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IN CLERK'S OFFICE
U.S. DISTRICT COURT, E.D.N.Y.
★ FEB - 7 2005 ★
BROOKLYN OFFICE

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

RETAIL INDUSTRY LEADERS ASSOCIATION,

Plaintiff,

v.

**SUFFOLK COUNTY, STEVE LEVY in his official
capacity as County Executive of Suffolk County,
SUFFOLK COUNTY DEPARTMENT OF LABOR,
and ROBERT W. DOW, JR. in his official capacity as
Commissioner of Labor of Suffolk County,**

Defendants.

CV-06

Case No.

531

**DECLARATORY AND
INJUNCTIVE RELIEF SOUGHT**

SPATT, J.

BOYLE, M.J.

COMPLAINT

Plaintiff Retail Industry Leaders Association ("RILA") files this Complaint for declaratory and permanent injunctive relief against defendant Suffolk County; defendant Steve Levy in his official capacity as County Executive of Suffolk County; defendant Suffolk County Department of Labor; and defendant Robert W. Dow, Jr. in his official capacity as Commissioner of Labor of Suffolk County.

RILA hereby alleges as follows:

I.
PRELIMINARY STATEMENT

1. On or about October 28, 2005, Suffolk County Executive Steve Levy signed into law the "Suffolk County Fair Share for Health Care Act," IR-1903-2005 ("Suffolk County Act" or "Act"). (A complete and accurate copy of the Act is attached hereto as Exhibit 1.) The Act requires large retail grocery stores in Suffolk County to make health care expenditures on behalf of every employee at a rate of no less than \$3 per hour worked. To comply with the Act, a

covered employer that has no health benefit plan is required to establish one; a covered employer that already provides health benefits to its employees is obligated to modify and fund its plan in compliance with the Act. Companies with collective bargaining agreements with labor unions are exempted from the Act, however, regardless whether they make the same level of health care expenditures required of covered employers, or whether they provide health benefits at all. The Act vests the Suffolk County Department of Labor with authority to enforce the law's provisions, including the authority to audit employers, investigate complaints, inspect workplaces, and order payment of civil remedies. Employers are required to make annual reports to the County Department of Labor.

2. As explained below, the Suffolk County Act is an unlawful intrusion on the comprehensive federal framework for the administration and regulation of employee benefit plans and, accordingly, is preempted by the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1144 *et seq.* ("ERISA"). Further, the Act is preempted by the National Labor Relations Act, 29 U.S.C. §§ 151 *et seq.* ("NLRA"), violates Section 1983 of the Civil Rights Act of 1871, 42 U.S.C. § 1983, and is a discriminatory, irrational regulation of commercial activity in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. The Act also improperly discriminates against out-of-state businesses and imposes an undue burden on interstate commerce in violation of the Commerce Clause, article I, section 8, clause 3 of the United States Constitution, and is rendered null and void by New York State's Minimum Wage Act, N.Y. LAB. LAW §§ 650-665, and accordingly violates Article IX of the New York Constitution and New York's Municipal Home Rule Law, N.Y. MUN. H. R. LAW §§ 10-11.

3. Plaintiff RILA is a trade association representing companies from all segments of retailing. With this suit, RILA seeks a declaration that the Suffolk County Act is preempted by ERISA and the NLRA and violates section 1983 of the Civil Rights Act of 1871, 42 U.S.C. § 1983, the Commerce Clause of the United States Constitution, article I, section 8, clause 3, the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, New York's Minimum Wage Act and Municipal Home Rule Law, as well as Article IX of the New York Constitution. RILA also seeks an injunction to prevent enforcement of the Act, as well as all other relief provided by law.

II. **JURISDICTION AND VENUE**

4. This Court has jurisdiction over the subject matter of this suit pursuant to 28 U.S.C. § 1331, because this case raises questions arising under the United States Constitution, ERISA, the NLRA, and 42 U.S.C. § 1983. The Court has supplemental jurisdiction over the subject matter of this suit pursuant to 28 U.S.C. § 1367(a), because plaintiff's claims arising under New York law are so closely related to the federal question claims that they form part of the same case or controversy under Article III of the United States Constitution. Plaintiff seeks a declaration of its rights in this case of actual controversy within the Court's jurisdiction pursuant to 28 U.S.C. §§ 2201-02.

