

[Second Reprint]

**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)**

**Senator TROY SINGLETON**

**District 7 (Burlington)**

**SYNOPSIS**

“New Jersey Health Insurance Market Preservation Act.”

**CURRENT VERSION OF TEXT**

As reported by the Senate Budget and Appropriations Committee on March 5, 2018, with amendments.



**(Sponsorship Updated As Of: 2/27/2018)**

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 <sup>1</sup>["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  
14 management.]<sup>1</sup>

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

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

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

30 <sup>1</sup>["For purposes of this act, carriers that are affiliated companies  
31 shall be treated as one carrier."] <sup>1</sup>

32 <sup>2</sup>["Gross income tax” means the New Jersey gross income tax  
33 pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1  
34 et seq.]<sup>2</sup>

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

37 <sup>2</sup>["Taxpayer” means a resident taxpayer as defined in  
38 N.J.S.54A:1-2.]<sup>2</sup>

39

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

**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:**

<sup>1</sup>Senate SCM committee amendments adopted February 15, 2018.

<sup>2</sup>Senate SBA committee amendments adopted March 5, 2018.

1 individual, is covered under minimum essential coverage for that  
2 month.

3 b. In the case of any taxpayer who fails to meet the  
4 requirements of subsection a. of this section, there shall be imposed  
5 a State shared responsibility tax equal to a taxpayer's federal  
6 penalty that would apply for the taxable year under section 5000A  
7 of the Internal Revenue Code of 1986, as in effect on December 15,  
8 2017 (26 U.S.C. s.5000A).

9  
10 4. The rules for determining the State shared responsibility tax  
11 under section 3 of this act shall reflect the following changes  
12 relative to the rules for determining the federal shared responsibility  
13 payment under 26 U.S.C. s.5000A:

14 a. The amount of the tax imposed by this <sup>2</sup>[section] act<sup>2</sup> shall  
15 be determined, if applicable, using the State average premium for  
16 bronze-level plans rather than the national average premium for  
17 bronze-level plans;

18 b. <sup>2</sup>[For purposes of this section, "minimum essential  
19 coverage" shall include, in addition to the types of coverage  
20 included under 26 U.S.C. s.5000A, the coverage required pursuant  
21 to the New Jersey Individual Health Coverage Program;

22 c. <sup>2</sup> Instead of the United States Secretary of Health and Human  
23 Services, in coordination with the United States Secretary of the  
24 Treasury, the Commissioner of Banking and Insurance, in  
25 coordination with the State Treasurer, shall have the authority to  
26 recognize additional health benefits coverage as "minimum  
27 essential coverage;"

28 <sup>2</sup>[d.] c.<sup>2</sup> For purposes of the exemption for individuals who  
29 cannot afford coverage:

30 (1) <sup>1</sup>[the required contribution for an individual eligible for  
31 minimum essential coverage under both an eligible employer-  
32 sponsored plan and a qualified health plan is the lesser of the  
33 amounts that the individual would have to pay for coverage of each  
34 type] the threshold to qualify for the exemption shall be calculated  
35 based on the lesser amount that the individual would be required to  
36 pay for minimum essential coverage under either:

37 (a) an eligible employer-sponsored plan; or

38 (b) a qualified individual health plan<sup>1</sup> ;

39 (2) the income threshold for coverage to be considered  
40 unaffordable shall be determined by the <sup>1</sup>[Commissioner of  
41 Banking and Insurance , in consultation with the] <sup>1</sup> State Treasurer;

42 <sup>2</sup>[e.] d.<sup>2</sup> No tax shall be imposed under this <sup>2</sup>[section] act<sup>2</sup>  
43 with respect to any applicable individual for any month during a  
44 calendar year if the taxpayer's <sup>2</sup>[gross] taxable<sup>2</sup> income for the  
45 taxable year is below the minimum taxable income threshold  
46 established in N.J.S.54A:2-4 and N.J.S.54A:8-3.1;

1       <sup>2</sup>[f.] e.<sup>2</sup> No tax shall be imposed by this <sup>2</sup>[section] act<sup>2</sup> with  
2 respect to any applicable individual for any month during which the  
3 individual is a bona fide resident of another state;

4       <sup>2</sup>[g.] f.<sup>2</sup> Determinations as to hardship exemptions shall be  
5 made by the <sup>1</sup>[Commissioner of Banking and Insurance] State  
6 Treasurer<sup>1</sup> under this act rather than by the U.S. Secretary of Health  
7 and Human Services under 42 U.S.C. s.18031(d)(4)(H);

8       <sup>2</sup>[h.] g.<sup>2</sup> A grandfathered plan, as defined in 42 U.S.C.  
9 s.18011(e), shall qualify as minimum essential coverage only if it  
10 satisfies the requirements that apply to non-grandfathered plans sold  
11 in the market in which the grandfathered plan is sold;

12       <sup>2</sup>[i.] h.<sup>2</sup> If a taxpayer is subject to both the tax imposed by  
13 this <sup>2</sup>[section] act<sup>2</sup> and the federal penalty under 26 U.S.C.  
14 s.5000A for a taxable year, the <sup>2</sup>[amount of the taxpayer's State  
15 income]<sup>2</sup> taxpayer shall be allowed a credit against the<sup>2</sup> tax <sup>2</sup>[is  
16 reduced, but not below zero, by] otherwise due for the taxable year  
17 under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et  
18 seq., in<sup>2</sup> the amount of the taxpayer's federal penalty payment <sup>2</sup>.

