

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

Committee Report: Favorable with amendments

Senate action: Adopted with floor amendments

Read second time: April 1, 2005

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.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



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:

4  
 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 ~~(I)~~ (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 ~~(II)~~ (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)(II)~~ (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;

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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.