

3948

2009-2010 Regular Sessions

I N S E N A T E

April 7, 2009

Introduced by Sen. OPPENHEIMER -- read twice and ordered printed, and when printed to be committed to the Committee on Labor

AN ACT to amend the labor law and the state finance law, in relation to creating the "fair share health act"

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. This act shall be known and may be cited as the "fair share  
2 health act".  
3 S 2. The labor law is amended by adding a new section 211-b to read as  
4 follows:  
5 S 211-B. THE FAIR SHARE HEALTH PROGRAM. 1. DEFINITIONS. FOR PURPOSES  
6 OF THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:  
7 (A) "EMPLOYEE" MEANS ALL INDIVIDUALS EMPLOYED FULL-TIME OR PART-TIME  
8 DIRECTLY BY AN EMPLOYER.  
9 (B) "EMPLOYER" MEANS EITHER A NOT-FOR-PROFIT CORPORATION, AS DEFINED  
10 IN SECTION ONE HUNDRED TWO OF THE NOT-FOR-PROFIT CORPORATION LAW, OR A  
11 FOR-PROFIT CORPORATION, AS DEFINED IN SECTION ONE HUNDRED TWO OF THE  
12 BUSINESS CORPORATION LAW, EMPLOYING TEN THOUSAND OR MORE EMPLOYEES IN  
13 NEW YORK STATE; PROVIDED, HOWEVER, THAT THE FEDERAL GOVERNMENT, THE  
14 STATE OR ANOTHER STATE, OR A POLITICAL SUBDIVISION OF THE STATE OR  
15 ANOTHER STATE ARE NOT INCLUDED IN THE DEFINITION OF EMPLOYER.  
16 (C) "HEALTH INSURANCE BENEFITS" SHALL INCLUDE AMOUNTS PAID BY THE  
17 EMPLOYER FOR MEDICAL CARE, PRESCRIPTION DRUGS, VISION CARE, MEDICAL  
18 SAVINGS ACCOUNTS, AND ANY OTHER PAYMENTS MADE TO PROVIDE HEALTH BENEFITS  
19 AS DEFINED IN SECTION 213(D) OF THE INTERNAL REVENUE CODE.  
20 (D) "OFFICE" MEANS THE STATE DEPARTMENT OF LABOR OFFICE LOCATED IN  
21 ALBANY.  
22 (E) "PROGRAM" MEANS THE FAIR SHARE HEALTH PROGRAM.  
23 2. DATA COLLECTION. (A) ON OR BEFORE APRIL FIRST OF EACH YEAR, ALL  
24 EMPLOYERS WITH TEN THOUSAND OR MORE EMPLOYEES IN NEW YORK STATE SHALL  
25 PREPARE AND SUBMIT AN AFFIDAVIT REVIEWED AND SIGNED BY THE PRINCIPAL

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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1 EXECUTIVE OFFICER OR INDIVIDUAL PERFORMING A SIMILAR FUNCTION THAT  
2 STATES UNDER PENALTY OF PERJURY THAT THE INFORMATION REQUIRED UNDER  
3 PARAGRAPH (B) OF THIS SUBDIVISION WAS REVIEWED BY SUCH OFFICER AND IS  
4 TRUE TO THE BEST OF THE SIGNING OFFICER'S KNOWLEDGE, INFORMATION AND  
5 BELIEF.

6 (B) THE PRINCIPAL EXECUTIVE OFFICER, AS PROVIDED IN PARAGRAPH (A) OF  
7 THIS SUBDIVISION, SHALL PROVIDE THE OFFICE WITH THE FOLLOWING INFORMA-  
8 TION:

9 (I) THE NUMBER OF EMPLOYEES AS OF A DATE TO BE SET ANNUALLY BY THE  
10 COMMISSIONER OR HIS OR HER DESIGNEE;

11 (II) THE AMOUNT SPENT BY THE EMPLOYER IN THE IMMEDIATELY PRECEDING  
12 YEAR ON HEALTH INSURANCE BENEFITS FOR ALL EMPLOYEES WORKING WITHIN THE  
13 STATE;

14 (III) THE PERCENTAGE OF TOTAL WAGES PAID THAT WAS SPENT BY THE EMPLOY-  
15 ER IN THE IMMEDIATELY PRECEDING YEAR ON HEALTH INSURANCE BENEFITS FOR  
16 EMPLOYEES IN THE STATE; AND

17 (IV) ANY OTHER INFORMATION THE COMMISSIONER DEEMS NECESSARY TO IMPLE-  
18 MENT THIS SECTION.