5. Venue is proper in this Court pursuant to 29 U.S.C. § 1391 because Suffolk County is a political subdivision located in this judicial district, the individual defendants are government officials who perform their official duties in this judicial district, and because a substantial part of the events giving rise to plaintiff's claims have occurred in this judicial district.

III. PARTIES

6. Plaintiff Retail Industry Leaders Association is a trade association representing companies from all segments of retailing, including retailers, product manufacturers, and service suppliers. It has an underlying membership of more than 400 companies worldwide, which account for more than \$1.4 trillion in sales annually and operate more than 100,000 stores, manufacturing facilities, and distribution centers nationwide. Its member retailers and suppliers have facilities in all 50 states and employ more than 5 million American workers. One or more RILA members are affected by the Act and RILA therefore has standing before this Court.

7. One or more RILA members have stores located in Suffolk County and meet at least one of the following conditions for coverage by the Act: A Suffolk County store containing more than 100,000 square feet of selling area floor space, over 3 percent of which is used for the sale of groceries as defined by the Act; a store with more than 25,000 square feet of selling area floor space that is used for the sale of groceries as defined by the Act; or the company as a whole has total annual revenues of more than \$1 billion and the sale of groceries, as defined by the Act, accounts for more than 20 percent of this revenue. A variety of health coverage options are made available to employees in the RILA-member stores affected by the Act, pursuant to nationally-administered benefit plans. However, the expenditures on health care for these employees are less than \$3 per employee hour worked.

8. Defendant Suffolk County enacted the Act, effective January 1, 2006. Defendant Steve Levy is Suffolk County Executive, the chief executive officer of the County with ultimate responsibility for administering its laws and programs. Defendant Suffolk County Department of Labor is the agency charged with enforcement of the Act, and defendant Robert W. Dow, Jr. is the Suffolk County Commissioner of Labor with oversight of the Department. Defendants

Steve Levy and Robert W. Dow, Jr. are sued in their official capacity. The relief requested in this action is sought against defendants, as well as against any other subordinate officers, employees, agents, and other persons acting in cooperation with defendants and under their supervision, at their direction, or under their control. Upon information and belief, all defendants are citizens of the State of New York.

IV. FACTS

9. The Suffolk County Act was passed by the Suffolk County Legislature on September 27, 2005 and signed into law by County Executive Steve Levy on October 28, 2005. The Act's provisions took effect on January 1, 2006, with the obligation of covered employers to make required health care expenditures commencing on May 1, 2006. IR 1903-2005, § 7.

10. The central requirement of the Act is that covered employers make "health care expenditures on behalf of their employees" in Suffolk County of "not less than \$3.00" per hour worked by their employees in the County. *Id.* § 3(A). "Employee" is defined to include part-time and seasonal employees, but does not include managerial employees. *Id.* § 2. The Act defines "health care expenditures" to include "any amount paid by a covered employer to an employee or to another party on behalf of an employee for the purpose of providing health care services or reimbursing the cost of such services for the employee or family of the employee." *Id.* These payments are considered health care expenditures "whether or not the employee had any preexisting entitlement to such reimbursement under any plan, fund or program maintained by the employer." *Id.* The Act prohibits "deduct[ing] any payment made pursuant to this law from an employee's wages, salaries, or other compensation" or "reduc[ing] any employee's wages, salaries, or other compensation in order to finance compliance with this law." *Id.* § 3(B). Each year, the Suffolk County Department of Labor is to adjust the per-hour expenditure rate to

reflect changes in the medical component of the Consumer Price Index, and to ensure that the health plans of covered employers comply with the new rate. *Id.* § 3(A).

11. A covered employer whose minimum health care expenditures fall short of the Act's requirements must pay a penalty equal to the shortfall and must make up the shortfall within ninety days. *Id.* § 4(A). Failure to correct the violation within ninety days subjects an employer to an additional civil penalty of up to \$15 per employee for each day of continued violation. *Id.* All penalties are paid to Suffolk County. *Id.*

12. The Act is written to target large, out-of-state retail grocers whose employees are not represented by labor unions. Specifically, coverage is triggered where a retailer has at least one store located in Suffolk County and where either:

(a) 25,000 square feet or more of the store's selling area floor space is used for the sale of groceries or other foods for off-site consumption; or

(b) 3 percent or more of the store's selling area floor space is used for the sale of groceries or other foods for off-site consumption and the store contains at least 100,000 square feet of selling area floor space; or

(c) The retailer had total annual revenues of \$1 billion or more in the most recent calendar year and the sale of groceries accounts for 20 percent or more of the company's revenue.

