

[First Reprint]

**ASSEMBLY, No. 3380**

**STATE OF NEW JERSEY**  
**218th LEGISLATURE**

INTRODUCED FEBRUARY 12, 2018

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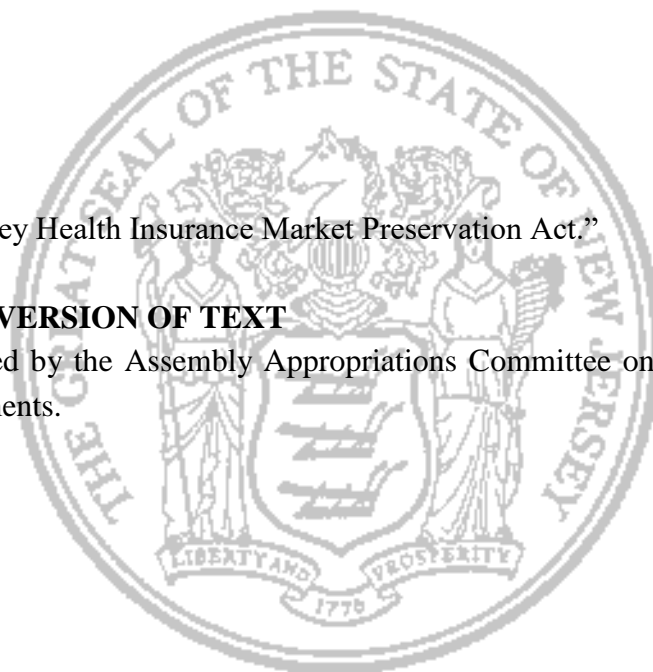
**Assemblyman Mukherji, Assemblywomen Pinkin, Jasey, Pintor Marin and  
Senator Greenstein**

**SYNOPSIS**

“New Jersey Health Insurance Market Preservation Act.”

**CURRENT VERSION OF TEXT**

As reported by the Assembly Appropriations Committee on April 5, 2018,  
with amendments.



**(Sponsorship Updated As Of: 4/13/2018)**

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.

32 “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>1</sup>

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

37 <sup>1</sup>["Taxpayer” means a resident taxpayer as defined in  
38 N.J.S.54A:1-2.]<sup>1</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  
43 individual, is covered under minimum essential coverage for that  
44 month.

**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>Assembly AAP committee amendments adopted April 5, 2018.

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

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

12 a. The amount of the tax imposed by this <sup>1</sup>[section] act<sup>1</sup> shall  
13 be determined, if applicable, using the State average premium for  
14 bronze-level plans rather than the national average premium for  
15 bronze-level plans;

16 b. <sup>1</sup>[For purposes of this section, "minimum essential  
17 coverage" shall include, in addition to the types of coverage  
18 included under 26 U.S.C. s.5000A, the coverage required pursuant  
19 to the New Jersey Individual Health Coverage Program;

20 c. <sup>1</sup>Instead of the United States Secretary of Health and Human  
21 Services, in coordination with the United States Secretary of the  
22 Treasury, the Commissioner of Banking and Insurance, in  
23 coordination with the State Treasurer, shall have the authority to  
24 recognize additional health benefits coverage as "minimum  
25 essential coverage";

26 <sup>1</sup>[d.] c.<sup>1</sup> For purposes of the exemption for individuals who  
27 cannot afford coverage:

28 (1) the required contribution <sup>1</sup>is as follows:

29 (a) <sup>1</sup>for an individual eligible for minimum essential coverage  
30 under both an eligible employer-sponsored plan and a qualified  
31 health plan <sup>1</sup>[is] <sup>1</sup>the lesser of the amounts <sup>1</sup>[that the individual  
32 would have to pay for coverage of each type] described in 26  
33 U.S.C. s.5000A(e)(1)(B)(i) and 26 U.S.C. s.5000A(e)(1)(B)(ii):

