

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

RETAIL INDUSTRY LEADERS ASSOCIATION,

Plaintiff,

v.

JAMES D. FIELDER, JR., in his official capacity as  
Maryland Secretary of Labor, Licensing, and  
Regulation,

Defendant.

Case No. \_\_\_\_\_

DECLARATORY AND  
INJUNCTIVE RELIEF SOUGHT

FILED  
U.S. DISTRICT COURT  
DISTRICT OF MARYLAND  
2006 FEB -7 A 9:51  
CLERK OF COURT  
BRYAN J. ...

**COMPLAINT**

Plaintiff Retail Industry Leaders Association (“RILA”) files this Complaint for declaratory and permanent injunctive relief against defendant James D. Fielder, Jr. in his official capacity as Maryland Secretary of Labor, Licensing and Regulation.

RILA hereby alleges as follows:

**I.**

**PRELIMINARY STATEMENT**

1. On or about January 12, 2006, the Maryland General Assembly overrode the veto of Maryland Governor Robert L. Ehrlich and enacted the “Fair Share Health Care Fund Act.” MD. CODE ANN., LAB. & EMPL. tit. 8.5, §§ 101-107 (2006) (“Maryland Act” or “Act”). (A complete and accurate copy of the Act is attached hereto as Exhibit 1.) The Act applies only to employers with 10,000 or more employees in the State of Maryland. For-profit corporations covered by the Act are required to make expenditures on employee health insurance for their Maryland employees that equal at least 8 percent of the “total compensation” they provide

Maryland employees. *Id.* § 104(B). Non-profit employers covered by the Act are required to dedicate 6 percent of compensation to employee health insurance costs. If an employer fails to meet the applicable threshold, it is required to pay the shortfall to the Maryland Secretary of Labor, Licensing and Regulation. Employers are expressly prohibited from reducing employees' wages to comply with the Act.

2. The Act vests the Maryland Secretary of Labor, Licensing and Regulation with authority to enforce the law's provisions, including broad authority to adopt regulations to implement and regulate compliance with the Act. Covered employers are required to make annual reports to the Secretary.

3. As explained below, the Maryland 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 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 violates the prohibition of the Maryland State Constitution on "special laws," because it arbitrarily singles out one company for discriminatory treatment. MD. CONST. art. III, § 33.

4. Plaintiff RILA is a trade association representing companies from all segments of retailing. With this suit, RILA seeks a declaration, pursuant to 28 U.S.C. § 2201, that the Maryland Act is preempted by ERISA and violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and the prohibition on "special laws" of the Maryland Constitution, article III, section 33. RILA also seeks an injunction to prevent enforcement of the Act, as well as all other relief provided by law.

**II.**  
**JURISDICTION AND VENUE**

5. 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 and ERISA. 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 Maryland 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.

6. This Court also has diversity jurisdiction over the subject matter of this suit pursuant to 28 U.S.C. § 1332. Plaintiff RILA is incorporated in New York and has its principal place of business in the Commonwealth of Virginia; Defendant James D. Fielder, Jr. is, upon information and belief, a citizen of the State of Maryland, and the amount in controversy exceeds \$75,000.

7. Venue is proper in this Court pursuant to 29 U.S.C. § 1391 because defendant is a government official who performs his 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**

8. Plaintiff Retail Industry Leaders Association, located at 1700 North Moore Street, Suite 2250, Arlington, Virginia 22209, 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. A member of RILA is affected by the Act and RILA therefore has standing before this Court.

9. The State of Maryland enacted the Act on January 12, 2006. Defendant James D. Fielder, Jr., located at 500 North Calvert Street, Baltimore, Baltimore County, Maryland 21202, is the Maryland Secretary of Labor, Licensing, and Regulation. As the State official with ultimate responsibility for administering the Act, Fielder is sued in his official capacity. The relief requested in this action is sought against defendant, as well as against any subordinate officers, employees, agents, and other persons acting in cooperation with defendant and under his supervision, at his direction, or under his control. Upon information and belief, defendant is a citizen of the State of Maryland.

### **IV.** **FACTS**

10. The Maryland Act was passed into law over Governor Ehrlich's veto by the Maryland General Assembly on January 12, 2006. The Act's provisions take effect on January 1, 2007.