Id. § 2. The Act specifically exempts unionized employers, regardless whether they offer any health coverage. *Id.* § 6.

13. The Act acknowledges that its "legislative intent" is to curb "competitive pressures from large employers" in light of their purported effect on "Suffolk retail employers." *Id.* § 1. In signing the law, County Executive Steve Levy characterized the Act as targeting

“national or international corporations,” in contrast to the “small and mid-sized businesses operating in Suffolk.” Press Release, Office of the County Executive, Suffolk County Executive Signs Health Care Act Legislation (Oct. 28, 2005). John Durso—president of the Long Island Federation of Labor, AFL-CIO—explained that unions supported the Act because it targeted RILA member Wal-Mart Stores, Inc., which allegedly “take(s) away revenues from *local* merchants and put many out of business.” John Durso, Op-Ed., *Time to Make Wal-Mart Pay Fair Share*, NEWSDAY, October 9, 2005, at A54 (emphasis added). The Long Island Federation of Labor avowedly “lobb[ied] . . . for months” to pass the Act. Press Release, International Brotherhood of Electrical Workers, NY County: Wal-Mart Must Pay Share of Worker Health Care (Oct. 7, 2005).

14. In exempting smaller companies and companies with collective bargaining agreements, the Act imposes no requirement that they make employee health contributions equivalent to those provided by the Act, or that they provide employee health benefits at all. Indeed, unionized employers sought and obtained exemption from the Act in part because they feared they would not meet its \$3 per hour requirement.

15. Employers provide employee health coverage through ERISA-covered group health plans. The Act requires covered employers either to establish a health benefit plan for their employees, or to change the administration of their national benefits plan for participating Suffolk County employees, and/or to create a separate and independent plan for those employees. The Act’s provisions by their terms require that all covered employers make contributions that, by operation of federal law, must be made to ERISA-covered health plans subject to that law’s reticulated regulatory framework.

16. The Act vests the Suffolk County Department of Labor with extensive enforcement powers. Covered employers are required to make annual reports to the Department providing detailed records for each employee. IR 1903-2005, § 3(D). The records must be made publicly available. *Id.* (Unionized employers are specifically exempted from these reporting requirements. *Id.*) In addition, the Suffolk County Department of Labor is authorized to audit covered employers, investigate complaints, conduct inspections of employers' workplaces, examine employers' books, documents, and records, serve notices to correct shortfall violations, supervise payment of penalties, and negotiate settlements with covered employers. *Id.* § 4(B). The agency is further empowered to establish a system for holding administrative hearings regarding alleged violations, including making findings of violations, ordering payment of penalties, and ordering disclosure of information and reinstatement of employees. *Id.*

V.
CLAIMS FOR RELIEF

COUNT I

ERISA Preemption

17. Plaintiff repeats and realleges each and every allegation contained in the above paragraphs as if fully set forth herein.

18. The Employee Retirement Income Security Act, 29 U.S.C. §§ 1144 *et seq.*, was enacted in 1974 to establish a uniform national framework for sponsoring, administering, protecting, and regulating employee benefit plans, including pension plans and health and welfare plans. ERISA is a comprehensive and highly-reticulated statute intended to eliminate inconsistent state and local regulation of employee benefit plans. In order to foster uniform national standards and administration, ERISA contains a broad preemption clause that expressly supersedes state and local laws that "relate to" employee benefit plans. 29 U.S.C. § 1144. The

Supremacy Clause of the United States Constitution separately and independently preempts state and local laws that conflict with ERISA or operate to frustrate its objectives.

19. The Suffolk County Act conflicts with ERISA's carefully-constructed federal framework and is expressly preempted by ERISA § 514(a), 29 U.S.C. § 1144(a), because it "relates to" ERISA-covered plans and has an impermissible connection with and reference to ERISA-covered employee health plans. Specifically, the Act improperly requires covered employers to make contributions to ERISA-covered plans, and improperly requires covered employers to sponsor health plans that provide for a specific contribution level.

20. The Act conflicts with and is preempted by ERISA for the additional reason that it impermissibly interferes with the uniform national administration of benefits plans by imposing on covered employers different health care obligations toward employees in Suffolk County than owed to employees elsewhere in the country, or even elsewhere in the New York City metropolitan area. Thus, the Act illegally forces and compels covered employers to change the administration of their plans and/or to create a separate and independent plan for Suffolk County employees and, accordingly, is preempted and null and void.

