

[Third Reprint]

SENATE, No. 1877

STATE OF NEW JERSEY
218th LEGISLATURE

INTRODUCED FEBRUARY 15, 2018

Sponsored by:

Senator JOSEPH F. VITALE

District 19 (Middlesex)

Senator TROY SINGLETON

District 7 (Burlington)

Co-Sponsored by:

Senator Greenstein

SYNOPSIS

“New Jersey Health Insurance Market Preservation Act.”

CURRENT VERSION OF TEXT

As reported by the Senate Commerce 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 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 ²["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.]²

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

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

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.

²Senate SBA committee amendments adopted March 5, 2018.

³Senate SCM committee amendments adopted April 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 ²[section] ²act² 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. ²[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. ²Instead 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 ²[d.] ²c. ²For purposes of the exemption for individuals who
29 cannot afford coverage:

30 (1) ¹[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] ³[the threshold to qualify for the exemption shall be
35 calculated based on the lesser amount that the individual would be
36 required to pay for minimum essential coverage under either:

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

38 (b) a qualified individual health plan¹] the required contribution
39 is as follows:

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

44 (b) for an individual only eligible for minimum essential
45 coverage under a qualified health plan the amount described in 26
46 U.S.C. s.5000A(e)(1)(B)(ii)³;

1 (2) the income threshold for coverage to be considered
2 unaffordable shall be determined by the ¹【Commissioner of
3 Banking and Insurance , in consultation with the ¹ State Treasurer
4 ³in a manner consistent with 26 U.S.C. c.5000A(e)(1)³;

5 ²【e.】 ^{d.}² No tax shall be imposed under this ²【section】 ^{act}²
6 with respect to any applicable individual for any month during a
7 calendar year if the taxpayer's ²【gross】 ^{taxable}² income for the
8 taxable year is below the minimum taxable income threshold
9 established in N.J.S.54A:2-4 and N.J.S.54A:8-3.1;

10 ²【f.】 ^{e.}² No tax shall be imposed by this ²【section】 ^{act}² with
11 respect to any applicable individual for any month during which the
12 individual is a ³【bona fide resident of another state】 ^{nonresident}
13 ^{taxpayer}³;

14 ²【g.】 ^{f.}² Determinations as to hardship exemptions shall be
15 made by the ¹【Commissioner of Banking and Insurance】 ^{State}
16 ^{Treasurer}¹ under this act rather than by the U.S. Secretary of Health
17 and Human Services under 42 U.S.C. s.18031(d)(4)(H);

18 ²【h.】 ^{g.}² ³【A grandfathered plan, as defined in 42 U.S.C.
19 s.18011(e), shall qualify as minimum essential coverage only if it
20 satisfies the requirements that apply to non-grandfathered plans sold
21 in the market in which the grandfathered plan is sold;

22 ²【i.】 ^{h.}² ³ If a taxpayer is subject to both the tax imposed by
23 this ²【section】 ^{act}² and the federal penalty under 26 U.S.C.
24 s.5000A for a taxable year, the ²【amount of the taxpayer's State
25 income】² ^{taxpayer shall be allowed a credit against the}² tax ²【is
26 reduced, but not below zero, by】 ^{otherwise due for the taxable year}
27 ^{under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et}
28 ^{seq., in}² the amount of the taxpayer's federal penalty payment , ^{but}
29 ^{not to exceed the amount of the taxpayer's State tax imposed by this}
30 ^{act in the taxable year}^{3 2} .