19 (C) WHEN CALCULATING THE PERCENTAGE OF TOTAL WAGES PAID, THE EMPLOYER  
20 MAY EXEMPT THE FOLLOWING:

21 (I) WAGES PAID TO ANY EMPLOYEE IN EXCESS OF THE MEDIAN HOUSEHOLD  
22 INCOME IN THE STATE AS PROVIDED BY THE UNITED STATES CENSUS BUREAU; AND

23 (II) WAGES PAID TO AN EMPLOYEE WHO IS ENROLLED IN OR ELIGIBLE FOR  
24 MEDICARE, OR ITS SUCCESSOR PROGRAM.

25 3. REQUIREMENTS. ALL EMPLOYERS WITH TEN THOUSAND OR MORE EMPLOYEES IN  
26 NEW YORK STATE SHALL CONTRIBUTE TO THE INCREASING COST OF HEALTH CARE  
27 BENEFITS TO PERSONS IN THE STATE.

28 (A) FOR-PROFIT EMPLOYERS WHO DO NOT SPEND EIGHT PERCENT OF THE TOTAL  
29 WAGES PAID TO EMPLOYEES IN THE STATE ON HEALTH CARE BENEFITS SHALL  
30 CONTRIBUTE THE DIFFERENCE BETWEEN THE AMOUNT SUCH EMPLOYER ACTUALLY  
31 SPENDS ON HEALTH CARE BENEFITS FOR EMPLOYEES AND THE AMOUNT EQUAL TO  
32 EIGHT PERCENT OF THE TOTAL WAGES PAID TO SUCH EMPLOYEES.

33 (B) NOT-FOR-PROFIT EMPLOYERS WHO DO NOT SPEND SIX PERCENT OF THE TOTAL  
34 WAGES PAID TO EMPLOYEES IN THE STATE ON HEALTH CARE BENEFITS SHALL  
35 CONTRIBUTE THE DIFFERENCE BETWEEN THE AMOUNT THE EMPLOYER ACTUALLY  
36 SPENDS ON HEALTH CARE BENEFITS FOR EMPLOYEES AND THE AMOUNT EQUAL TO SIX  
37 PERCENT OF THE TOTAL WAGES PAID TO EMPLOYEES.

38 (C) SUCH PAYMENTS SHALL BE MADE AS DETERMINED BY THE COMMISSIONER AND  
39 SHALL BE FORWARDED TO THE FAIR SHARE HEALTH FUND, AS PROVIDED IN SECTION  
40 NINETY-SEVEN-M OF THE STATE FINANCE LAW. AN EMPLOYER MAY NOT DEDUCT ANY  
41 PAYMENT MADE TO THE STATE UNDER THIS SECTION FROM THE WAGES PAID TO AN  
42 EMPLOYEE.

43 4. DUTIES OF THE DEPARTMENT. THE COMMISSIONER SHALL DESIGNATE MEMBERS  
44 OF THE DEPARTMENT TO BE RESPONSIBLE FOR THE FOLLOWING:

45 (A) COLLECTION OF THE EMPLOYER DATA REQUIRED IN SUBDIVISION TWO OF  
46 THIS SECTION;

47 (B) VERIFICATION OF EMPLOYERS THAT HAVE TEN THOUSAND OR MORE EMPLOYEES  
48 IN THE STATE;

49 (C) VERIFICATION THAT ALL EMPLOYERS WITH TEN THOUSAND OR MORE EMPLOY-  
50 EES IN THE STATE HAVE MADE THE REQUIRED REPORT UNDER SUBDIVISION TWO OF  
51 THIS SECTION;

52 (D) COLLECTION OF EACH EMPLOYER'S CONTRIBUTIONS TO THE FUND;

53 (E) COLLECTION OF THE FINES AND PENALTIES AS PROVIDED IN SUBDIVISION  
54 FIVE OF THIS SECTION;

55 (F) PREPARATION OF AN ANNUAL REPORT TO BE FORWARDED TO THE GOVERNOR  
56 AND THE LEGISLATURE; AND

1 (G) ANY OTHER DUTIES DEEMED NECESSARY BY THE COMMISSIONER TO IMPLEMENT  
2 THE PROGRAM.

3 5. PENALTIES. (A) FAILURE TO FILE AN AFFIDAVIT AS REQUIRED BY SUBDIVI-  
4 SION TWO OF THIS SECTION SHALL RESULT IN THE IMPOSITION BY THE COMMIS-  
5 SIONER OF A CIVIL PENALTY OF NOT MORE THAN TWO HUNDRED FIFTY DOLLARS FOR  
6 EACH DAY THAT THE AFFIDAVIT IS NOT TIMELY FILED.

7 (B) FAILURE TO MAKE THE PAYMENT REQUIRED UNDER SUBDIVISION THREE OF  
8 THIS SECTION SHALL RESULT IN THE IMPOSITION BY THE COMMISSIONER OF A  
9 CIVIL PENALTY OF NOT MORE THAN TWO HUNDRED FIFTY THOUSAND DOLLARS.

