance, issued by an insurance company,
4 insurance service, or insurance organization, quali-
5 fied to conduct business in a State.”.

6 (3) EFFECTIVE DATE.—The amendments made
7 by this subsection shall apply with respect to plan
8 years beginning on or after the date of the enact-
9 ment of this Act.

10 (c) AMENDMENTS TO PPACA.—

11 (1) SMALL EMPLOYER BENEFIT ARRANGEMENT
12 DEFINED.—Section 1304(b) of the Patient Protec-
13 tion and Affordable Care Act (42 U.S.C. 18024(b))
14 is amended by adding at the end the following new
15 paragraph:

16 “(5) SMALL EMPLOYER BENEFIT ARRANGE-
17 MENT.—The term ‘small employer benefit arrange-
18 ment’ has the meaning given such term in section
19 3(43) of the Employee Retirement and Income Secu-
20 rity Act.”.

21 (2) QUALIFIED HEALTH PLANS.—Section
22 1301(a) of such Act (42 U.S.C. 18021(a)) is amend-
23 ed by adding at the end the following new para-
24 graph:

1 “(5) INCLUSION OF SMALL EMPLOYER BENEFIT
2 ARRANGEMENT PLANS.—Any reference in this title
3 to a qualified health plan shall be deemed to include
4 any group health plan established or maintained by
5 a small employer benefit arrangement.”.

6 (3) ELIGIBILITY TO PARTICIPATE IN AMERICAN
7 HEALTH BENEFIT EXCHANGES.—Section 1312(f)(2)
8 of such Act (42 U.S.C. 18032(f)(2)) is amended by
9 adding at the end the following new subparagraph:

10 “(C) SMALL EMPLOYER BENEFIT AR-
11 RANGEMENTS.—For purposes of subparagraph
12 (A), a small employer benefit arrangement shall
13 be treated as a small employer.”.

14 (4) EFFECTIVE DATE.—The amendments made
15 to any provision by this subsection shall take effect
16 as if included in the enactment of such provision.

○