34 (b) for an individual only eligible for minimum essential  
35 coverage under a qualified health plan the amount described in 26  
36 U.S.C. s.5000A(e)(1)(B)(ii)<sup>1</sup>;

37 (2) the income threshold for coverage to be considered  
38 unaffordable shall be determined by the <sup>1</sup>[Commissioner of  
39 Banking and Insurance , in consultation with the] <sup>1</sup>State Treasurer  
40 <sup>1</sup>in a manner consistent with 26 U.S.C. s.5000A (e)(1)<sup>1</sup>;

41 <sup>1</sup>[e.] d.<sup>1</sup> No tax shall be imposed under this <sup>1</sup>[section] act<sup>1</sup>  
42 with respect to any applicable individual for any month during a  
43 calendar year if the taxpayer's <sup>1</sup>[gross] taxable<sup>1</sup> income for the  
44 taxable year is below the minimum taxable income threshold  
45 established in N.J.S.54A:2-4 and N.J.S.54A:8-3.1;

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

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

9       <sup>1</sup>**[h.] A** grandfathered plan, as defined in 42 U.S.C. s.18011(e),  
10 shall qualify as minimum essential coverage only if it satisfies the  
11 requirements that apply to non-grandfathered plans sold in the  
12 market in which the grandfathered plan is sold;

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

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

31       <sup>1</sup>**[j.] h.**<sup>1</sup> Health coverage provided under a <sup>1</sup>**[plan obtained**  
32 **through an association, trust, or]**<sup>1</sup> multiple employer <sup>1</sup>**welfare**<sup>1</sup>  
33 arrangement, <sup>1</sup>**[including an out-of-state trust or association]** as  
34 defined in subsection (40) of 29 U.S.C. s.1002<sup>1</sup>, shall not qualify as  
35 minimum essential coverage unless the plan complies with the  
36 requirements of one or more of the following New Jersey statutes,  
37 as applicable to a carrier and health benefits plans offered in the  
38 relevant individual, small employer, or large employer markets:

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

1 (9) P.L.1997, c.1972 (C.26:2S-1 et seq.); or

2 (10) P.L.1992, c.162 (C.17B:27A-17 et seq.).

3 <sup>1</sup>i. For any taxable year in which federal premium tax credits,  
4 available pursuant to 26 U.S.C. s.36B, enacted as part of the federal  
5 "Patient Protection and Affordable Care Act," Pub.L.111-148, as  
6 amended by the "Health Care and Education Reconciliation Act of  
7 2010," Pub.L.111-152 (ACA), become unavailable due to the  
8 federal government repealing that section or failing to fund the  
9 premium tax credits, the State shared responsibility tax under this  
10 act shall not be enforced.<sup>1</sup>

11

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

17 b. Any funds collected pursuant to this act shall be deposited in  
18 the New Jersey Health Insurance Premium Security Fund created  
19 pursuant to P.L. , c. (C. ) (pending before the Legislature as  
20 Assembly Committee Substitute for Assembly Bill No. 3379 of  
21 2018). If the Commissioner of Banking and Insurance does not  
22 establish a health insurance reinsurance plan pursuant to P.L. ,  
23 c. (C. ) (pending before the Legislature as the Assembly  
24 Committee Substitute for Assembly Bill No. 3379 of 2018), the  
25 funds collected pursuant to this act shall be deposited in the Health  
26 Care Subsidy Fund established pursuant to section 8 of P.L.1992,  
27 c.160 (C.26:2H-18.58), which may be used to improve and expand  
28 children's health insurance in the NJ FamilyCare Program,  
29 established pursuant to P.L.2005, c.156 (C.30:4J-8 et al.), and, to  
30 the extent possible, to maximize federal funding under Title XXI of  
31 the federal Social Security Act, subject to the approval of the  
32 Director of the Division of Budget and Accounting in the  
33 Department of the Treasury.<sup>1</sup>