21. Further, the extensive reporting and enforcement mechanisms of the Act conflict with the integrated civil enforcement mechanism of ERISA that is intended to provide the exclusive remedy for plan violations, 29 U.S.C. § 1132(a), and for this reason also the Act is preempted by ERISA and the Supremacy Clause of the United States Constitution.

COUNT II

NLRA Preemption

22. Plaintiff repeats and realleges each and every allegation contained in the above paragraphs as if fully set forth herein.

23. The National Labor Relations Act, 29 U.S.C. §§ 151 *et seq.*, establishes a comprehensive scheme for the regulation of labor-management relations. The NLRA preempts state and local laws that conflict with this comprehensive plan by regulating activities either arguably protected or arguably prohibited by the NLRA, or that regulate matters intended by Congress to be left to the free play of economic forces. Among the matters left to the free play of economic forces is the organization of a company's workforce by a labor union, and a company's entry into a collective bargaining agreement with a labor union.

24. The Suffolk County Act purposely imposes substantial economic costs on companies that have not been organized by a labor union, and that do not have a collective bargaining agreement, while expressly exempting from those costly requirements unionized companies and employers with collective bargaining agreements. The Act thereby improperly regulates matters left to the free play of economic forces by the NLRA and is, accordingly, preempted by the NLRA and invalid and null and void.

COUNT III

42 U.S.C. § 1983

25. Plaintiff repeats and realleges each and every allegation contained in the above paragraphs as if fully set forth herein.

26. Section 1983 of the Civil Rights Act of 1871, 42 U.S.C. § 1983, makes it illegal for a state or locality to burden a citizen's "rights, privileges, or immunities secured by the Constitution and laws of the United States," including those secured by the NLRA. 42 U.S.C. § 1983. Section 1983 is therefore specifically violated when a state or local government imposes greater burdens on a company because its employees are not represented by a labor union, or because the company is not signatory to a collective bargaining agreement.

27. The Suffolk County Act imposes substantial economic costs on companies that have not been organized, and that have not entered into a collective bargaining agreement, while expressly exempting unionized employers that are signatory to a collective bargaining agreement. It thereby purposely burdens the rights, privileges, and immunities of corporations secured by the NLRA, and violates 42 U.S.C. § 1983.

COUNT IV

Commerce Clause

28. Plaintiff repeats and realleges each and every allegation contained in the above paragraphs as if fully set forth herein.

29. The Commerce Clause of the United States Constitution prohibits state and local governments from burdening interstate commerce through protectionist laws and restrictions that discriminate against business and commerce from other states. Accordingly, state and local laws that have the aim or effect of establishing an economic barrier against competition from the products of another state, or the labor of its residents, are unconstitutional.

30. The Suffolk County Act violates the Commerce Clause and is illegal and null and void because all employers covered by the Act are based in another state and the Act has the effect and intent—in the words of defendant Suffolk County Executive Steve Levy—of targeting “national and international corporations” so as to advantage “small and mid-sized businesses operating in Suffolk.” The Act accordingly imposes an excessive burden on interstate commerce, discriminates against corporations based out-of-state, and is unconstitutional.

COUNT V

Equal Protection Clause

31. Plaintiff repeats and realleges each and every allegation contained in the above paragraphs as if fully set forth herein.

32. The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution requires that classifications by state and local authorities regulating commercial activity be reasonable, not arbitrary, and rest upon grounds having a fair and substantial relation to the object of the legislation. The Equal Protection Clause prohibits clear and hostile discrimination by state and local governments against particular persons or classes.

33. The Suffolk County Act violates the Equal Protection Clause because it draws an irrational, arbitrary, and discriminatory distinction between smaller and unionized employers on the one hand, and larger and non-unionized employers on the other hand, by completely excluding the former from coverage regardless whether they offer equivalent health benefits or any health coverage at all.

COUNT VI

New York's Wage and Hour Law

34. Plaintiff repeats and realleges each and every allegation contained in the above paragraphs as if fully set forth herein.

