

**ENROLLED BILL**

-- Health and Government Operations/Finance and Budget and Taxation --

Introduced by **Delegates Healey, Barkley, Benson, Bobo, Boschert, Bronrott, Cane, Carter, G. Clagett, V. Clagett, Conroy, Cryor, C. Davis, Donoghue, Doory, Dumais, Feldman, Franchot, Frush, Gaines, Gilleland, Goldwater, Goodwin, Gutierrez, Haynes, Heller, Hixson, Holmes, Hubbard, Kaiser, Kelley, King, Kirk, Krysiak, Lee, Love, Madaleno, Malone, Mandel, Marriott, McHale, McIntosh, Menes, Moe, Murray, Nathan-Pulliam, Niemann, Oaks, Paige, Parker, Patterson, Pendergrass, Quinter, Ramirez, Rosenberg, Ross, Rudolph, Taylor, V. Turner, and ~~Vaughn~~ Vaughn, Hurson, and Kullen**

Read and Examined by Proofreaders:

\_\_\_\_\_  
Proofreader.

\_\_\_\_\_  
Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ o'clock, \_\_\_\_\_M.

\_\_\_\_\_  
Speaker.

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

1 accounted for; requiring the Fund to be used to support the operations of the  
 2 Maryland Medical Assistance Program; providing that certain provisions of this  
 3 Act apply to certain employers; requiring certain employers to submit certain  
 4 information to the Secretary of Labor, Licensing, and Regulation; requiring the  
 5 Secretary to adopt certain regulations that provide for the submission of a  
 6 certain designation and affidavit; providing that a certain employer may exempt  
 7 certain wages when calculating a certain percentage; requiring a certain  
 8 employer to make a certain payment to the Secretary under certain  
 9 circumstances and in a certain manner; prohibiting a certain employer from  
 10 making a certain deduction; providing for a certain ~~penalty~~ penalties; requiring  
 11 the Secretary to make a certain verification, adopt certain regulations, and  
 12 make a certain payment to a certain fund; *requiring the Secretary to report*  
 13 *certain information to the Governor and the General Assembly on or before a*  
 14 *certain date each year*; defining certain terms; *providing for a delayed effective*  
 15 *date*; and generally relating to requiring certain employers to pay a certain  
 16 assessment for employee health insurance costs.

17 BY adding to

18 Article - Health - General  
 19 Section 15-142  
 20 Annotated Code of Maryland  
 21 (2000 Replacement Volume and 2004 Supplement)

22 BY adding to

23 Article - Labor and Employment  
 24 Section 8.5-101 through ~~8.5-106~~ *8.5-107*, inclusive, to be under the new title  
 25 "Title 8.5. Health Care Payroll Assessment"  
 26 Annotated Code of Maryland  
 27 (1999 Replacement Volume and 2004 Supplement)

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

30 **Article - Health - General**

31 15-142.

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

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

34 (C) THE PURPOSE OF THE FUND IS TO SUPPORT THE OPERATIONS OF THE  
 35 PROGRAM.

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

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

3 (E) THE FUND CONSISTS OF:

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

6 (2) ANY OTHER MONEY FROM ANY OTHER SOURCE ACCEPTED FOR THE  
7 BENEFIT OF THE FUND.

8 (F) THE FUND MAY BE USED ONLY TO SUPPORT THE OPERATIONS OF THE  
9 PROGRAM.

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

12 (2) ANY INVESTMENT EARNINGS OF THE FUND SHALL BE RETAINED TO  
13 THE CREDIT OF THE FUND.

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

17 **Article - Labor and Employment**

18 TITLE 8.5. HEALTH CARE PAYROLL ASSESSMENT.

19 8.5-101.

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

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

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

25 (2) "EMPLOYER" DOES NOT INCLUDE THE FEDERAL GOVERNMENT, THE  
26 STATE, ANOTHER STATE, OR A POLITICAL SUBDIVISION OF THE STATE OR ANOTHER  
27 STATE.

28 (D) (1) "HEALTH INSURANCE COSTS" MEANS THE AMOUNT PAID BY AN  
29 EMPLOYER TO PROVIDE HEALTH CARE OR HEALTH INSURANCE TO EMPLOYEES IN  
30 THE STATE TO THE EXTENT THE COSTS MAY BE DEDUCTIBLE BY ~~THE~~ AN EMPLOYER  
31 UNDER FEDERAL TAX LAW.

32 (2) "HEALTH INSURANCE COSTS" INCLUDES PAYMENTS FOR MEDICAL  
33 CARE, PRESCRIPTION DRUGS, VISION CARE, MEDICAL SAVINGS ACCOUNTS, AND ANY

1 OTHER COSTS TO PROVIDE HEALTH BENEFITS AS DEFINED IN § 213(D) OF THE  
2 INTERNAL REVENUE CODE.

3 (E) "SECRETARY" MEANS THE SECRETARY OF LABOR, LICENSING, AND  
4 REGULATION.