19       The order of priority of the application of the tax credit allowed  
20 pursuant this subsection and any other tax credits allowed by law  
21 shall be as prescribed by the director. The amount of the tax credit  
22 applied under this subsection against the tax otherwise due under  
23 the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., for  
24 a taxable year, when taken together with any other payments,  
25 credits, deductions, and adjustments allowed by law, shall not  
26 reduce the tax liability of the taxpayer to an amount less than zero<sup>2</sup> ;  
27 and

28       <sup>2</sup>[j.] i.<sup>2</sup> Health coverage provided under a plan obtained  
29 through an association, trust, or multiple employer arrangement,  
30 including an out-of-state trust or association, shall not qualify as  
31 minimum essential coverage unless the plan complies with the  
32 requirements of one or more of the following New Jersey statutes,  
33 as applicable to a carrier and health benefits plans offered in the  
34 relevant individual, small employer, or large employer markets:

- 35       (1) P.L.1938, c.366 (C.17:48-1 et seq.);  
36       (2) P.L.1940, c.74 (C.17:48A-1 et seq.);  
37       (3) P.L.1985, c.236 (C.17:48E-1 et seq.);  
38       (4) N.J.S.17B:26-1 et seq.;  
39       (5) N.J.S.17B:27-26 et seq.;  
40       (6) P.L.1973, c.337 (C.26:2J-1 et seq.);  
41       (7) P.L.1992, c.161 (C.17B:27A-2 et seq.);  
42       (8) P.L.2001, c.352 (17B:27C-1 et seq.);  
43       (9) P.L.1997, c.1972 (C.26:2S-1 et seq.); or  
44       (10) P.L.1992, c.162 (C.17B:27A-17 et seq.).

45       <sup>2</sup>j. For any taxable year in which federal premium tax credits,  
46 available pursuant to 26 U.S.C. s.36B, enacted as part of the federal  
47 "Patient Protection and Affordable Care Act," Pub.L.111-148, as

1 amended by the "Health Care and Education Reconciliation Act of  
2 2010," Pub.L.111-152 (ACA), become unavailable due to the  
3 federal government repealing that section or failing to fund the  
4 premium tax credits, the State shared responsibility tax under this  
5 act shall not be enforced.<sup>2</sup>

6  
7 5. <sup>1</sup>a.<sup>1</sup> The tax imposed by this act shall be assessed and  
8 collected in the same manner as under the "New Jersey Gross  
9 Income Tax Act," N.J.S.54A:1-1 et seq. <sup>2</sup>; provided, however, that  
10 any funds collected pursuant to this act shall not be gross income  
11 tax revenue for purposes of N.J.S.54A:9-25.<sup>2</sup>

12 <sup>1</sup>b. Any funds collected pursuant to this act shall be deposited in  
13 the New Jersey Health Insurance Premium Security Fund created  
14 pursuant to P.L. , c. (C. ) (pending before the Legislature as  
15 Senate Bill No. 1878 of 2018) .<sup>1</sup> <sup>2</sup>If the Commissioner of Banking  
16 and Insurance does not establish a health insurance reinsurance plan  
17 pursuant to P.L. , c. (C. ) (pending before the Legislature as  
18 Senate Bill No. 1878 of 2018), the funds collected pursuant to this  
19 act shall be deposited in the Health Care Subsidy Fund established  
20 pursuant to section 8 of P.L.1992, c.160 (C.26:2H-18.58) for  
21 subsidized children's health insurance in the NJ FamilyCare  
22 Program, established pursuant to P.L.2005, c.156 (C.30:4J-8 et al.),  
23 to maximize federal funding under Title XXI of the federal Social  
24 Security Act, subject to the approval of the Director of the Division  
25 of Budget and Accounting in the Department of the Treasury.<sup>2</sup>

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

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

37  
38 7. a. The <sup>1</sup>**【Commissioner of Banking and Insurance】** State  
39 Treasurer<sup>1</sup> shall establish a program for determining whether to  
40 grant a certification that an individual is entitled to an exemption  
41 from either the individual responsibility requirement pursuant to  
42 subsection a. of section 3 of this act or the tax imposed pursuant to  
43 subsection b. <sup>1</sup>of<sup>1</sup> section 3 of this act by reason of religious  
44 conscience or hardship.

45 b. The <sup>1</sup>**【commissioner】** State Treasurer<sup>1</sup> shall make the  
46 determination whether to grant an exemption pursuant to this  
47 section and shall notify the individual granted an exemption <sup>1</sup>**【and**

1 the State Treasurer of any such determinations in such a time and  
2 manner as the commissioner, in consultation with the State  
3 Treasurer, shall prescribe<sup>1</sup>.

4

5 8. a. The Legislature finds that:

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

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

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

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

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

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

1 c. (1) Except as provided in paragraph (2) of this subsection, a  
2 return shall be in such form as the State Treasurer may prescribe,  
3 and contain the name, address and Social Security number or  
4 taxpayer identification number of the primary insured and the name  
5 and Social Security number or taxpayer identification number of  
6 each other individual obtaining coverage under the policy, the dates  
7 during which that individual was covered under minimum essential  
8 coverage during the calendar year, and such other information as  
9 the State Treasurer may require.

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

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

22 d. As used in this section:

23 "Applicable entity" shall include the following:

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

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

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

32

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

43

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

1        11. This act shall take effect on <sup>1</sup>【October 1, 2018 and shall  
2 apply to taxable years beginning after December 31, 2018. The】  
3 January 1, 2019, but the<sup>1</sup> State Treasurer and Commissioner of  
4 Banking and Insurance may take such anticipatory administrative  
5 action in advance thereof as shall be necessary for the  
6 implementation of this act.