34

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

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

45 <sup>1</sup>c. All references in this act to any of the provisions of 26  
46 U.S.C. s.5000A shall be to that provision as in effect on December  
47 15, 2017.<sup>1</sup>

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

8       b. The <sup>1</sup>【commissioner】 State Treasurer<sup>1</sup> shall make the  
9 determination whether to grant an exemption pursuant to this  
10 section and shall notify the individual granted an exemption <sup>1</sup>【and  
11 the State Treasurer of any such determinations in such a time and  
12 manner as the commissioner, in consultation with the State  
13 Treasurer, shall prescribe】<sup>1</sup>.

14  
15       8. a. The Legislature finds that:

16       (1) The reporting requirement provided for in this section is  
17 necessary for the successful implementation of the tax imposed by  
18 this act. In particular, this requirement provides the only  
19 widespread source of third-party reporting to help taxpayers and the  
20 State Treasurer verify whether an applicable individual maintains  
21 minimum essential coverage. There is compelling evidence that  
22 third party reporting is crucial for ensuring compliance with tax  
23 provisions.

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

27       (3) The tax imposed by this act, and therefore the reporting  
28 requirement in this section, is necessary to protect the compelling  
29 State interest of fostering economic stability and growth in the  
30 State.

31       (4) The tax imposed by this act, and therefore the reporting  
32 requirement in this section, is necessary to protect the compelling  
33 State interest of ensuring a stable and well-functioning health  
34 insurance market. There is compelling evidence that, without an  
35 effective tax in place for those who go without coverage, there  
36 would be substantial instability in health insurance markets,  
37 including higher prices and the possibility of areas without any  
38 insurance available. Ensuring the health of insurance markets is a  
39 responsibility reserved for states under the McCarran-Ferguson Act  
40 and other federal law.

41       (5) The reporting requirement in this section has been narrowly  
42 tailored to support compliance with the tax imposed by this act  
43 while imposing only an incidental burden on reporting entities. In  
44 particular, the information that must be reported is a subset of the  
45 information that must already be reported under a similar federal  
46 reporting requirement under 26 U.S.C. s.6055. In addition, this  
47 section provides that its reporting requirement may be satisfied by

1 providing the same information that is currently reported under that  
2 federal requirement.

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

11 c. (1) Except as provided in paragraph (2) of this subsection, a  
12 return shall be in such form as the State Treasurer may prescribe,  
13 and contain the name, address and Social Security number or  
14 taxpayer identification number of the primary insured and the name  
15 and Social Security number or taxpayer identification number of  
16 each other individual obtaining coverage under the policy, the dates  
17 during which that individual was covered under minimum essential  
18 coverage during the calendar year, and such other information as  
19 the State Treasurer may require.

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

24 (3) In the case of coverage provided by an applicable entity that  
25 is any governmental unit or any agency or instrumentality thereof,  
26 the officer or employee who enters into the agreement to provide  
27 that coverage, or a person appropriately designated for purposes of  
28 this section, shall be responsible for the returns and statements  
29 required by this section. An applicable entity may contract with  
30 third-party service providers, including insurance carriers, to  
31 provide the returns and statements required by this section.

32 d. As used in this section:

33 “Applicable entity” shall include the following:

34 (1) An employer or other sponsor of an employment-based  
35 health plan with respect to employment-based minimum essential  
36 coverage.

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

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

42

43 9. Not earlier than November 1 nor later than November 30 of  
44 each year, the State Treasurer, in consultation with the  
45 Commissioner of Banking and Insurance, shall send a notification  
46 to each taxpayer who files a gross income tax return indicating if  
47 the taxpayer or one of the taxpayer’s dependents is not enrolled in  
48 minimum essential coverage as required by this act. That

1 notification shall contain information on the services available to  
2 obtain coverage, including through the federally-facilitated health  
3 insurance Exchange established pursuant to the Affordable Care  
4 Act.

5

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

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