

[First Reprint]

ASSEMBLY, No. 4108

STATE OF NEW JERSEY
213th LEGISLATURE

INTRODUCED JUNE 11, 2009

Sponsored by:

Assemblyman JOSEPH CRYAN

District 20 (Union)

Assemblyman ALBERT COUTINHO

District 29 (Essex and Union)

SYNOPSIS

Concerns taxation of certain lines of insurance and dedicates certain additional revenues to the Health Care Subsidy Fund.

CURRENT VERSION OF TEXT

As reported by the Assembly Budget Committee on June 15, 2009, with amendments.



(Sponsorship Updated As Of: 6/23/2009)

1 AN ACT concerning the taxation of certain lines of insurance,
 2 dedicating certain additional revenues to the Health Care
 3 Subsidy Fund, amending P.L.1945, c.132 ¹ [, P.L.1968, c.305]¹
 4 and P.L.1960, c.32, and supplementing P.L.1992, c.160
 5 (C.26:2H-18.51 et al.).

6
 7 **BE IT ENACTED** by the Senate and General Assembly of the State
 8 of New Jersey:

9
 10 1. Section 2 of P.L.1945, c.132 (C.54:18A-2) is amended to
 11 read as follows:

12 2. (a) The tax specified in subsection (a) of section 1 of this
 13 act, except as to life insurance companies and except as to marine
 14 insurance as described by chapter 16 of Title 54 of the Revised
 15 Statutes, shall, except as hereinafter provided, be 2% upon the
 16 taxable premiums collected by such company during the year
 17 ending December 31 next preceding on all business of the company
 18 in this State, less the amount of taxes on its property, exclusive of
 19 taxes on real estate and of taxes payable pursuant to this section,
 20 paid in this State by the company pursuant to any law of this State
 21 during the said year. Any taxes paid to the treasurer of any
 22 firemen's relief association of this State pursuant to R.S.54:18-1
 23 shall be considered a part of the tax payable under this act. An
 24 additional tax of 0.1% upon such taxable premiums of such insurers
 25 shall also be paid, which amount shall be dedicated to the
 26 Department of Banking and Insurance for payment of
 27 administrative costs related to its statutory duties.

28 (b) Taxable premiums, collected after December 31, 1965 by an
 29 insurance company subject to the provisions of subsection (a)
 30 hereof under group accident and health insurance policies on
 31 residents of this State, and taxable premiums collected under legal
 32 insurance policies as defined in section 3 of P.L.1981, c.160
 33 (C.17:46C-3) on residents of this State, shall be subject to tax
 34 **[only]** at the following rates:

35
 36 As to taxes payable in 1967 1 3/4 %
 37 As to taxes payable in 1968 1 1/2 %
 38 As to taxes payable in 1969 1 1/4 %
 39 As to taxes payable in 1970 **[and thereafter]** through 2008 1%
 40 As to taxes payable in 2009 ¹ **[and thereafter]** ¹ 2.25%
 41 ¹ As to taxes payable in 2010 and thereafter 1% ¹

42 An additional tax of **[0.05%]** ¹ **[0.1%]** 0.05% ¹ upon such taxable
 43 premiums of such insurers shall also be paid, which amount shall be

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly ABU committee amendments adopted June 15, 2009.

1 dedicated to the Department of Banking and Insurance for payment
2 of administrative costs related to its statutory duties.

3 (cf: P.L.1990, c.8, s.82)

4

5 '2. Section 3 of P.L.1945, c.132 (C.54:18A-3) is amended to
6 read as follows:

7 3. Amount of tax, life insurance companies; deductions. (a) The
8 tax specified in subsection (a) of section 1 of this act as to life
9 insurance companies, shall, except as hereinafter provided, be 2%
10 upon the taxable premiums collected by the company during the
11 year ending December 31 next preceding under all policies or
12 contracts of insurance on residents of this State, less the amount of
13 taxes on its property, exclusive of taxes on real estate and of taxes
14 payable pursuant to this section, paid in this State by the company
15 pursuant to any law of this State during the said year. An additional
16 tax of 0.1% upon such taxable premiums of such insurers shall also
17 be paid, which amount shall be dedicated to the Department of
18 Insurance Banking and for payment of administrative costs related
19 to its statutory duties.

