

**SENATE, No. 1877**

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**STATE OF NEW JERSEY**

**218th LEGISLATURE**

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INTRODUCED FEBRUARY 15, 2018

**Sponsored by:**  
**Senator JOSEPH F. VITALE**  
**District 19 (Middlesex)**

**SYNOPSIS**

“New Jersey Health Insurance Market Preservation Act.”

**CURRENT VERSION OF TEXT**

As introduced.



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  
34 this section, which shall include modifications necessary to reflect  
35 the 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.

4  
5  
6                                   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.