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

7 8.5-102.

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

10 8.5-103.

11 (A) (1) ON JANUARY 1, ~~2006~~ 2007, AND ANNUALLY THEREAFTER, AN  
12 EMPLOYER SHALL SUBMIT ON A FORM AND IN A MANNER APPROVED BY THE  
13 SECRETARY:

14 (I) THE NUMBER OF EMPLOYEES OF THE EMPLOYER IN THE  
15 STATE AS OF 1 DAY IN THE YEAR IMMEDIATELY PRECEDING THE PREVIOUS  
16 CALENDAR YEAR AS DETERMINED BY THE EMPLOYER ON AN ANNUAL BASIS:

17 ~~(II)~~ (II) THE AMOUNT SPENT BY THE EMPLOYER IN THE YEAR  
18 IMMEDIATELY PRECEDING THE PREVIOUS CALENDAR YEAR ON HEALTH INSURANCE  
19 COSTS IN THE STATE; AND

20 ~~(III)~~ (III) THE PERCENTAGE OF PAYROLL THAT WAS SPENT BY THE  
21 EMPLOYER IN THE YEAR IMMEDIATELY PRECEDING THE PREVIOUS CALENDAR YEAR  
22 ON HEALTH INSURANCE COSTS IN THE STATE.

23 (2) THE SECRETARY SHALL ADOPT REGULATIONS THAT SPECIFY THE  
24 INFORMATION THAT AN EMPLOYER SHALL SUBMIT UNDER PARAGRAPH (1) OF THIS  
25 SUBSECTION.

26 (3) THE INFORMATION REQUIRED SHALL:

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

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

31 1. WAS REVIEWED BY THE SIGNING OFFICER; AND

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

1 (B) WHEN CALCULATING THE PERCENTAGE OF PAYROLL UNDER SUBSECTION  
2 ~~(A)(I)(II)~~ (A)(I)(III) OF THIS SECTION, AN EMPLOYER MAY EXEMPT:

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

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

9 8.5-104.

10 (A) AN EMPLOYER THAT IS ORGANIZED AS A NONPROFIT ORGANIZATION  
11 THAT DOES NOT SPEND UP TO 6% OF THE TOTAL WAGES PAID TO EMPLOYEES IN THE  
12 STATE ON HEALTH INSURANCE COSTS SHALL PAY TO THE SECRETARY AN AMOUNT  
13 EQUAL TO THE DIFFERENCE BETWEEN WHAT THE EMPLOYER SPENDS FOR HEALTH  
14 INSURANCE COSTS AND AN AMOUNT EQUAL TO 6% OF THE TOTAL WAGES PAID TO  
15 EMPLOYEES IN THE STATE.

16 (B) AN EMPLOYER THAT IS NOT ORGANIZED AS A NONPROFIT ORGANIZATION  
17 AND DOES NOT SPEND UP TO 8% OF THE TOTAL WAGES PAID TO EMPLOYEES IN THE  
18 STATE ON HEALTH INSURANCE COSTS SHALL PAY TO THE SECRETARY AN AMOUNT  
19 EQUAL TO THE DIFFERENCE BETWEEN WHAT THE EMPLOYER SPENDS FOR HEALTH  
20 INSURANCE COSTS AND AN AMOUNT EQUAL TO 8% OF THE TOTAL WAGES PAID TO  
21 EMPLOYEES IN THE STATE.

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

24 (D) AN EMPLOYER SHALL MAKE THE PAYMENT REQUIRED UNDER THIS  
25 SECTION TO THE SECRETARY ON A PERIODIC BASIS AS DETERMINED BY THE  
26 SECRETARY.

27 8.5-105.

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

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

34 8.5-106.

35 (A) IN THIS SECTION, "HEALTH INSURANCE BENEFITS" INCLUDES PAYMENTS  
36 FOR MEDICAL CARE, PRESCRIPTION DRUGS, VISION CARE, MEDICAL SAVINGS  
37 ACCOUNTS, AND ANY OTHER COSTS TO PROVIDE HEALTH BENEFITS, AS DEFINED IN  
38 § 213(D) OF THE INTERNAL REVENUE CODE.

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

4 (1) THE NAME OF EACH NONPROFIT AND FOR PROFIT EMPLOYER WITH  
5 10,000 OR MORE EMPLOYEES IN THE STATE;

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

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

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

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

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

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

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

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

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

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

27 ~~8.5-106. 8.5-107.~~

28 THE SECRETARY SHALL:

29 (1) ON AN ANNUAL BASIS, BASED ON THE INFORMATION REPORTED  
30 UNDER § 8.5-103(A)(1)(I) OF THIS TITLE;

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

33 (II) ENSURE THAT ALL EMPLOYERS ~~IN THE STATE~~ WITH 10,000 OR  
34 MORE EMPLOYEES IN THE STATE HAVE MADE THE REPORT REQUIRED UNDER §  
35 8.5-103 OF THIS TITLE;

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

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

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