11. The Act applies only to employers with 10,000 or more employees in Maryland. MD. CODE ANN., LAB. & EMPL. tit. 8.5, § 102 (2006). The term “employer” is defined to exclude the federal government, Maryland, any other state, and the political subdivisions of Maryland and any other state. *Id.* § 101(C)(2).

12. The central requirement of the Act is that expenditures on health insurance costs amount to at least 8 percent of the total compensation that a covered, for-profit employer provides to its Maryland employees. *Id.* § 104(B). Non-profit employers covered by the Act are required to dedicate only 6 percent of compensation to health insurance costs. *Id.* § 104(A). In calculating the total compensation, covered employers may exempt wages paid to employees who are eligible for Medicare, and wages paid to an employee in excess of the median household income in Maryland. *Id.* § 103(B).

13. A covered employer whose health insurance costs fall short of the Act’s requirements must pay a penalty equal to the amount of the shortfall to the Maryland Secretary of Labor, Licensing and Regulation. *Id.* These funds are deposited by the Secretary into the “Fair Share Health Care Fund.” *Id.* § 107(3). Failure by an employer to make the required payment results in an additional mandatory civil penalty of \$250,000. *Id.* § 105(B).

14. “Employee” is defined by the Act to include part-time employees. *Id.* § 101(B). “Health insurance costs” are defined by reference to federal law as “the amount paid by an employer to provide health care or health insurance to employees in the state to the extent the costs may be deductible by an employer under federal tax law,” including “payments for medical care, prescription drugs, vision care, medical savings accounts, and any other costs to provide health benefits as defined in § 213(D) of the Internal Revenue Code.” *Id.* § 101(D). The Act

prohibits covered employers from “deduct[ing] any payment made [pursuant to the Act] from the wages of an employee.” *Id.* § 104(C).

15. It is widely recognized that the Act was passed to initially target a single employer—Wal-Mart Stores, Inc. (“Wal-Mart”). See Maryland General Assembly Department of Legislative Services, Fiscal and Policy Note Revised 2005, H.B. 1284 (discussing Wal-Mart extensively); Stephanie Armour, *Maryland First To OK “Wal-Mart Bill,”* USA TODAY, January 13, 2006, at 1B (noting that “only Wal-Mart is affected by the legislation”); John Wagner, *Md. Senate Overrides Veto on “Wal-Mart Bill,”* WASH. POST, January 12, 2006, at A1; Andrew A. Green, *Wal-Mart Veto Falls,* BALTIMORE SUN, January 13, 2006, at 1A (characterizing the Act simply as a “bill requiring Wal-Mart to pay more for employee health care”). At most, only four private employers have 10,000 or more employees in Maryland, and of those employers only Wal-Mart is expected to be required to make additional payments—either to health care costs or to the State—as a result of the Act. Green, *supra*.

16. Wal-Mart is a member of RILA. In Maryland, Wal-Mart employs over 10,000 employees. It offers health care coverage to both its full-time and part-time associates through an ERISA-covered plan. The payments required by Wal-Mart under the Act exceed those made by Wal-Mart in prior years.

17. In exempting employers with fewer than 10,000 employees in Maryland, the Act imposes no requirement that they make employee health contributions equivalent to those required by the Act, or that they provide employee health benefits at all, despite the fact that smaller employers account for the vast majority of employees with health insurance costs below the Act’s threshold percentage.

18. Employers provide employee health coverage through ERISA-covered group health plans. The Act requires covered employers either to sponsor health benefit plans, or to change the administration of their national benefits plan for participating Maryland employees, and/or to create a separate and independent plan for those employees. The Act's provisions by their terms also require that all covered employers incur "health insurance costs" that, by operation of federal law, must be paid to ERISA-covered health plans subject to that law's reticulated regulatory framework. Because no employer would choose to make a payment to the state fund rather than pay the required percentage to its employees, this functions as a penalty, compulsion and requirement.