35. New York State's Minimum Wage Act, N.Y. LAB. LAW §§ 650-665, mandates that "[e]very employer shall pay to each of its employees" a stated minimum wage. *Id.* § 652. The New York Constitution permits local governments only to adopt laws "not inconsistent with . . . any general law" enacted by the State. N. Y. CONST. art. IX, § 2(c). Further, New York's Municipal Home Rule Law, N.Y. MUN. H. R. LAW §§ 10-11, denies local legislatures the

authority to “adopt a local law which supersedes a state statute, if such local law . . . [a]pplies to or affects any provision of . . . the labor law.” *Id.* § 11(1)(f). These provisions, together and separately, prohibit counties and municipalities from imposing wage requirements different than those required by the Minimum Wage Act.

36. Suffolk County’s Act is inconsistent with the Minimum Wage Act because it, *inter alia*, requires that “[n]o covered employer shall deduct any payment made pursuant to this law from an employee’s wages,” thereby directly regulating wages paid by covered employers and in certain circumstances barring employers from reducing wages to a level expressly permitted by the Minimum Wage Act. Therefore, the Suffolk County Act is invalid, unlawful, and nullified by New York’s Minimum Wage Act in accordance with the requirements of the New York Constitution and New York’s Municipal Home Rule Law.

Permanent Injunctive Relief

37. Plaintiff repeats and realleges each and every allegation contained in the above paragraphs as if fully set forth herein.

38. The Suffolk County Act will cause one or more of RILA’s members immediate injury for which there is no adequate remedy at law because it (1) subjects one or more of RILA’s members to a regulatory scheme that is inconsistent with and preempted by ERISA and the NLRA, and that violates 42 U.S.C. § 1983, the Commerce Clause of the United States Constitution, the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, Article IX of the New York Constitution, New York’s Municipal Home Rule Law, and New York’s Minimum Wage Act; (2) requires that, effective May 1, 2006, one or more of RILA’s members make additional expenditures for ERISA-covered health benefits; (3) subjects one or more of RILA’s members to inspection, auditing, and enforcement by the Suffolk County

Department of Labor pursuant to statutory terms that are inconsistent with and preempted by ERISA's exclusive civil enforcement mechanism; and (4) imposes requirements that increase one or more of RILA's members' costs and decrease their competitiveness relative to smaller, unionized, and locally-based grocery stores.

39. The injury to one or more of RILA's members will occur immediately because the Act has been passed into law and took effect January 1, 2006 with an obligation to make expenditures commencing on May 1, 2006. This injury is a direct result of the Act, cannot adequately be compensated by money damages, and accordingly is redressable by appropriate injunctive relief and a declaration that the Act is invalid.

PRAYER FOR RELIEF

WHEREFORE plaintiff respectfully requests that this Court:

- A. Enter Judgment in plaintiff's favor;
- B. Declare that the Suffolk County Act is preempted by the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1144 *et seq.*;
- C. Declare that the Act is preempted by the National Labor Relations Act, 29 U.S.C. §§ 151 *et seq.*;
- D. Declare that the Act violates Section 1983 of the Civil Rights Act of 1871, 42 U.S.C. § 1983;
- E. Declare that the Act violates the Commerce Clause of the United States Constitution by excessively burdening interstate commerce and discriminating against non-local commerce in favor of in-state economic interests;

F. Declare that the Act violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution by discriminating against larger and non-unionized employers in favor of smaller and unionized employers;

G. Declare that the Act violates New York's Minimum Wage Act, in accordance with the requirements of the New York Constitution and New York's Municipal Home Rule Law;

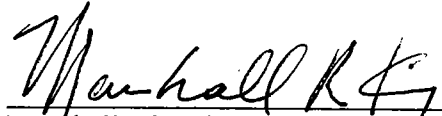
H. Permanently enjoin the defendants and their officers, agents, subordinates, and employees from giving effect to the Act, including implementing and enforcing its requirements;

I. Enter Judgment awarding plaintiff compensatory damages and reasonable attorneys' fees; and

J. Grant such additional relief as the Court may deem appropriate.

Dated: February 7, 2006

Respectfully submitted,



Marshall King (MK-1642)
GIBSON, DUNN & CRUTCHER LLP
200 Park Avenue, 47th Floor
New York, New York 10166
Telephone: (212) 351-4000
Facsimile: (212) 351-4035

Of Counsel:

W. Stephen Cannon
Todd Anderson
CONSTANTINE CANNON, P.C.
1627 Eye Street, N.W.
Washington, D.C. 20006
Telephone: (202) 204-3500
Facsimile: (202) 204-3501