10 (C) ALL PENALTIES AND FINES COLLECTED BY THE DEPARTMENT SHALL BE USED  
11 TO OFFSET THE COST OF ADMINISTRATION AND ENFORCEMENT OF THE PROGRAM.

12 S 3. The state finance law is amended by adding a new section 97-m to  
13 read as follows:

14 S 97-M. THE FAIR SHARE HEALTH FUND. 1. THERE IS HEREBY ESTABLISHED IN  
15 THE JOINT CUSTODY OF THE STATE COMPTROLLER AND THE COMMISSIONER OF TAXA-  
16 TION AND FINANCE A SPECIAL REVENUE FUND TO BE KNOWN AS THE FAIR SHARE  
17 HEALTH FUND.

18 2. THE FAIR SHARE HEALTH FUND SHALL CONSIST OF MONEYS RECEIVED BY THE  
19 STATE PURSUANT TO SECTION TWO HUNDRED ELEVEN-B OF THE LABOR LAW, MONEYS  
20 DONATED OR GIVEN TO THE STATE, AND ALL OTHER MONEYS APPROPRIATED, CRED-  
21 ITED OR TRANSFERRED THERETO FROM ANY OTHER FUND OR SOURCE.

22 3. MONEYS OF THE FAIR SHARE HEALTH FUND SHALL BE USED TO PROVIDE  
23 HEALTH CARE AND/OR HEALTH COVERAGE TO EMPLOYEES WHO (A) ARE EMPLOYED BY  
24 EMPLOYERS THAT ARE REQUIRED TO MAKE PAYMENTS TO THE FUND AND (B) DO NOT  
25 OTHERWISE HAVE HEALTH COVERAGE. FOLLOWING APPROPRIATION BY THE LEGISLA-  
26 TURE AND ALLOCATION BY THE DIRECTOR OF THE BUDGET, MONEYS OF THE FAIR  
27 SHARE HEALTH FUND SHALL BE MADE AVAILABLE TO THE COMMISSIONER OF THE  
28 DEPARTMENT OF HEALTH TO FUND THE CARE OR COVERAGE AS REQUIRED HEREIN, IN  
29 ANY MANNER DEEMED APPROPRIATE BY THE COMMISSIONER.

30 4. THE OFFICE OF CHILDREN AND FAMILY SERVICES AND THE OFFICE OF TEMPO-  
31 RARY AND DISABILITY ASSISTANCE SHALL SUBMIT A REPORT TO THE GOVERNOR AND  
32 THE LEGISLATURE BY JUNE FIRST NEXT SUCCEEDING THE FIRST YEAR OF FAIR  
33 SHARE HEALTH PROGRAM IMPLEMENTATION AND ANNUALLY THEREAFTER DETAILING  
34 ALL EXPENDITURES MADE FROM THE FAIR SHARE HEALTH FUND DURING THE PREVI-  
35 OUS YEAR, THE STATUS OF ANY DEMONSTRATION PROJECTS FUNDED BY THE FUND,  
36 AND THE OFFICE'S PRIORITIES FOR ALLOCATING MONEY FROM THE FUND FOR THE  
37 CURRENT YEAR.

38 S 4. The commissioner of the department of labor shall report to the  
39 governor, the speaker of the assembly and the temporary president of the  
40 senate regarding the administration, implementation, and enforcement of  
41 the fair share health program and fund, including recommendations, with-  
42 in one year of the effective date of this act, and annually, thereafter.  
43 1. Such report shall include, but not be limited to:

44 (a) The name of each not-for-profit and for-profit employer with ten  
45 thousand or more employees in the state;

46 (b) The employer's definition of full-time employee and part-time  
47 employee;

48 (c) The number of full-time employees;

49 (d) The number of full-time employees eligible to receive health  
50 insurance benefits;

51 (e) The number of full-time employees receiving health insurance bene-  
52 fits from the employer;

53 (f) The source of health insurance benefits for those eligible full-  
54 time employees not receiving health insurance benefits through an  
55 employer subject to reporting under this act;

56 (g) The number of part-time employees;

1 (h) The number of part-time employees eligible to receive health  
2 insurance benefits;

3 (i) The number of part-time employees receiving health insurance bene-  
4 fits from the employer; and

5 (j) The source of health insurance benefits for those eligible part-  
6 time employees not receiving health insurance benefits through an  
7 employer subject to reporting under this act.

8 2. The information required in subdivision one of this section shall  
9 be reported by the employers on the same date as of the date set by the  
10 commissioner of the department of labor in paragraph (b) of subdivision  
11 2 of section 211-b of the labor law.

12 S 5. This act shall take effect on the one hundred twentieth day after  
13 it shall have become a law; provided, however, that effective immediate-  
14 ly, the collection of data, the addition, amendment and/or repeal of any  
15 rule or regulation necessary for the implementation of this act on its  
16 effective date are authorized and directed to be made and completed on  
17 or before such effective date.