31 The order of priority of the application of the tax credit allowed
32 pursuant ³to³ this subsection and any other tax credits allowed by
33 law shall be as prescribed by the ³【director】 Director of the
34 Division of Taxation³ . The amount of the tax credit applied under
35 this subsection against the tax otherwise due under the "New Jersey
36 Gross Income Tax Act," N.J.S.54A:1-1 et seq., for a taxable year,
37 when taken together with any other payments, credits, deductions,
38 and adjustments allowed by law, shall not reduce the tax liability of
39 the taxpayer to an amount less than zero² ; and

40 ²【j.】 ³【i.】 ² ^{h.}³ Health coverage provided under a ³【plan
41 obtained through an association, trust, or ³ multiple employer
42 ^{welfare}³ arrangement, ³【including an out-of-state trust or
43 association】 as defined in subsection (40) of 29 U.S.C. s. 1002³,
44 shall not qualify as minimum essential coverage unless the plan
45 complies with the requirements of one or more of the following

1 New Jersey statutes, as applicable to a carrier and health benefits
2 plans offered in the relevant individual, small employer, or large
3 employer markets:

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

14 ³**[²j.] i.³** For any taxable year in which federal premium tax
15 credits, available pursuant to 26 U.S.C. s.36B, enacted as part of the
16 federal "Patient Protection and Affordable Care Act," Pub.L.111-
17 148, as amended by the "Health Care and Education Reconciliation
18 Act of 2010," Pub.L.111-152 (ACA), become unavailable due to the
19 federal government repealing that section or failing to fund the
20 premium tax credits, the State shared responsibility tax under this
21 act shall not be enforced.²

22
23 5. ¹a.¹ The tax imposed by this act shall be assessed and
24 collected in the same manner as under the "New Jersey Gross
25 Income Tax Act," N.J.S.54A:1-1 et seq. ²; provided, however, that
26 any funds collected pursuant to this act shall not be gross income
27 tax revenue for purposes of N.J.S.54A:9-25.²

28 ¹b. Any funds collected pursuant to this act shall be deposited in
29 the New Jersey Health Insurance Premium Security Fund created
30 pursuant to P.L. , c. (C.) (pending before the Legislature as
31 ³the Senate Committee Substitute for³ Senate Bill No. 1878 of
32 2018).¹ ²If the Commissioner of Banking and Insurance does not
33 establish a health insurance reinsurance plan pursuant to
34 P.L. , c. (C.) (pending before the Legislature as ³the Senate
35 Committee Substitute for³ Senate Bill No. 1878 of 2018), the funds
36 collected pursuant to this act shall be deposited in the Health Care
37 Subsidy Fund established pursuant to section 8 of P.L.1992, c.160
38 (C.26:2H-18.58) ³**[for subsidized]** which may be used to improve
39 and expand³ children's health insurance in the NJ FamilyCare
40 Program, established pursuant to P.L.2005, c.156 (C.30:4J-8 et al.),
41 ³and, to the extent possible,³ to maximize federal funding under
42 Title XXI of the federal Social Security Act, subject to the approval
43 of the Director of the Division of Budget and Accounting in the
44 Department of the Treasury.²

45
46 6. a. Except as otherwise provided in this section, any federal
47 regulations implementing 26 U.S.C. s.5000A, as that section and

1 those regulations are in effect on December 15, 2017, shall apply as
2 though incorporated into this act. Federal guidance interpreting
3 these federal regulations shall similarly apply.

4 b. The State Treasurer shall adopt regulations implementing
5 this section, which shall include modifications necessary to reflect
6 the differences between this act and 26 U.S.C. s.5000A, and other
7 differences between the “New Jersey Gross Income Tax Act” and
8 the Internal Revenue Code of 1986.

9 ³c. All references in this act to any of the provisions of 26
10 U.S.C. s.5000A shall be to that provision as in effect on December
11 15, 2017.³

12
13 7. a. The ¹**【Commissioner of Banking and Insurance】** State
14 Treasurer¹ shall establish a program for determining whether to
15 grant a certification that an individual is entitled to an exemption
16 from either the individual responsibility requirement pursuant to
17 subsection a. of section 3 of this act or the tax imposed pursuant to
18 subsection b. ¹of¹ section 3 of this act by reason of religious
19 conscience or hardship.

20 b. The ¹**【commissioner】** State Treasurer¹ shall make the
21 determination whether to grant an exemption pursuant to this
22 section and shall notify the individual granted an exemption ¹**【and**
23 **the State Treasurer of any such determinations in such a time and**
24 **manner as the commissioner, in consultation with the State**
25 **Treasurer, shall prescribe】**¹.

