

# ASSEMBLY APPROPRIATIONS COMMITTEE

## STATEMENT TO

### ASSEMBLY, No. 3380

with committee amendments

# STATE OF NEW JERSEY

DATED: APRIL 5, 2018

The Assembly Appropriations Committee reports favorably Assembly Bill No. 3380, with committee amendments.

As amended, this bill, entitled the “New Jersey Health Insurance Market Preservation Act,” restores, at the State level, the recently repealed shared responsibility tax provided under the Affordable Care Act (ACA), which requires most individuals, other than those who qualify for certain exemptions, to obtain health insurance or pay a penalty.

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

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

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

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

(3) For purposes of the exemption for individuals who cannot afford coverage:

- the required contribution for an individual eligible for minimum essential coverage under both an eligible employer-sponsored plan and a qualified health plan the lesser of the amounts described in 26 U.S.C. s.5000A(e)(1)(B)(i) and 26 U.S.C. s.5000A(e)(1)(B)(ii);

- the required contribution for an individual only eligible for minimum essential coverage under a qualified health plan the amount described in 26 U.S.C. s.5000A(e)(1)(B)(ii);

- the income threshold for coverage to be considered unaffordable shall be determined by the State Treasurer consistent with the federal law; and

- no tax shall be imposed with respect to any applicable individual for any month during a calendar year if the taxpayer's taxable income for the taxable year is below the State's minimum taxable income threshold;

(4) No tax shall be imposed with respect to any applicable individual for any month during which the individual is a nonresident taxpayer;

(5) Determinations as to religious conscience or hardship exemptions shall be made by the State Treasurer;

(6) If a taxpayer is subject to both the State shared responsibility tax and the federal penalty, the taxpayer is allowed a credit against the taxpayer's State gross income tax obligation for that taxable year, in the amount of the taxpayer's federal penalty payment, but not to exceed the amount of the taxpayer's State tax imposed by this act in the taxable year; and

(7) Health coverage provided under a multiple employer welfare arrangement shall not qualify as minimum essential coverage when the plan complies with the requirements of applicable New Jersey law.

Additionally, the State shared responsibility tax imposed by the bill is to be assessed and collected in the same manner as under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. However, any funds collected under the bill shall not be gross income tax revenue for purposes of N.J.S.54A:9-25 and, accordingly, shall not be dedicated to the Property Tax Relief Fund.

The State Treasurer will establish a program for determining whether to grant a certification that an individual is entitled to an exemption from either the individual responsibility requirement or the tax by reason of religious conscience or hardship.

Any funds collected pursuant to the bill shall be deposited in the New Jersey Health Insurance Premium Security Fund created pursuant to the Assembly Committee Substitute for Assembly Bill No. 3379 of 2018, which establishes an individual health insurance reinsurance plan. If that fund is not created, the funds collected pursuant to the bill shall be deposited in the Health Care Subsidy Fund for subsidized children's health insurance in the NJ FamilyCare Program to maximize federal funding under Title XXI of the federal Social Security Act, subject to the approval of the Director of the Division of Budget and Accounting in the Department of the Treasury.

The bill also expresses the Legislature's intent as to the collection of data necessary for the successful implementation of the tax imposed by the bill. The bill provides that the reporting

requirement is necessary to protect various compelling State interests.

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

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

The bill takes effect on January 1, 2019.

With the committee amendments, the bill is identical to Senate Bill No. 1877 (3R).

#### COMMITTEE AMENDMENTS:

The proposed committee amendments:

- Remove the term "affiliated company" from the definitions;
- Provide that determinations as to religious conscience or hardship under the bill will be made by the State Treasurer;
- Provide that any funds collected pursuant to the bill shall be deposited in the New Jersey Health Insurance Premium Security Fund created pursuant to the Assembly Committee Substitute for Assembly Bill No. 3379 of 2018, which establishes an individual health insurance reinsurance plan. If a health insurance reinsurance plan is not created, the funds shall be deposited in the Health Care Subsidy Fund, which may be used to improve and expand children's health insurance in the NJ FamilyCare Program, subject to the approval of the Director of the Division of Budget and Accounting in the Department of the Treasury;

- For purposes of the exemption for individuals who cannot afford coverage:
  - (1) clarify the method for calculating the required contribution for an individual; and
  - (2) provide that the income threshold for coverage to be considered unaffordable shall be determined by the State Treasurer consistent with the federal law;
- Use the term “nonresident taxpayer,” rather than “bona fide resident of another state;”
- Remove the provision requiring a grandfathered plan, in order to qualify as minimum essential coverage, to satisfy the requirements that apply to non-grandfathered plans sold in the market in which the grandfathered plan is sold;
- Clarify that reference to the “director” refers to the Director of the Division of Taxation;
- Provide that health coverage provided under a multiple employer welfare arrangement, as defined in subsection (40) of 29 U.S.C. s.10021, shall not qualify as minimum essential coverage unless the plan complies with certain requirements of New Jersey law;
- Clarify that all references in the bill to any of the provisions of 26 U.S.C. s.5000A shall be to that provision as in effect on December 15, 2017;
- Revise the effective date to take effect January 1, 2019.

**FISCAL IMPACT:**

The Office of Legislative Services (OLS) concludes that the bill will have an indeterminate impact on State finances.

The State shared responsibility tax will generate additional revenues to be deposited in the New Jersey Health Insurance Premium Security Fund created by Assembly Bill No. 3379 of 2018. Enactment of the bill may cause some individuals, who would otherwise drop their health insurance, to maintain their NJ FamilyCare coverage, thereby maintaining State expenditures at a higher level. Some individuals may decide to purchase health insurance in order to avoid paying the State shared responsibility tax. To the extent that these individuals enroll in NJ FamilyCare, the State will incur additional costs. Changes in the number of individuals who have health insurance may also result in a reduction in State Charity Care expenditures.

The OLS cannot predict how many individuals will not maintain their health insurance after the repeal of the individual health insurance mandate or the number of individuals who may be incentivized to obtain health insurance in order to avoid paying the State shared responsibility tax.

Data on the number of New Jersey resident taxpayers who may be required to pay the State share responsibility tax are not available at

this time. According to the federal Centers for Medicare and Medicaid Services, approximately 244,000 individuals in New Jersey had effectuated coverage through the ACA Marketplace as of March 2017. Internal Revenue Service data for Tax Year 2015 show that 188,750 New Jersey tax returns were subject to the federal shared responsibility payment, remitting a total of \$93.3 million.