19. The Act vests the Maryland Secretary of Labor, Licensing and Regulation with extensive enforcement powers. Covered employers are required to make annual reports to the Secretary providing detailed records including (1) the number of employees in the prior year; (2) health insurance expenditures in the prior year; and (3) the percentage of payroll spent on health insurance costs in the prior year. MD. CODE ANN., LAB. & EMPL. tit. 8.5, § 103(A). Failure to file this report subjects a covered employer to a penalty of \$250 per day. *Id.* § 105(A). In addition, the Secretary is authorized to "verify which employers have 10,000 or more employees," "ensure that all employers with 10,000 or more employees in the state have made the report," and "adopt regulations to implement this title." *Id.* § 107(1) & (2).

**V.**  
**CLAIMS FOR RELIEF**

**COUNT I**

**ERISA Preemption**

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

21. 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 or 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 laws that conflict with ERISA or operate to frustrate its objectives.

22. The Maryland 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 health insurance payments in connection with ERISA-covered plans, and improperly requires covered employers to sponsor health plans that provide for a specific contribution level. The Act purposely and directly operates with respect to payments that covered employers currently make to ERISA plans or that they will be compelled to make to ERISA plans to comply with the Act.

23. 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 intended by the Act, since it imposes on covered employers different health care obligations toward employees in Maryland than owed to employees elsewhere in the country. 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 Maryland employees and, accordingly, is preempted and null and void.

24. Further, the Act's broad reporting and enforcement mandate conflicts 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 under ERISA and by the Supremacy Clause of the United States Constitution.

## **COUNT II**

### **Equal Protection Clause**

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

26. The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution requires that classifications drawn 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, including out-of-state corporations.

27. The Maryland Act violates the Equal Protection Clause because it draws irrational, arbitrary, and discriminatory distinctions between otherwise similarly-situated employers. Specifically, the Act arbitrarily requires significant increased health costs for one large employer, while exempting other Maryland employers despite the fact that those employers account for the vast majority of employees with health insurance costs below the Act's 8 percent threshold. The Act also erects an irrational and discriminatory distinction by allowing large employers that are not-for-profit to dedicate a lower percent of compensation to health care

coverage (6 percent) and a correspondingly larger percentage to cash compensation and other forms of remuneration.

### **COUNT III**

#### **Maryland Constitution's Prohibition on Special Laws**

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

29. Maryland's Constitution states that "the General Assembly shall pass no special Law, for any case, for which provision has been made, by an existing General Law." MD. CONST. art. III, § 33. In determining whether a statute is a "special law" in violation of the Maryland Constitution, consideration is given to (1) whether the statute serves as a vehicle to confer special advantages on, or to discriminate against, a particular individual or business; (2) the public need, the public interest, and the adequacy of the general law to serve those needs and interests; and (3) whether the law drawn by the legislature was arbitrary and without any reasonable basis. In making these determinations, the substance and practical effect of the statute is considered, as opposed to mere form.

30. The Maryland Act impermissibly departs from general laws of the State of Maryland regulating employment and health care in order to single out one company—Wal-Mart—for discriminatory, adverse treatment and increased expenditures. The Act therefore violates the prohibition of the Maryland Constitution on special laws and is illegal and null and void.

### **Permanent Injunctive Relief**

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

32. The Maryland 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 RILA members to a regulatory scheme that is inconsistent with and preempted by ERISA, and that violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and the Maryland Constitution's prohibition on "special laws"; (2) requires that, effective January 1, 2007, one or more RILA members make certain ERISA health plan contributions; (3) subjects one or more RILA members to inspection, auditing, and enforcement by the Maryland Department of Labor, Licensing and Regulation 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 RILA members' costs and decrease their competitiveness relative to smaller employers.