*Outside General Counsel to
Retail Industry Leaders Association*

William J. Kilberg
Eugene Scalia
Paul Blankenstein
Tanya Axenson Macallair
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Ave., N.W.
Washington, D.C. 20036
Telephone: (202) 955-8500
Facsimile: (202) 467-0539

*Counsel for Plaintiff
Retail Industry Leaders Association*

Exhibit A

Intro. Res. No. 1903-2005

Laid on Table 8/9/2005

Introduced by Legislators Lindsay, Foley, Vitoria-Fisher, Montano, Cooper, O'Leary, Bishop, Mystal, Tonna and Schneiderman

**RESOLUTION NO. 958 -2005, ADOPTING LOCAL LAW
NO. 30-2005, A LOCAL LAW TO PROTECT SUFFOLK
RESIDENTS BY ENACTING THE SUFFOLK COUNTY FAIR
SHARE FOR HEALTH CARE ACT**

WHEREAS, there was duly presented and introduced to this County Legislature at a meeting held on August 23, 2005, a proposed local law entitled, "A LOCAL LAW TO PROTECT SUFFOLK RESIDENTS BY ENACTING THE SUFFOLK COUNTY FAIR SHARE FOR HEALTH CARE ACT" now, therefore, be it

RESOLVED, that said local law be enacted in form as follows:

LOCAL LAW NO. 30-2005, SUFFOLK COUNTY, NEW YORK

**A LOCAL LAW TO PROTECT SUFFOLK RESIDENTS BY
ENACTING THE SUFFOLK COUNTY FAIR SHARE FOR HEALTH
CARE ACT**

**BE IT ENACTED BY THE COUNTY LEGISLATURE OF THE COUNTY OF
SUFFOLK**, as follows:

Section 1. Legislative Intent.

This Legislature hereby finds and determines that, historically, most retail employers in Suffolk County have provided paid health care for their employees and families, but mounting competitive pressures from large employers who do not follow this practice have forced many Suffolk retail employers to eliminate health care coverage.

This Legislature also finds and determines that wages in the retail industry are among the lowest in Suffolk County, thereby increasing the number of County residents who hold these jobs and are unable to pay for their own health care.

This Legislature further finds and determines that these low wage employees are often forced to turn to Medicaid or other County funded forms of health care to meet their family's needs, thereby causing County taxpayers to subsidize employers who have failed to provide health coverage for their workers.

This Legislature finds that the County of Suffolk is facing double-digit increases in Medicaid costs and that growth in Medicaid spending has consumed nearly half of the growth in County sales tax revenues for 2004.

This Legislature determines that the County cannot afford to continue to subsidize low wage employers who refuse to provide a minimum level of health care for their employees.

Therefore, the purpose of this law is to require that all covered employers spend a minimum level of funding on health care for employees based on the number of hours worked in the year, thereby reducing the burden on County residents who are employees in low wage positions and County taxpayers.

Section 2. Definitions.

As used in this law, the following terms shall have the meanings indicated:

"Administering Agency" shall mean the Suffolk County Department of Labor.

"County" shall mean the County of Suffolk.

"Covered Employer" shall mean any person that operates at least one (1) retail store located in Suffolk County where groceries or other foods are sold for off-site consumption and where either (1) 25,000 square feet or more of the store's selling area floor space is used for the sale of groceries or other foods for off-site consumption, or (2) 3% or more of the store's selling area floor space is used for the sale of groceries or other foods for off-site consumption and the store contains at least 100,000 square feet of selling area floor space, or (3) had total annual revenues of \$1 billion or more in the most recent calendar year and the sale of groceries comprise 20% or more of a company's revenue.

"Employee" shall mean any person who works in the County of Suffolk for a covered employer for wages, salary or other compensation on a full-time, part-time, or seasonal basis at a covered store, but does not include persons who are managerial, supervisory, or confidential employees.

"Family of Employee" shall mean the spouse or domestic partner as defined under New York Worker's Compensation Law, Section 4(1) of an employee, and each dependent of such employee.

"Groceries" shall mean perishable or non-perishable food sold for off-site consumption. Where a store also sells health and beauty supplies, pet food and supplies, or paper products, such products shall also be included within the definition of groceries.

