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Chamber Challenges “Fair Share” Health Bill

Annapolis, MD (January 3, 2006) - The Maryland Chamber of Commerce today challenged the legality of the Fair Share Health Care Act. According to a legal opinion issued by a labor law expert, efforts to enact legislation in Maryland forcing large employers to pay a specified amount of health insurance benefits would likely violate federal law.

“State law cannot overturn federal law,” said Ronald W. Wineholt, the Maryland Chamber’s Vice President for Government Affairs. “In light of this legal opinion, the Maryland Chamber asks that the Maryland General Assembly sustain Governor Ehrlich’s veto. It’s time to address the real problem of the uninsured in Maryland, which results from small employers’ inability to afford the high cost of health insurance.”

Next week the Maryland General Assembly will consider overriding the Governor’s veto of the “Fair Share” health bill. However, the Chamber believes that even if the veto is overridden, the bill would be unlikely to withstand a court challenge.

In a recent letter of advice addressed to the Maryland Chamber of Commerce, attorney Henry A. Smith, III, a partner with Smith & Downey, outlined the broad sweep of federal law under the Employee Retirement Income Security Act (ERISA). That federal law supersedes all State laws as they relate to any employee benefit plan. Smith’s legal opinion stated:

- **ERISA Exists to Create a Consistent Regulatory Scheme for Employer-Provided Benefits**
“One of the principal purposes of ERISA was to eliminate the possibility of a tangle of State laws impacting employee benefit plans, and instead to create a single, comprehensive, thoughtful, federal regulatory scheme for employer-provided benefits.”
- **ERISA Preempts State Law**
“The (U.S. Supreme) Court has held that ERISA preempts State laws that require employers to provide employee benefits measured against some State-mandated reference point.”
- **The Courts Have Struck Down Similar State Laws**
“Since ERISA’s enactment in 1974, the courts repeatedly have struck down State laws directly or indirectly relating to employee benefit plans.”
- **SB 790/HB 1284 is the Type of Law Intended to be Preempted by ERISA**
“The Proposal (Fair Share Health Care Fund Act) is the type of State law intended to be preempted by ERISA. Specifically, the Proposal is a direct attempt to try to force employers to provide employee health benefits meeting a State-mandated design (i.e., costing at least the designated percentage of total wages), either directly or through a combination of contributions to their own plans plus contributions to the Fair Share Health Care Fund.”

About Henry A. Smith, III

Henry A. Smith, III is a partner of Smith & Downey, a law firm with a national practice concentrating in employee benefits, executive compensation, and labor and employment law. He advises for-profit, tax-exempt, governmental and church-related employers of all sizes, in all industries and in all areas of the country, concerning the full range of employee benefit and executive compensation issues. (Complete Bio Enclosed)

About the Maryland Chamber of Commerce

The Maryland Chamber of Commerce is a non-profit coalition of more than 800 businesses who employ more than 340,000 people in the state. Its mission is to maximize opportunities for its members and their employees to grow and prosper. For more information about the Chamber, visit its website, www.mdchamber.org or call (410) 269-0642 or (301) 261-2858.

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