33. This injury is a direct result of the Act, cannot adequately be compensated by money damages, will be irreparable absent injunctive relief, 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 Maryland Act is preempted by the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1144 *et seq.*;

C. Declare that the Act violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution by arbitrarily targeting a single employer for increased economic regulation;

D. Declare that the Act violates the Maryland Constitution's prohibition on special laws;

E. Permanently enjoin defendant and his officers, agents, subordinates, and employees from giving effect to the Act, including implementing and enforcing its requirements; and

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

Dated: February 7, 2006

Respectfully submitted,



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By: **Senators Lawlah, Astle, Currie, Exum, Forehand, Frosh, Gladden,  
Green, Grosfeld, Hogan, Hollinger, Jones, Kelley, McFadden, Miller,  
Pinsky, Ruben, and Teitelbaum**

Introduced and read first time: February 4, 2005

Assigned to: Finance and Budget and Taxation

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Committee Report: Favorable with amendments

Senate action: Adopted with floor amendments

Read second time: April 1, 2005

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CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Fair Share Health Care Fund Act**

3 FOR the purpose of establishing the Fair Share Health Care Fund; establishing the  
4 purpose of the Fund; providing that the Fund consists of certain payments made  
5 by employers in connection with a certain health care payroll assessment;  
6 providing that the Fund is a special, nonlapsing fund; requiring the State  
7 Treasurer to hold the Fund and the Comptroller to account for the Fund;  
8 requiring that investment earnings of the Fund be retained in the Fund;  
9 requiring the interest on and other income from the Fund be separately  
10 accounted for; requiring the Fund to be used to support the operations of the  
11 Maryland Medical Assistance Program; providing that certain provisions of this  
12 Act apply to certain employers; requiring certain employers to submit certain  
13 information to the Secretary of Labor, Licensing, and Regulation; requiring the  
14 Secretary to adopt certain regulations that provide for the submission of certain  
15 information and a certain designation and affidavit; providing that a certain  
16 employer may exempt certain wages when calculating a certain percentage;  
17 requiring a certain employer to make a certain payment to the Secretary under  
18 certain circumstances and in a certain manner; prohibiting a certain employer  
19 from making a certain deduction; providing for a certain ~~penalty~~ penalties;  
20 requiring the Secretary to make a certain verification, adopt certain regulations,  
21 and make a certain payment to a certain fund; requiring the Secretary to report  
22 certain information to the Governor and the General Assembly on or before a  
23 certain date each year; defining certain terms; providing for a delayed effective  
24 date; and generally relating to requiring certain employers to pay a certain  
25 assessment for employee health insurance costs.

1 BY adding to  
2 Article - Health - General  
3 Section 15-142  
4 Annotated Code of Maryland  
5 (2000 Replacement Volume and 2004 Supplement)

6 BY adding to  
7 Article - Labor and Employment  
8 Section 8.5-101 through ~~8.5-106~~ 8.5-107, inclusive, to be under the new title  
9 "Title 8.5. Health Care Payroll Assessment"  
10 Annotated Code of Maryland  
11 (1999 Replacement Volume and 2004 Supplement)

12 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
13 MARYLAND, That the Laws of Maryland read as follows:

14 **Article - Health - General**

15 15-142.

16 (A) IN THIS SECTION, "FUND" MEANS THE FAIR SHARE HEALTH CARE FUND.

17 (B) THERE IS A FAIR SHARE HEALTH CARE FUND.

18 (C) THE PURPOSE OF THE FUND IS TO SUPPORT THE OPERATIONS OF THE  
19 PROGRAM.

20 (D) (1) THE FUND IS A SPECIAL, NONLAPSING FUND THAT IS NOT SUBJECT  
21 TO § 7-302 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

22 (2) THE TREASURER SHALL HOLD THE FUND SEPARATELY, AND THE  
23 COMPTROLLER SHALL ACCOUNT FOR THE FUND.

24 (E) THE FUND CONSISTS OF:

25 (1) ANY REVENUE RECEIVED FROM PAYMENTS MADE BY EMPLOYERS  
26 UNDER TITLE 8.5 OF THE LABOR AND EMPLOYMENT ARTICLE; AND

27 (2) ANY OTHER MONEY FROM ANY OTHER SOURCE ACCEPTED FOR THE  
28 BENEFIT OF THE FUND.

29 (F) THE FUND MAY BE USED ONLY TO SUPPORT THE OPERATIONS OF THE  
30 PROGRAM.

31 (G) (1) THE TREASURER SHALL INVEST THE MONEY OF THE FUND IN THE  
32 SAME MANNER AS OTHER STATE MONEY MAY BE INVESTED.

33 (2) ANY INVESTMENT EARNINGS OF THE FUND SHALL BE RETAINED TO  
34 THE CREDIT OF THE FUND.