"Health Care Expenditure" shall mean any amount paid by a covered employer to an employee or to another party on behalf of an employee for the purpose of providing health care services or reimbursing the cost of such services for the employee or family of the employee. "Health Care Expenditure" includes, but is not limited to: contributions by a covered employer to a health savings account as defined under Section 223 of the United States Internal Revenue Code on behalf of its employee or the family of its employee; or reimbursement by a covered employer of health care expenses incurred by its employee or the family of its employee, whether or not the employee had any preexisting entitlement to such reimbursement under any plan, fund or program maintained by the employer. "Health Care Expenditure" does not include any payment made directly or indirectly for workers' compensation, Medicare benefits or any other health benefits costs, taxes or assessments that the employer is required to pay by State or federal law, or any payroll deductions or other costs paid by employees for health care services.

"Health Care Services" shall mean primary or secondary medical care or service including, but not limited to,

- a.) inpatient and outpatient hospital services;
- b.) physicians' surgical and medical services;
- c.) laboratory, diagnostic and x-ray services;
- d.) prescription drug coverage;
- e.) annual physical examinations;
- f.) preventative services;
- g.) mental health services;
- h.) substance abuse treatment services;
- i.) vision care; and
- j.) medical savings accounts;

provided, however, that such term shall not include any medical procedure or treatment that is solely cosmetic.

"Minimum Health Care Expenditure" shall mean the total health care expenditure that a covered employer is required to make each year as specified in Section 3 of this law.

"Person" shall mean any natural person, individual, corporation, unincorporated association, proprietorship, firm, partnership, joint venture, joint stock association, or other entity of business of any kind.

Section 3. Requirements.

- A.) Covered employers shall make minimum health care expenditures on behalf of their employees each year. A covered employer's minimum health care expenditure each year shall be not less than \$3.00 multiplied by the total number of hours worked by employees of the covered employer over the year, beginning in the first full calendar year after the effective date of this law. The administering agency shall adjust this rate annually to reflect changes in the medical component of the Consumer Price Index for All Urban Consumers, as reported by the United States Department of Labor for the New York-Northern New Jersey-Long Island region.
- B.) No covered employer shall deduct any payment made pursuant to this law from an employee's wages, salaries, or other compensation, or reduce any employee's wages, salaries, or other compensation in order to finance compliance with this law.
- C.) The administering agency, in consultation with the County Comptroller if the administering agency requests such consultation, shall establish procedures for determining the health care expenditures made by a covered employer each year. Where a covered employer's health care expenditures fall below the minimum health care expenditure, during a given year, the covered employer shall be deemed to be in violation of this law and shall be subject to civil penalties as specified in this law.
- D.) Covered employers shall report annually on a form prescribed by the administering agency the following information: (1) the covered employer's health care expenditures over the prior year; (2) payroll records indicating name,

address, job title; and (3) dates and hours worked of each employee during the reporting period. Such records filed with the administering agency shall be available to the public for inspection and copying to the same extent that such information may be released under New York Public Officers Law Section 87; provided, however, that a covered employer that is a signatory to one or more collective bargaining agreements may comply with this law as provided in Section 6 of this law.

- E.) A covered employer shall: (1) maintain accurate records for each employee's name and the dates and hours worked by each employee; (2) permit employees or their designated representatives access to records maintained pursuant to this subsection for inspection and copying; and (3) maintain accurate records of the covered employer's health care expenditures each year. Covered employers shall not be required to maintain such records regarding health care expenditures in any particular form.

Section 4. Enforcement & Penalties.

- A.) A covered employer that violates this law by making health care expenditures during a given year that fall short of its minimum health care expenditure shall be required to pay a civil penalty equal to the amount of the shortfall, and shall be required to correct such violation by increasing its health care expenditures to make up for the past shortfall within ninety days of such determination. The administering agency shall serve a notice to correct such violation which shall specify the date by which the violation shall be corrected. Failure to correct such violation pursuant to this subsection shall subject a covered employer to an additional civil penalty of up to \$15.00 per employee for each day such violation continues. A covered employer that violates this law by failing to provide information to the administering agency as required under this law, or by retaliating against any person in violation of this law, shall be subject to a civil penalty in the amount of up to \$250.00 for each day that a violation occurred or remains unremedied. Civil penalties assessed pursuant to this law shall be paid to the county and deposited into the general fund.
- B.) The administering agency shall be empowered to enforce this law by auditing covered employers to monitor their compliance; establishing a system to accept complaints from any person charging that a covered employer has violated this law; investigating complaints received; conducting inspections at a covered employer's workplace; examining the books, documents and records pertaining to the health care expenditures made by a covered employer, and the hours of work performed by its employees; issuing subpoenas, administering oaths and examining witnesses pursuant to the New York Civil Practice Law and Rules; negotiating settlements with covered employers; establishing a system for holding administrative hearings over alleged violations; making findings of violations and ordering the payment of civil penalties by the covered employer and any other appropriate relief, including disclosure of required information or reinstatement of employees discharged in violation of this law; supervising the payment of civil penalties; and delegating any of the foregoing powers to its deputy or other authorized representative. Findings rendered by the administering agency shall be subject to review pursuant to Article 78 of the New