26
27 8. a. The Legislature finds that:

28 (1) The reporting requirement provided for in this section is
29 necessary for the successful implementation of the tax imposed by
30 this act. In particular, this requirement provides the only
31 widespread source of third-party reporting to help taxpayers and the
32 State Treasurer verify whether an applicable individual maintains
33 minimum essential coverage. There is compelling evidence that
34 third party reporting is crucial for ensuring compliance with tax
35 provisions.

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

39 (3) The tax imposed by this act, and therefore the reporting
40 requirement in this section, is necessary to protect the compelling
41 State interest of fostering economic stability and growth in the
42 State.

43 (4) The tax imposed by this act, and therefore the reporting
44 requirement in this section, is necessary to protect the compelling
45 State interest of ensuring a stable and well-functioning health
46 insurance market. There is compelling evidence that, without an
47 effective tax in place for those who go without coverage, there

1 would be substantial instability in health insurance markets,
2 including higher prices and the possibility of areas without any
3 insurance available. Ensuring the health of insurance markets is a
4 responsibility reserved for states under the McCarran-Ferguson Act
5 and other federal law.

6 (5) The reporting requirement in this section has been narrowly
7 tailored to support compliance with the tax imposed by this act
8 while imposing only an incidental burden on reporting entities. In
9 particular, the information that must be reported is a subset of the
10 information that must already be reported under a similar federal
11 reporting requirement under 26 U.S.C. s.6055. In addition, this
12 section provides that its reporting requirement may be satisfied by
13 providing the same information that is currently reported under that
14 federal requirement.

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

23 c. (1) Except as provided in paragraph (2) of this subsection, a
24 return shall be in such form as the State Treasurer may prescribe,
25 and contain the name, address and Social Security number or
26 taxpayer identification number of the primary insured and the name
27 and Social Security number or taxpayer identification number of
28 each other individual obtaining coverage under the policy, the dates
29 during which that individual was covered under minimum essential
30 coverage during the calendar year, and such other information as
31 the State Treasurer may require.

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

36 (3) In the case of coverage provided by an applicable entity that
37 is any governmental unit or any agency or instrumentality thereof,
38 the officer or employee who enters into the agreement to provide
39 that coverage, or a person appropriately designated for purposes of
40 this section, shall be responsible for the returns and statements
41 required by this section. An applicable entity may contract with
42 third-party service providers, including insurance carriers, to
43 provide the returns and statements required by this section.

44 d. As used in this section:

45 "Applicable entity" shall include the following:

46 (1) An employer or other sponsor of an employment-based
47 health plan with respect to employment-based minimum essential
48 coverage.

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

3 (3) Carriers licensed or otherwise authorized to offer health
4 coverage with respect coverage they provide that is not described in
5 paragraphs (1) or (2) of this subsection.
6

7 9. Not earlier than November 1 nor later than November 30 of
8 each year, the State Treasurer, in consultation with the
9 Commissioner of Banking and Insurance, shall send a notification
10 to each taxpayer who files a gross income tax return indicating if
11 the taxpayer or one of the taxpayer's dependents is not enrolled in
12 minimum essential coverage as required by this act. That
13 notification shall contain information on the services available to
14 obtain coverage, including through the federally-facilitated health
15 insurance Exchange established pursuant to the Affordable Care
16 Act.
17

18 10. The State Treasurer, in consultation with the Commissioner
19 of Banking and Insurance shall adopt rules and regulations,
20 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
21 (C.52:14B-1 et seq.), in order to effectuate the purposes of this act.
22

23 11. This act shall take effect on ¹October 1, 2018 and shall
24 apply to taxable years beginning after December 31, 2018. The
25 January 1, 2019, but the¹ State Treasurer and Commissioner of
26 Banking and Insurance may take such anticipatory administrative
27 action in advance thereof as shall be necessary for the
28 implementation of this act.