1 (H) THE FUND SHALL BE SUBJECT TO AN AUDIT BY THE OFFICE OF  
2 LEGISLATIVE AUDITS AS PROVIDED FOR IN § 2-1220 OF THE STATE GOVERNMENT  
3 ARTICLE.

4 **Article - Labor and Employment**

5 TITLE 8.5. HEALTH CARE PAYROLL ASSESSMENT.

6 8.5-101.

7 (A) IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

8 (B) "EMPLOYEE" MEANS ALL INDIVIDUALS EMPLOYED FULL TIME OR PART  
9 TIME DIRECTLY BY AN EMPLOYER.

10 (C) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION,  
11 "EMPLOYER" HAS THE MEANING STATED IN § 10-905 OF THE TAX - GENERAL ARTICLE.

12 (2) "EMPLOYER" DOES NOT INCLUDE THE FEDERAL GOVERNMENT, THE  
13 STATE, ANOTHER STATE, OR A POLITICAL SUBDIVISION OF THE STATE OR ANOTHER  
14 STATE.

15 (D) (1) "HEALTH INSURANCE COSTS" MEANS THE AMOUNT PAID BY AN  
16 EMPLOYER TO PROVIDE HEALTH CARE OR HEALTH INSURANCE TO EMPLOYEES IN  
17 THE STATE TO THE EXTENT THE COSTS MAY BE DEDUCTIBLE BY THE AN EMPLOYER  
18 UNDER FEDERAL TAX LAW.

19 (2) "HEALTH INSURANCE COSTS" INCLUDES PAYMENTS FOR MEDICAL  
20 CARE, PRESCRIPTION DRUGS, VISION CARE, MEDICAL SAVINGS ACCOUNTS, AND ANY  
21 OTHER COSTS TO PROVIDE HEALTH BENEFITS AS DEFINED IN § 213(D) OF THE  
22 INTERNAL REVENUE CODE.

23 (E) "SECRETARY" MEANS THE SECRETARY OF LABOR, LICENSING, AND  
24 REGULATION.

25 (F) "WAGES" HAS THE MEANING STATED IN § 10-905 OF THE TAX - GENERAL  
26 ARTICLE.

27 8.5-102.

28 THIS TITLE APPLIES TO AN EMPLOYER WITH 10,000 OR MORE EMPLOYEES IN  
29 THE STATE.

30 8.5-103.

31 (A) (1) ON JANUARY 1, 2006 2007, AND ANNUALLY THEREAFTER, AN  
32 EMPLOYER SHALL SUBMIT ON A FORM AND IN A MANNER APPROVED BY THE  
33 SECRETARY:

1 (I) THE NUMBER OF EMPLOYEES OF THE EMPLOYER IN THE STATE  
2 AS OF 1 DAY IN THE YEAR IMMEDIATELY PRECEDING THE PREVIOUS CALENDAR  
3 YEAR AS DETERMINED BY THE EMPLOYER ON AN ANNUAL BASIS;

4 (H) (II) THE AMOUNT SPENT BY THE EMPLOYER IN THE YEAR  
5 IMMEDIATELY PRECEDING THE PREVIOUS CALENDAR YEAR ON HEALTH INSURANCE  
6 COSTS IN THE STATE; AND

7 (H) (III) THE PERCENTAGE OF PAYROLL THAT WAS SPENT BY THE  
8 EMPLOYER IN THE YEAR IMMEDIATELY PRECEDING THE PREVIOUS CALENDAR YEAR  
9 ON HEALTH INSURANCE COSTS IN THE STATE.

10 (2) THE SECRETARY SHALL ADOPT REGULATIONS THAT SPECIFY THE  
11 INFORMATION THAT AN EMPLOYER SHALL SUBMIT UNDER PARAGRAPH (1) OF THIS  
12 SUBSECTION.