York Civil Practice Law and Rules. In any proceeding investigating a complaint of an alleged violation of this law, the person filing the complaint shall be deemed to be a party to the proceeding and shall be permitted to participate in the proceeding.

- C.) It shall be unlawful for any covered employer to deprive or threaten to deprive any person of employment, take or threaten to take any reprisal or retaliatory action against any person, or directly or indirectly, intimidate, threaten, coerce, command or influence or attempt to intimidate, threaten, coerce, command or influence any person because such person has taken an action to enforce, inquire about, or inform others about the requirements of this law. Taking adverse action against a person within ninety (90) days of a person's exercise of rights protected under this law shall raise a rebuttable presumption that such action was in retaliation for the exercise of such rights. Any person who has suffered retaliation by a covered employer in violation of this law may bring an action in any court of competent jurisdiction against the covered employer and, upon a determination of a violation, shall be awarded liquidated damages in the amount of \$250.00 for each day that the violation occurred or remains unremedied, any other appropriate legal or equitable relief, and reasonable attorney's fees and costs incurred in maintaining the action.
- D.) Any enforcement proceeding or civil action commenced under this law must be commenced within three years after the date of the occurrence or termination of the alleged violation.

Section 5. Rules and Regulations.

The Suffolk County Department of Labor shall promulgate such rules and regulations as it deems necessary and appropriate for the implementation and enforcement of any provisions of this law.

Section 6. Exemptions.

A covered employer that is a signatory to one or more collective bargaining agreements that cover at least seventy-five percent of its employees at a covered store may fully comply with the requirements of this law as to its employees at that store by filing annually with the administering agency proof of such collective bargaining agreements and their terms, in a format specified by the administering agency, and shall otherwise be exempt from all other requirements of this law as regard to employees at that covered store.

Section 7. Applicability.

This law shall take effect on January 1, 2006, but the obligation of covered employers to make prevailing health care expenditures shall not commence until May 1, 2006.

Section 8. Severability.

If any clause, sentence, paragraph, subdivision, section, or part of this law or the application thereof to any person, individual, corporation, firm, partnership, entity, or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, or part of this law, or in its application to the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

Section 9. SEQRA Determination.

This Legislature, being the State Environmental Quality Review Act (SEQRA) lead agency, hereby finds and determines that this law constitutes a Type II action pursuant to Section 617.5(c)(20) and (27) of Title 6 of the NEW YORK CODE OF RULES AND REGULATIONS (6 NYCRR) and within the meaning of Section 8-0109(2) of the NEW YORK ENVIRONMENTAL CONSERVATION LAW as a promulgation of regulations, rules, policies, procedures, and legislative decisions in connection with continuing agency administration, management and information collection. The Suffolk County Council on Environmental Quality (CEQ) is hereby directed to circulate any appropriate SEQRA notices of determination of non-applicability or non-significance in accordance with this law.

Section 10. Effective Date.

This law shall take effect on January 1, 2006.

[] Brackets denote deletion of existing language.
___ Underlining denotes addition of new language.

DATED: September 27, 2005

APPROVED BY:


County Executive of Suffolk County
after a public hearing duly held on October 11, 2005

Date: 10/28/05

Filed with the Secretary of State on November 17, 2005

SUFFOLK COUNTY
County Legislature
RIVERHEAD, NY



This is to certify that I, Henry L. Barton, Jr., Clerk of the County Legislature of the County of Suffolk, have compared the foregoing copy of resolution with the original now on file in this office and which was duly adopted by the County Legislature of said County on September 27, 2005, and signed by the County Executive on October 28, 2005, after a public hearing duly held on October 11, 2005,

and that the same is a true and correct transcript of said resolution and of the whole thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and the official seal of the County Legislature of the County of Suffolk.


Clerk of the County Legislature