20 (b) Taxable premiums, collected after December 31, 1965 by an
21 insurance company subject to the provisions of subsection (a)
22 hereof under group accident and health insurance policies on
23 residents of this State, and taxable premiums collected under legal
24 insurance policies as defined in section 3 of P.L.1981, c.160
25 (C.17:46C-3) on residents of this State, shall be subject to tax
26 **[only]** at the following rates:

27	As to taxes payable in 1967	1 3/4 %
28	As to taxes payable in 1968	1 1/2 %
29	As to taxes payable in 1969	1 1/4 %
30	As to taxes payable in 1970 [and thereafter] <u>through 2008</u>	1%
31	<u>As to taxes payable in 2009</u>	<u>2.25%</u>
32	<u>As to taxes payable in 2010 and thereafter</u>	<u>1%</u>

33 An additional tax of 0.05% upon such taxable premiums of such
34 insurers shall also be paid, which amount shall be dedicated to the
35 Department of Banking and Insurance for payment of
36 administrative costs related to its statutory duties.¹

37 (cf: P.L.1990, c.8, s.83)

38

39 **'[2.] 3.'** Section 6 of P.L.1945, c.132 (C.54:18A-6) is
40 amended to read as follows:

41 6. a. In the event that the taxable premiums collected by any
42 company, as specified in sections 2 and 3 of this act, and all of its
43 affiliates as defined in the chapter entitled "Insurance Holding
44 Company Systems," P.L.1970, c.22 (C.17:27A-1 et seq.), during
45 any year ending December 31, exceed twelve and one-half
46 percentum (12 1/2%) of the total premiums collected by the
47 company and all of its affiliates during the same year on all policies

1 and contracts of insurance, whenever and wherever issued, the
2 taxable premiums of such company shall not exceed a sum equal to
3 twelve and one-half percentum (12 1/2%) of such company's total
4 premiums collected during the same year on all policies and
5 contracts of insurance, whenever and wherever issued, calculated as
6 specified in sections 4 and 5 of this act; provided, however, a
7 company to which section 2 of this act (C.54:18A-2) applies shall in
8 no event be deemed to be an affiliate of a company to which section
9 3 of this act (C.54:18A-3) applies and provided, further, that as to
10 any company licensed in this State prior to June 30, 1984, the
11 taxable premiums of that company shall be calculated without
12 regard to the premiums collected by any affiliate.

13 b. On and after January 1, 2005 the provisions of subsection a.
14 of this section shall not apply to a health service corporation
15 established pursuant to the provisions of P.L.1985, c.236
16 (C.17:48E-1 et **[seq.] al.**).

17 c. On and after January 1, 2009 the provisions of subsection a.
18 of this section shall not apply to accident and health insurance
19 premiums.

20 (cf: P.L.2005, c.128, s.1)

21

22 **'[3.] 4.'** Section 16 of P.L.1945, c.132 (C.54:18A-9) is
23 amended to read as follows:

24 16. a. This act shall not apply to any fraternal beneficiary
25 society. For the purposes of this act, "insurance company" shall
26 include a corporation, and any person, partnership or
27 unincorporated association required as an insurer to procure from
28 the Commissioner of Banking and Insurance the certificate
29 prescribed by section 1 of an act entitled "An act to regulate the
30 transaction of the business of insurance by individuals, partnerships
31 and unincorporated associations in this State" approved July 11,
32 1939 (P.L.1939, c.188; C.17:49-1), or under any other statute now
33 in force or hereafter enacted, engaging in any kind or kinds of
34 business specified in R.S.17:17-1, subject to the insurance laws of
35 this State; provided, however, that no company or society, which by
36 its act or certificate of incorporation has for its object the assistance
37 of sick, needy or disabled members, the defraying of funeral
38 expenses of deceased members and the provision for the wants of
39 the surviving spouses and families of members after death, shall be
40 deemed an insurance company within the purview of this act.

41 b. (1) For the purposes of P.L.1945, c.132 (C.54:18A-1 et
42 **[seq.] al.**), "insurance company" shall include, beginning January
43 1, 1992, a health service corporation established pursuant to the
44 provisions of P.L.1985, c.236 (C.17:48E-1 et **[seq.] al.**), with
45 respect to its experience rated health insurance. An "insurance
46 company" shall also include any life, accident, or health insurance
47 company in which a health service corporation owns stock,

1 controls, or otherwise becomes affiliated with, as provided in
2 subsection e. of section 3 of P.L.1985, c.236 (C.17:48E-3).