13 (3) THE INFORMATION REQUIRED SHALL:

14 (I) BE DESIGNATED IN A REPORT SIGNED BY THE PRINCIPAL  
15 EXECUTIVE OFFICER OR AN INDIVIDUAL PERFORMING A SIMILAR FUNCTION; AND

16 (II) INCLUDE AN AFFIDAVIT UNDER PENALTY OF PERJURY THAT  
17 THE INFORMATION REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION:

18 1. WAS REVIEWED BY THE SIGNING OFFICER; AND

19 2. ~~WAS BASED ON THE OFFICER'S KNOWLEDGE AND DOES~~  
20 ~~NOT CONTAIN ANY UNTRUE STATEMENT OF A MATERIAL FACT OR OMIT A MATERIAL~~  
21 ~~FACT NECESSARY TO MAKE THE STATEMENT MADE NOT MISLEADING IS TRUE TO~~  
22 THE BEST OF THE SIGNING OFFICER'S KNOWLEDGE, INFORMATION, AND BELIEF.

23 (B) WHEN CALCULATING THE PERCENTAGE OF PAYROLL UNDER SUBSECTION  
24 ~~(A)(1)(H)~~ (A)(1)(III) OF THIS SECTION, AN EMPLOYER MAY EXEMPT:

25 (1) WAGES PAID TO ANY EMPLOYEE ~~BEYOND THE AMOUNT TAXABLE~~  
26 ~~FOR FEDERAL SOCIAL SECURITY (FICA) PURPOSES IN EXCESS OF THE MEDIAN~~  
27 HOUSEHOLD INCOME IN THE STATE AS PUBLISHED BY THE UNITED STATES CENSUS  
28 BUREAU; AND

29 (2) WAGES PAID TO AN EMPLOYEE WHO IS ENROLLED IN OR ELIGIBLE  
30 FOR MEDICARE.

31 8.5-104.

32 (A) AN EMPLOYER THAT IS ORGANIZED AS A NONPROFIT ORGANIZATION  
33 THAT DOES NOT SPEND UP TO 6% OF THE TOTAL WAGES PAID TO EMPLOYEES IN THE  
34 STATE ON HEALTH INSURANCE COSTS SHALL PAY TO THE SECRETARY AN AMOUNT  
35 EQUAL TO THE DIFFERENCE BETWEEN WHAT THE EMPLOYER SPENDS FOR HEALTH  
36 INSURANCE COSTS AND AN AMOUNT EQUAL TO 6% OF THE TOTAL WAGES PAID TO  
37 EMPLOYEES IN THE STATE.



1 (B) AN EMPLOYER THAT IS NOT ORGANIZED AS A NONPROFIT ORGANIZATION  
2 AND DOES NOT SPEND UP TO 8% OF THE TOTAL WAGES PAID TO EMPLOYEES IN THE  
3 STATE ON HEALTH INSURANCE COSTS SHALL PAY TO THE SECRETARY AN AMOUNT  
4 EQUAL TO THE DIFFERENCE BETWEEN WHAT THE EMPLOYER SPENDS FOR HEALTH  
5 INSURANCE COSTS AND AN AMOUNT EQUAL TO 8% OF THE TOTAL WAGES PAID TO  
6 EMPLOYEES IN THE STATE.

7 (C) AN EMPLOYER MAY NOT DEDUCT ANY PAYMENT MADE UNDER  
8 SUBSECTION (A) OR (B) OF THIS SECTION FROM THE WAGES OF AN EMPLOYEE.

9 (D) AN EMPLOYER SHALL MAKE THE PAYMENT REQUIRED UNDER THIS  
10 SECTION TO THE SECRETARY ON A PERIODIC BASIS AS DETERMINED BY THE  
11 SECRETARY.

12 8.5-105.

13 (A) FAILURE TO REPORT IN ACCORDANCE WITH § 8.5-103 OF THIS TITLE ~~OR~~  
14 SHALL RESULT IN THE IMPOSITION BY THE SECRETARY OF A CIVIL PENALTY OF \$250  
15 FOR EACH DAY THAT THE REPORT IS NOT TIMELY FILED.

16 (B) FAILURE TO MAKE THE PAYMENT REQUIRED UNDER § 8.5-104 OF THIS  
17 TITLE SHALL RESULT IN THE IMPOSITION BY THE SECRETARY OF A CIVIL PENALTY  
18 OF \$250,000.

19 8.5-106.

