

[First Reprint]

SENATE, No. 1877

STATE OF NEW JERSEY
218th LEGISLATURE

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Sponsored by:

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District 19 (Middlesex)

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SYNOPSIS

“New Jersey Health Insurance Market Preservation Act.”

CURRENT VERSION OF TEXT

As reported by the Senate Commerce Committee on February 15, 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 ¹["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.]¹

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 ¹For purposes of this act, carriers that are affiliated companies
31 shall be treated as one carrier.]¹

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.

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

37 “Taxpayer” means a resident taxpayer as defined in N.J.S.54A:1-
38 2.

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:

¹Senate SCM committee amendments adopted February 15, 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 section shall be
13 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. For purposes of this section, "minimum essential coverage"
17 shall include, in addition to the types of coverage included under 26
18 U.S.C. s.5000A, the coverage required pursuant to the New Jersey
19 Individual Health Coverage Program;

20 c. 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 d. For purposes of the exemption for individuals who cannot
27 afford coverage:

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

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

36 (b) a qualified individual health plan¹ ;

37 (2) the income threshold for coverage to be considered
38 unaffordable shall be determined by the ¹~~Commissioner of~~
39 ~~Banking and Insurance , in consultation with the~~¹ State Treasurer;

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

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

1 g. Determinations as to hardship exemptions shall be made by
2 the ¹【Commissioner of Banking and Insurance】 State Treasurer¹
3 under this act rather than by the U.S. Secretary of Health and
4 Human Services under 42 U.S.C. s.18031(d)(4)(H);

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

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

14 j. Health coverage provided under a plan obtained through an
15 association, trust, or multiple employer arrangement, including an
16 out-of-state trust or association, shall not qualify as minimum
17 essential coverage unless the plan complies with the requirements
18 of one or more of the following New Jersey statutes, as applicable
19 to a carrier and health benefits plans offered in the relevant
20 individual, small employer, or large employer markets:

- 21 (1) P.L.1938, c.366 (C.17:48-1 et seq.);
- 22 (2) P.L.1940, c.74 (C.17:48A-1 et seq.);
- 23 (3) P.L.1985, c.236 (C.17:48E-1 et seq.);
- 24 (4) N.J.S.17B:26-1 et seq.;
- 25 (5) N.J.S.17B:27-26 et seq.;
- 26 (6) P.L.1973, c.337 (C.26:2J-1 et seq.);
- 27 (7) P.L.1992, c.161 (C.17B:27A-2 et seq.);
- 28 (8) P.L.2001, c.352 (17B:27C-1 et seq.);
- 29 (9) P.L.1997, c.1972 (C.26:2S-1 et seq.); or
- 30 (10) P.L.1992, c.162 (C.17B:27A-17 et seq.).

31
32 5. ¹a.¹ The tax imposed by this act shall be assessed and
33 collected in the same manner as under the "New Jersey Gross
34 Income Tax Act," N.J.S.54A:1-1 et seq.

35 ¹b. Any funds collected pursuant to this act shall be deposited in
36 the New Jersey Health Insurance Premium Security Fund created
37 pursuant to P.L. , c. (C.)(pending before the Legislature as
38 Senate Bill No. 1878 of 2018).¹

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

45 b. The State Treasurer shall adopt regulations implementing
46 this section, which shall include modifications necessary to reflect
47 the differences between this act and 26 U.S.C. s.5000A, and other

1 differences between the “New Jersey Gross Income Tax Act” and
2 the Internal Revenue Code of 1986.

3
4 7. a. The ¹【Commissioner of Banking and Insurance】 State
5 Treasurer¹ shall establish a program for determining whether to
6 grant a certification that an individual is entitled to an exemption
7 from either the individual responsibility requirement pursuant to
8 subsection a. of section 3 of this act or the tax imposed pursuant to
9 subsection b. ¹of¹ section 3 of this act by reason of religious
10 conscience or hardship.

11 b. The ¹【commissioner】 State Treasurer¹ shall make the
12 determination whether to grant an exemption pursuant to this
13 section and shall notify the individual granted an exemption ¹【and
14 the State Treasurer of any such determinations in such a time and
15 manner as the commissioner, in consultation with the State
16 Treasurer, shall prescribe】¹.

17
18 8. a. The Legislature finds that:

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

27 (2) 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 protecting the health and welfare of its residents.

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

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

44 (5) The reporting requirement in this section has been narrowly
45 tailored to support compliance with the tax imposed by this act
46 while imposing only an incidental burden on reporting entities. In
47 particular, the information that must be reported is a subset of the

1 information that must already be reported under a similar federal
2 reporting requirement under 26 U.S.C. s.6055. In addition, this
3 section provides that its reporting requirement may be satisfied by
4 providing the same information that is currently reported under that
5 federal requirement.

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

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

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

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

35 d. As used in this section:

36 "Applicable entity" shall include the following:

37 (1) An employer or other sponsor of an employment-based
38 health plan with respect to employment-based minimum essential
39 coverage.

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

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

45

46 9. Not earlier than November 1 nor later than November 30 of
47 each year, the State Treasurer, in consultation with the
48 Commissioner of Banking and Insurance, shall send a notification

1 to each taxpayer who files a gross income tax return indicating if
2 the taxpayer or one of the taxpayer's dependents is not enrolled in
3 minimum essential coverage as required by this act. That
4 notification shall contain information on the services available to
5 obtain coverage, including through the federally-facilitated health
6 insurance Exchange established pursuant to the Affordable Care
7 Act.

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

13
14 11. This act shall take effect on ¹October 1, 2018 and shall
15 apply to taxable years beginning after December 31, 2018. The
16 January 1, 2019, but the¹ State Treasurer and Commissioner of
17 Banking and Insurance may take such anticipatory administrative
18 action in advance thereof as shall be necessary for the
19 implementation of this act.