3 (2) For the purposes of P.L.1945, c.132 (C.54:18A-1 et **[seq.]**
4 **al.**), "insurance company" shall include, beginning January 1, 2005,
5 a health service corporation established pursuant to the provisions
6 of P.L.1985, c.236 (C.17:48E-1 et **[seq.] al.**), with respect to its
7 experience rated and community rated health insurance. An
8 "insurance company" shall also include any life, accident, or health
9 insurance company in which a health service corporation owns
10 stock, controls, or otherwise becomes affiliated with, as provided in
11 subsection e. of section 3 of P.L.1985, c.236 (C.17:48E-3).

12 (3) For the purposes of P.L.1945, c.132 (C.54:18A-1 et al.),
13 "insurance company" shall include, beginning January 1, 2009
14 'through December 31, 2009'¹, a dental service corporation
15 established pursuant to the provisions of P.L.1968, c.305
16 (C.17:48C-1 et seq.)¹, notwithstanding the provisions of section 32
17 of P.L.1968, c.305 (C.17:48C-32) and any other law to the contrary,
18 and provided that notwithstanding section 1 of P.L.1945, c.132
19 (C.54:18A-1) as to the payment of tax, tax liability due on a dental
20 service corporation's business done during that calendar year shall
21 be paid on March 1, 2010, with the filing of a return in a manner as
22 shall be specified by the Director of the Division of Taxation and
23 the Commissioner of Banking and Insurance¹.

24 (cf: P.L.2005, c.128, s.2)

25

26 ¹[4. Section 32 of P.L.1968, c.305 (C.17:48C-32) is amended to
27 read as follows:

28 32. Every dental service corporation is hereby declared to be a
29 charitable and benevolent institution, and its funds and property
30 shall be exempt from taxation by the State or any political
31 subdivision thereof other than taxation on premiums pursuant to
32 P.L.1945, c.132 (C.54:18A-1 et al.) as provided in section 16 of that
33 act (C.54:18A-9).

34 (cf: P.L.1968, c.305, s.32)]¹

35

36 5. Section 25 of P.L.1960, c.32 (C.17:22-6.59) is amended to
37 read as follows:

38 25. The premiums charged for surplus lines coverages are
39 subject to a premium receipts tax of **[3%]** 5% of all gross
40 premiums less any return premiums charged for such insurance.
41 The surplus lines agent shall collect from the insured, either directly
42 or through the originating broker, the amount of the tax, in addition
43 to the full amount of the gross premium charged by the insurer for
44 the insurance; provided, however, that the tax on any unearned
45 portion of the premium shall be returned to the policyholder by the
46 surplus lines agent. The surplus lines agent is prohibited from
47 absorbing such tax, or, as an inducement for insurance or for any

1 other reason, rebating all or any part of such tax or of his
2 commission.

3 The surplus lines agent shall forward to the commissioner
4 together with his quarterly report submitted pursuant to section 24
5 of P.L.1960, c.32 (C.17:22-6.58) a check in the amount of the
6 premium receipts tax due for that period made out to "the State of
7 New Jersey," except that where the policies cover fire insurance on
8 property in any municipality or portion of a township, or fire
9 district in this State, which now has or may hereafter have, a duly
10 incorporated firemen's relief association, 3% of the premium
11 receipts tax covering such insurance shall be paid to the treasurer of
12 the [association] New Jersey State Firemen's Association and the
13 remaining 2% of the premium receipts tax shall be forwarded to the
14 commissioner.

15 The tax imposed hereunder, if delinquent, shall be subject to the
16 provisions of R.S.54:49-3 and R.S.54:49-4.

17 The check covering taxes paid under the provisions of this act
18 shall be forwarded by the commissioner to the Director of the
19 Division of Taxation and that portion of the premiums representing
20 fire insurance shall be distributed by him in the amount now or
21 hereafter provided by law as to taxes collected by him from fire
22 insurance companies of other states and foreign countries. The
23 commissioner shall ascertain and report to the Director of the
24 Division of Taxation all facts necessary to enable the director to
25 ascertain, fix and collect the amount of the tax to be paid by each
26 licensee subject thereto under this act.

27 If a surplus lines policy covers risks or exposures only partially
28 in this State, the tax payable shall be computed on the portion of the
29 premium which is properly allocable to the risks or exposures
30 located in this State.

31 This section does not apply as to insurance of or with respect to
32 insurance of risks of the State Government or its agencies, or of any
33 county or municipality or of any agency thereof.

34 (cf: P.L.1996, c.69, s.8)

35

36 ^{16.} Section 30 of P.L.1960, c.32 (C.17:22-6.64) is amended to
37 read as follows:

38 30. Every insured who in this State procures or causes to be
39 procured or continues or renews insurance with an unauthorized
40 foreign or alien insurer, or any insured or self-insurer who procures
41 or continues excess loss, catastrophe or other insurance, upon a
42 subject of insurance resident, located or to be performed within this
43 State, other than insurance procured through a surplus lines agent
44 pursuant to the surplus lines law of this State or exempted from tax
45 under section 25 of P.L.1960, c.32 (C.17:22-6.59), shall within 30
46 days after the date such insurance was so procured, continued, or
47 renewed, file a report of the same with the commissioner in writing
48 and upon forms designated by the commissioner and furnished to

1 such an insured upon request. The report shall show the name and
2 address of the insured or insureds, name and address of the insurer,
3 the subject of the insurance, a general description of the coverage,
4 the amount of premium currently charged therefor, and such
5 additional pertinent information as is reasonably requested by the
6 commissioner.

7 Any insurance in an unauthorized insurer procured through
8 negotiations or an application, in whole or in part occurring or made
9 within or from within this State, or for which premiums in whole or
10 in part are remitted directly or indirectly from within this State,
11 shall be deemed to be insurance procured, or continued or renewed
12 in this State within the intent of this section.

13 There is hereby levied upon the obligation, chose in action, or
14 right represented by the premium charged for such insurance, a tax
15 at the rate of ~~3%~~ 5% of the gross amount of such premium less
16 any return premiums charged for such insurance. Within 30 days
17 after the insurance was so procured, continued or renewed, and
18 coincidentally with the filing with the commissioner of the report
19 provided for in this section, the insured shall pay the amount of the
20 tax to the commissioner, who, after reviewing the above report,
21 shall turn over the amount of the tax to the Director of the Division
22 of Taxation along with a summary of the facts necessary to enable
23 the director to ascertain and fix the proper amount of the tax ,
24 except that where the policies cover fire insurance on property in
25 any municipality or portion of a township, or fire district in this
26 State, which now has or may hereafter have, a duly incorporated
27 firemen's relief association, 3% of the premium receipts tax
28 covering such insurance shall be paid to the treasurer of the New
29 Jersey State Firemen's Association and the remaining 2% of the
30 premium receipts tax shall be forwarded to the commissioner.

31 If the insured fails to withhold from the premium the amount of
32 tax herein levied, the insured shall be liable for the amount thereof
33 and shall pay the same to the commissioner within the time
34 specified in this section.

35 The tax imposed hereunder if delinquent shall be subject to the
36 provisions of R.S.54:49-3 and R.S.54:49-4.

37 The tax shall be collectible from the insured by civil action
38 brought by the commissioner.

39 The amount of taxes paid to the Director of the Division of
40 Taxation under the provisions of this section on premiums for fire
41 insurance shall be distributed by him in the manner now or hereafter
42 provided by law as to taxes collected by him from fire insurance
43 companies of other states and foreign countries.

44 This section does not abrogate or modify, and shall not be
45 construed or deemed to abrogate or modify, any provision of
46 section 3 of P.L.1960, c.32 (C.17:22-6.37), representing or aiding
47 unauthorized insurer prohibited; section 4 of P.L.1960, c.32
48 (C.17:22-6.38), penalty for representing unauthorized insurer; or

1 section 5 of P.L.1960, c.32 (C.17:22-6.39), suits by unauthorized
2 insurers prohibited; or any other provision of this Title.

3 This section does not apply as to life or disability insurances.¹
4 (cf: P.L.1996, c.69, s.11)

5
6 **'[6.] 7.'** (New section) **'[Commencing with fiscal years]**
7 **During the fiscal year**¹ beginning on **'[and after]'** July 1, 2009,
8 there shall be deposited **'[annually]'** in the Health Care Subsidy
9 Fund established pursuant to section 8 of P.L.1992, c.160 (C.26:2H-
10 18.58): the sum of \$74.5 million from the revenue collected
11 **'[annually]'** from the taxation of group accident and health
12 insurance policies pursuant to subsection (b) of section 2 of
13 P.L.1945, c.132 (C.54:18A-2); and the sum of \$5 million from the
14 taxation of dental service corporations pursuant to P.L.1945, c.132
15 (C.54:18A-1 et al.).

16

17 **'[7.] 8.'** This act shall take effect immediately.