20 (A) IN THIS SECTION, "HEALTH INSURANCE BENEFITS" INCLUDES PAYMENTS  
21 FOR MEDICAL CARE, PRESCRIPTION DRUGS, VISION CARE, MEDICAL SAVINGS  
22 ACCOUNTS, AND ANY OTHER COSTS TO PROVIDE HEALTH BENEFITS, AS DEFINED IN  
23 § 213(D) OF THE INTERNAL REVENUE CODE.

24 (B) ON OR BEFORE MARCH 15 OF EACH YEAR, THE SECRETARY SHALL REPORT  
25 TO THE GOVERNOR AND, IN ACCORDANCE WITH § 2-1246 OF THE STATE  
26 GOVERNMENT ARTICLE, TO THE GENERAL ASSEMBLY ON:

27 (1) THE NAME OF EACH NONPROFIT AND FOR PROFIT EMPLOYER WITH  
28 10,000 OR MORE EMPLOYEES IN THE STATE;

29 (2) THE EMPLOYER'S DEFINITION OF FULL-TIME EMPLOYEE AND  
30 PART-TIME EMPLOYEE;

31 (3) THE NUMBER OF FULL-TIME EMPLOYEES;

32 (4) THE NUMBER OF FULL-TIME EMPLOYEES ELIGIBLE TO RECEIVE  
33 HEALTH INSURANCE BENEFITS;

34 (5) THE NUMBER OF FULL-TIME EMPLOYEES RECEIVING HEALTH  
35 INSURANCE BENEFITS FROM THE EMPLOYER;

UNOFFICIAL COPY OF SENATE BILL 790

1 (6) THE SOURCE OF HEALTH INSURANCE BENEFITS FOR THOSE  
2 ELIGIBLE FULL-TIME EMPLOYEES NOT RECEIVING HEALTH INSURANCE BENEFITS  
3 THROUGH AN EMPLOYER SUBJECT TO REPORTING UNDER THIS TITLE;

4 (7) THE NUMBER OF PART-TIME EMPLOYEES;

5 (8) THE NUMBER OF PART-TIME EMPLOYEES ELIGIBLE TO RECEIVE  
6 HEALTH INSURANCE BENEFITS;

7 (9) THE NUMBER OF PART-TIME EMPLOYEES RECEIVING HEALTH  
8 INSURANCE BENEFITS FROM THE EMPLOYER; AND

9 (10) THE SOURCE OF HEALTH INSURANCE BENEFITS FOR THOSE  
10 ELIGIBLE PART-TIME EMPLOYEES NOT RECEIVING HEALTH INSURANCE BENEFITS  
11 THROUGH AN EMPLOYER SUBJECT TO REPORTING UNDER THIS TITLE.

12 (C) THE INFORMATION REQUIRED UNDER SUBSECTION (B) OF THIS SECTION  
13 SHALL BE REPORTED AS OF THE INFORMATION REPORTING DATE DETERMINED BY  
14 THE EMPLOYER UNDER § 8.5-103(A)(1)(I) OF THIS TITLE.

15 ~~8.5-106. 8.5-107.~~

16 THE SECRETARY SHALL:

17 (1) ON AN ANNUAL BASIS, BASED ON THE INFORMATION REPORTED  
18 UNDER § 8.5-103(A)(1)(I) OF THIS TITLE:

19 (I) VERIFY WHICH EMPLOYERS ~~IN THE STATE~~ HAVE 10,000 OR  
20 MORE EMPLOYEES IN THE STATE; AND

21 (II) ENSURE THAT ALL EMPLOYERS ~~IN THE STATE~~ WITH 10,000 OR  
22 MORE EMPLOYEES IN THE STATE HAVE MADE THE REPORT REQUIRED UNDER §  
23 8.5-103 OF THIS TITLE;

24 (2) ADOPT REGULATIONS TO IMPLEMENT THIS TITLE; AND

25 (3) PAY THE REVENUE FROM THE PAYROLL ASSESSMENT INTO THE  
26 FUND CREATED UNDER ~~§ 15-141~~ § 15-142 OF THE HEALTH - GENERAL ARTICLE.

27 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
28 ~~July 1, 2005~~ January 1, 2007.