

AMENDED COPY AS OF 9/19/2005

Intro. Res. No. 1903-2005

Laid on Table 8/9/2005

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

**RESOLUTION NO. -2005, ADOPTING LOCAL LAW
NO. -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 , 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. -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:

APPROVED BY:

County Executive of Suffolk County

Date: