

ASSEMBLY, No. 3380

STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED FEBRUARY 12, 2018

Sponsored by:

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District 27 (Essex and Morris)

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District 7 (Burlington)

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District 6 (Burlington and Camden)

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Assemblyman Mukherji, Assemblywomen Pinkin and Jasey

SYNOPSIS

“New Jersey Health Insurance Market Preservation Act.”

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 4/6/2018)

1 AN ACT requiring health insurance coverage and supplementing
2 Title 54A of the New Jersey Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. This act shall be known and may be cited as the “New Jersey
8 Health Insurance Market Preservation Act.”

9

10 2. As used in this act:

11 "Affiliated company" means a company in the same corporate
12 system as a parent, an industrial insured or a member organization
13 by virtue of common ownership, control, operation or management.

14 “Affordable Care Act” means the federal “Patient Protection and
15 Affordable Care Act,” Pub.L.111-148, as amended by the federal
16 “Health Care and Education Reconciliation Act of 2010,”
17 Pub.L.111-152, and any federal rules and regulations adopted
18 pursuant thereto.

19 “Applicable individual” means the same as defined in 26 U.S.C.
20 s. 5000A(d)(1).

21 “Carrier” means any entity that contracts or offers to contract to
22 provide, deliver, arrange for, pay for, or reimburse any of the costs
23 of health care services, including a sickness and accident insurance
24 company, a health maintenance organization, a hospital or health
25 service corporation, a multiple employer welfare arrangement, an
26 entity under contract with the State Health Benefits Program or the
27 School Employees’ Health Benefits Program to administer a health
28 benefits plan, or any other entity providing a health benefits plan.
29 For purposes of this act, carriers that are affiliated companies shall
30 be treated as one carrier.

31 “Gross income tax” means the New Jersey gross income tax
32 pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1
33 et seq.

34 “Minimum essential coverage” means the same as defined in 26
35 U.S.C. s.5000A(f)(1).

36 “Taxpayer” means a resident taxpayer as defined in N.J.S.54A:1-
37 2.

38

39 3. a. A taxpayer shall, for each month beginning after
40 December 31, 2018, ensure that the taxpayer, if an applicable
41 individual, and any dependent of the taxpayer who is an applicable
42 individual, is covered under minimum essential coverage for that
43 month.

44 b. In the case of any taxpayer who fails to meet the
45 requirements of subsection a. of this section, there shall be imposed
46 a State shared responsibility tax equal to a taxpayer’s federal
47 penalty that would apply for the taxable year under section 5000A

1 of the Internal Revenue Code of 1986, as in effect on December 15,
2 2017 (26 U.S.C. s.5000A).

3

4 4. The rules for determining the State shared responsibility tax
5 under section 3 of this act shall reflect the following changes
6 relative to the rules for determining the federal shared responsibility
7 payment under 26 U.S.C. s.5000A:

8 a. The amount of the tax imposed by this section shall be
9 determined, if applicable, using the State average premium for
10 bronze-level plans rather than the national average premium for
11 bronze-level plans;

12 b. For purposes of this section, “minimum essential coverage”
13 shall include, in addition to the types of coverage included under 26
14 U.S.C. s.5000A, the coverage required pursuant to the New Jersey
15 Individual Health Coverage Program;

16 c. Instead of the United States Secretary of Health and Human
17 Services, in coordination with the United States Secretary of the
18 Treasury, the Commissioner of Banking and Insurance, in
19 coordination with the State Treasurer, shall have the authority to
20 recognize additional health benefits coverage as “minimum
21 essential coverage;”

22 d. For purposes of the exemption for individuals who cannot
23 afford coverage:

24 (1) the required contribution for an individual eligible for
25 minimum essential coverage under both an eligible employer-
26 sponsored plan and a qualified health plan is the lesser of the
27 amounts that the individual would have to pay for coverage of each
28 type;

29 (2) the income threshold for coverage to be considered
30 unaffordable shall be determined by the Commissioner of Banking
31 and Insurance, in consultation with the State Treasurer;

32 e. No tax shall be imposed under this section with respect to
33 any applicable individual for any month during a calendar year if
34 the taxpayer’s gross income for the taxable year is below the
35 minimum taxable income threshold established in N.J.S.54A:2-4
36 and N.J.S.54A:8-3.1;

37 f. No tax shall be imposed by this section with respect to any
38 applicable individual for any month during which the individual is a
39 bona fide resident of another state;

40 g. Determinations as to hardship exemptions shall be made by
41 the Commissioner of Banking and Insurance under this act rather
42 than by the U.S. Secretary of Health and Human Services under 42
43 U.S.C. s.18031(d)(4)(H);

44 h. A grandfathered plan, as defined in 42 U.S.C. s.18011(e),
45 shall qualify as minimum essential coverage only if it satisfies the
46 requirements that apply to non-grandfathered plans sold in the
47 market in which the grandfathered plan is sold;

1 i. If a taxpayer is subject to both the tax imposed by this
2 section and the federal penalty under 26 U.S.C. s.5000A for a
3 taxable year, the amount of the taxpayer's State income tax is
4 reduced, but not below zero, by the amount of the taxpayer's federal
5 penalty payment; and

6 j. Health coverage provided under a plan obtained through an
7 association, trust, or multiple employer arrangement, including an
8 out-of-state trust or association, shall not qualify as minimum
9 essential coverage unless the plan complies with the requirements
10 of one or more of the following New Jersey statutes, as applicable
11 to a carrier and health benefits plans offered in the relevant
12 individual, small employer, or large employer markets:

- 13 (1) P.L.1938, c.366 (C.17:48-1 et seq.);
- 14 (2) P.L.1940, c.74 (C.17:48A-1 et seq.);
- 15 (3) P.L.1985, c.236 (C.17:48E-1 et seq.);
- 16 (4) N.J.S.17B:26-1 et seq.;
- 17 (5) N.J.S.17B:27-26 et seq.;
- 18 (6) P.L.1973, c.337 (C.26:2J-1 et seq.);
- 19 (7) P.L.1992, c.161 (C.17B:27A-2 et seq.);
- 20 (8) P.L.2001, c.352 (17B:27C-1 et seq.);
- 21 (9) P.L.1997, c.1972 (C.26:2S-1 et seq.); or
- 22 (10) P.L.1992, c.162 (C.17B:27A-17 et seq.).

23
24 5. The tax imposed by this act shall be assessed and collected
25 in the same manner as under the "New Jersey Gross Income Tax
26 Act," N.J.S.54A:1-1 et seq.

27
28 6. a. Except as otherwise provided in this section, any federal
29 regulations implementing 26 U.S.C. s.5000A, as that section and
30 those regulations are in effect on December 15, 2017, shall apply as
31 though incorporated into this act. Federal guidance interpreting
32 these federal regulations shall similarly apply.

33 b. The State Treasurer shall adopt regulations implementing this
34 section, which shall include modifications necessary to reflect the
35 differences between this act and 26 U.S.C. s.5000A, and other
36 differences between the "New Jersey Gross Income Tax Act" and
37 the Internal Revenue Code of 1986.

38
39 7. a. The Commissioner of Banking and Insurance shall
40 establish a program for determining whether to grant a certification
41 that an individual is entitled to an exemption from either the
42 individual responsibility requirement pursuant to subsection a. of
43 section 3 of this act or the tax imposed pursuant to subsection b.
44 section 3 of this act by reason of religious conscience or hardship.

45 b. The commissioner shall make the determination whether to
46 grant an exemption pursuant to this section and shall notify the
47 individual granted an exemption and the State Treasurer of any such

1 determinations in such a time and manner as the commissioner, in
2 consultation with the State Treasurer, shall prescribe.

3

4 8. a. The Legislature finds that:

5 (1) The reporting requirement provided for in this section is
6 necessary for the successful implementation of the tax imposed by
7 this act. In particular, this requirement provides the only
8 widespread source of third-party reporting to help taxpayers and the
9 State Treasurer verify whether an applicable individual maintains
10 minimum essential coverage. There is compelling evidence that
11 third party reporting is crucial for ensuring compliance with tax
12 provisions.

13 (2) The tax imposed by this act, and therefore the reporting
14 requirement in this section, is necessary to protect the compelling
15 State interest of protecting the health and welfare of its residents.

16 (3) The tax imposed by this act, and therefore the reporting
17 requirement in this section, is necessary to protect the compelling
18 State interest of fostering economic stability and growth in the
19 State.

20 (4) The tax imposed by this act, and therefore the reporting
21 requirement in this section, is necessary to protect the compelling
22 State interest of ensuring a stable and well-functioning health
23 insurance market. There is compelling evidence that, without an
24 effective tax in place for those who go without coverage, there
25 would be substantial instability in health insurance markets,
26 including higher prices and the possibility of areas without any
27 insurance available. Ensuring the health of insurance markets is a
28 responsibility reserved for states under the McCarran-Ferguson Act
29 and other federal law.

30 (5) The reporting requirement in this section has been narrowly
31 tailored to support compliance with the tax imposed by this act
32 while imposing only an incidental burden on reporting entities. In
33 particular, the information that must be reported is a subset of the
34 information that must already be reported under a similar federal
35 reporting requirement under 26 U.S.C. s.6055. In addition, this
36 section provides that its reporting requirement may be satisfied by
37 providing the same information that is currently reported under that
38 federal requirement.

39 b. For purposes of administering the tax on individuals who fail
40 to maintain minimum essential coverage under section 3 of this act,
41 every applicable entity that provides minimum essential coverage to
42 an individual during a calendar year shall, at the time the State
43 Treasurer prescribes, make a return described in subsection c. of
44 this section. In a manner consistent with requirements under 26
45 U.S.C. s.6055, a copy of the return shall be provided to the
46 individual and the State Treasurer.

47 c. (1) Except as provided in paragraph (2) of this subsection, a
48 return shall be in such form as the State Treasurer may prescribe,

1 and contain the name, address and Social Security number or
2 taxpayer identification number of the primary insured and the name
3 and Social Security number or taxpayer identification number of
4 each other individual obtaining coverage under the policy, the dates
5 during which that individual was covered under minimum essential
6 coverage during the calendar year, and such other information as
7 the State Treasurer may require.

8 (2) Notwithstanding the requirements of paragraph (1), a return
9 shall not fail to be a return described in this section if it includes the
10 information contained in a return described in 26 U.S.C. s.6055, as
11 that section is in effect and interpreted on December 15, 2017.

12 (3) In the case of coverage provided by an applicable entity that
13 is any governmental unit or any agency or instrumentality thereof,
14 the officer or employee who enters into the agreement to provide
15 that coverage, or a person appropriately designated for purposes of
16 this section, shall be responsible for the returns and statements
17 required by this section. An applicable entity may contract with
18 third-party service providers, including insurance carriers, to
19 provide the returns and statements required by this section.

20 d. As used in this section:

21 "Applicable entity" shall include the following:

22 (1) An employer or other sponsor of an employment-based
23 health plan with respect to employment-based minimum essential
24 coverage.

25 (2) The Department of Human Services with respect to the NJ
26 FamilyCare Program.

27 (3) Carriers licensed or otherwise authorized to offer health
28 coverage with respect coverage they provide that is not described in
29 paragraphs (1) or (2) of this subsection.

30
31 9. Not earlier than November 1 nor later than November 30 of
32 each year, the State Treasurer, in consultation with the
33 Commissioner of Banking and Insurance, shall send a notification
34 to each taxpayer who files a gross income tax return indicating if
35 the taxpayer or one of the taxpayer's dependents is not enrolled in
36 minimum essential coverage as required by this act. That
37 notification shall contain information on the services available to
38 obtain coverage, including through the federally-facilitated health
39 insurance Exchange established pursuant to the Affordable Care
40 Act.

41
42 10. The State Treasurer, in consultation with the Commissioner
43 of Banking and Insurance shall adopt rules and regulations,
44 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
45 (C.52:14B-1 et seq.), in order to effectuate the purposes of this act.

46
47 11. This act shall take effect on October 1, 2018 and shall apply
48 to taxable years beginning after December 31, 2018. The State

1 Treasurer and Commissioner of Banking and Insurance may take
2 such anticipatory administrative action in advance thereof as shall
3 be necessary for the implementation of this act.

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5

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STATEMENT

7

8 This bill, entitled the “New Jersey Health Insurance Market
9 Preservation Act,” restores the recently repealed shared
10 responsibility tax provided under the Affordable Care Act (ACA),
11 which requires most individuals, other than those who qualify for
12 certain exemptions, to obtain health insurance or pay a penalty.
13 The bill is intended to ensure that health insurance markets in New
14 Jersey remain robust and affordable by ensuring that individuals
15 who can afford to purchase insurance participate in the market.

16 Specifically, the bill requires that every resident taxpayer of the
17 State obtain health insurance coverage that qualifies as minimum
18 essential coverage under the bill. If the taxpayer does not obtain
19 coverage, the bill imposes a State shared responsibility tax equal to
20 a taxpayer’s federal penalty under the ACA prior to the repeal of
21 that provision.

22 To determine the State shared responsibility tax, the bill largely
23 adopts the rules adopted pursuant to the ACA, with the following
24 changes:

25 (1) The amount of the tax imposed is determined, if applicable,
26 using the State average premium for bronze-level plans rather than
27 the national average premium for bronze-level plans;

28 (2) “Minimum essential coverage” includes, in addition to the
29 types of coverage included under the ACA, the coverage required
30 pursuant to the New Jersey Individual Health Coverage Program;

31 (3) Instead of the United States Secretary of Health and Human
32 Services, in coordination with the United States Secretary of the
33 Treasury, the Commissioner of Banking and Insurance, in
34 coordination with the State Treasurer, has the authority to recognize
35 additional health benefits coverage as “minimum essential”
36 coverage;

37 (4) For purposes of the exemption for individuals who cannot
38 afford coverage:

39 - the required contribution for an individual eligible for
40 minimum essential coverage under both an eligible employer-
41 sponsored plan and a qualified health plan is the lesser of the
42 amounts that the individual would have to pay for coverage of each
43 type;

44 - the income threshold for coverage to be considered
45 unaffordable shall be determined by the Commissioner of Banking
46 and Insurance, in consultation with the State Treasurer; and

47 - no tax shall be imposed under this section with respect to
48 any applicable individual for any month during a calendar year if

1 the taxpayer's gross income for the taxable year is below the State's
2 minimum taxable income threshold;

3 (5) No tax shall be imposed with respect to any applicable
4 individual for any month during which the individual is a bona fide
5 resident of another State;

6 (6) Determinations as to hardship exemptions shall be made by
7 the Commissioner of Banking and Insurance;

8 (7) A grandfathered plan shall qualify as minimum essential
9 coverage only if it satisfies the requirements that apply to non-
10 grandfathered plans sold in the market in which the grandfathered
11 plan is sold;

12 (8) If a taxpayer is subject to both the tax imposed by this
13 section and the federal penalty, the amount of the taxpayer's State
14 income tax is reduced, but not below zero, by the amount of the
15 taxpayer's federal penalty payment; and

16 (9) Health coverage provided under a plan obtained through an
17 association, trust, or multiple employer arrangement, including an
18 out-of-State trust or association, shall not qualify as minimum
19 essential coverage unless the plan complies with the requirements
20 of applicable New Jersey law.

21 Additionally, the tax imposed by the bill is to be assessed and
22 collected in the same manner as under the "New Jersey Gross
23 Income Tax Act," N.J.S.54A:1-1 et seq.

24 The Commissioner of Banking and Insurance will establish a
25 program for determining whether to grant a certification that an
26 individual is entitled to an exemption from either the individual
27 responsibility requirement or the tax by reason of religious
28 conscience or hardship.

29 The bill also expresses the Legislature's intent as to the
30 collection of data necessary for the successful implementation of
31 the tax imposed by the bill. The bill provides that the reporting
32 requirement is necessary to protect various compelling State
33 interests.

34 Accordingly, the bill provides that, for purposes of administering
35 the tax on individuals who fail to maintain minimum essential
36 coverage, every applicable entity, including employers and insurers,
37 that provide minimum essential coverage to an individual during a
38 calendar year shall, at such time as the State Treasurer may
39 prescribe, make a return with information about individuals and
40 their coverage. The return is to be in the form the State Treasurer
41 prescribes, and contain the name, address and Social Security
42 number or taxpayer identification number of the primary insured
43 and the name and Social Security number or taxpayer identification
44 number of each other individual obtaining coverage under the
45 policy; the dates during which that individual was covered under
46 minimum essential coverage during the calendar year and such
47 other information as the State Treasurer may require. To minimize

1 the reporting burden, the return may also be in the form of a return
2 under the ACA.

3 The bill also provides that not earlier than November 1 nor later
4 than November 30 of each year, the State Treasurer, in consultation
5 with the Commissioner of Banking and Insurance, shall send a
6 notification to each taxpayer who files a gross income tax return
7 indicating if the taxpayer or one of the taxpayer's dependents is not
8 enrolled in minimum essential coverage as required by this bill.
9 That notification shall contain information on the services available
10 to obtain coverage.

11 The bill takes effect on October 1, 2018 and applies to taxable
12 years beginning after December 31, 2018.