

FLOOR AMENDMENT STATEMENT:

No

LEGISLATIVE FISCAL ESTIMATE:

Yes March 28, 2018
 April 23, 2018

VETO MESSAGE:

No

GOVERNOR'S PRESS RELEASE ON SIGNING:

Yes

FOLLOWING WERE PRINTED:

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REPORTS:

HEARINGS:

NEWSPAPER ARTICLES:

Yes

"Murphy signs bill to protect Obamacare - Law creates N.J. individual mandate," The Star-Ledger, 6-1-2018

"Starting next year, most New Jersey residents will," Burlington County Times, 5-31-2018

"State groups laud health insurance laws," NJBIZ, 5-31-2018

"Murphy signs individual health care mandate law," NJBIZ, 5-31-2018

"Murphy signs bill mandating health insurance coverage in NJ," Associated Press State Wire: New Jersey, 5-31-2018

"Murphy signs bill to protect Obamacare in New Jersey - Law creates individual mandate, state penalties," Hunterdon County Democrat, 6-3-2018

RWH/JA

Title 54A.
Chapter 11. (New)
Health Insurance.
§§1-10 -
C.54A:11-1 to
54A:11-10
§11 - Note

P.L. 2018, CHAPTER 31, *approved May 30, 2018*
Assembly, No. 3380 (*First Reprint*)

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.

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.]¹

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:

¹Assembly AAP committee amendments adopted April 5, 2018.

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

3 ¹“Taxpayer” means a resident taxpayer as defined in
4 N.J.S.54A:1-2.¹

5
6 3. a. A taxpayer shall, for each month beginning after
7 December 31, 2018, ensure that the taxpayer, if an applicable
8 individual, and any dependent of the taxpayer who is an applicable
9 individual, is covered under minimum essential coverage for that
10 month.

11 b. In the case of any taxpayer who fails to meet the
12 requirements of subsection a. of this section, there shall be imposed
13 a State shared responsibility tax equal to a taxpayer’s federal
14 penalty that would apply for the taxable year under section 5000A
15 of the Internal Revenue Code of 1986, as in effect on December 15,
16 2017 (26 U.S.C. s.5000A).

17
18 4. The rules for determining the State shared responsibility tax
19 under section 3 of this act shall reflect the following changes
20 relative to the rules for determining the federal shared responsibility
21 payment under 26 U.S.C. s.5000A:

22 a. The amount of the tax imposed by this ¹“~~section~~ act”¹ shall
23 be determined, if applicable, using the State average premium for
24 bronze-level plans rather than the national average premium for
25 bronze-level plans;

26 b. ¹“~~For purposes of this section, “minimum essential~~
27 ~~coverage” shall include, in addition to the types of coverage~~
28 ~~included under 26 U.S.C. s.5000A, the coverage required pursuant~~
29 ~~to the New Jersey Individual Health Coverage Program;~~

30 c.¹ Instead of the United States Secretary of Health and Human
31 Services, in coordination with the United States Secretary of the
32 Treasury, the Commissioner of Banking and Insurance, in
33 coordination with the State Treasurer, shall have the authority to
34 recognize additional health benefits coverage as “minimum
35 essential coverage”;

36 ¹“~~d.~~ c.”¹ For purposes of the exemption for individuals who
37 cannot afford coverage:

38 (1) the required contribution ¹is as follows:

39 (a)¹ for an individual eligible for minimum essential coverage
40 under both an eligible employer-sponsored plan and a qualified
41 health plan ¹“~~is~~”¹ the lesser of the amounts ¹“~~that the individual~~
42 ~~would have to pay for coverage of each type~~ described in 26
43 U.S.C. 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)¹;

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 ¹in a manner consistent with 26 U.S.C. s.5000A (e)(1)¹;

5 ¹【e.】d.¹ No tax shall be imposed under this ¹【section】 act¹
6 with respect to any applicable individual for any month during a
7 calendar year if the taxpayer's ¹【gross】 taxable¹ 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 ¹【f.】e.¹ No tax shall be imposed by this ¹【section】 act¹ with
11 respect to any applicable individual for any month during which the
12 individual is a ¹【bona fide resident of another state】 nonresident
13 taxpayer¹;

14 ¹【g.】f.¹ Determinations as to hardship exemptions shall be
15 made by the ¹【Commissioner of Banking and Insurance】 State
16 Treasurer¹ 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 ¹【h.】A grandfathered plan, as defined in 42 U.S.C. s.18011(e),
19 shall qualify as minimum essential coverage only if it satisfies the
20 requirements that apply to non-grandfathered plans sold in the
21 market in which the grandfathered plan is sold;

22 ¹【i.】g.¹ If a taxpayer is subject to both the tax imposed by
23 this ¹【section】 act¹ and the federal penalty under 26 U.S.C.
24 s.5000A for a taxable year, the ¹【amount of the taxpayer's State
25 income】 taxpayer shall be allowed a credit against the¹ tax ¹【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., in¹ the amount of the taxpayer's federal penalty payment ¹, but
29 not to exceed the amount of the taxpayer's State tax imposed by this
30 act in the taxable year.

31 The order of priority of the application of the tax credit allowed
32 pursuant to this subsection and any other tax credits allowed by law
33 shall be as prescribed by the Director of the Division of Taxation.
34 The amount of the tax credit applied under this subsection against
35 the tax otherwise due under the "New Jersey Gross Income Tax
36 Act," N.J.S.54A:1-1 et seq., for a taxable year, when taken together
37 with any other payments, credits, deductions, and adjustments
38 allowed by law, shall not reduce the tax liability of the taxpayer to
39 an amount less than zero¹ ; and

40 ¹【j.】h.¹ Health coverage provided under a ¹【plan obtained
41 through an association, trust, or】¹ multiple employer ¹【welfare¹
42 arrangement, ¹【including an out-of-state trust or association】 as
43 defined in subsection (40) of 29 U.S.C. s.1002¹, shall not qualify as
44 minimum essential coverage unless the plan complies with the
45 requirements of one or more of the following New Jersey statutes,

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

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

13 ¹i. For any taxable year in which federal premium tax credits,
14 available pursuant to 26 U.S.C. s.36B, enacted as part of the federal
15 "Patient Protection and Affordable Care Act," Pub.L.111-148, as
16 amended by the "Health Care and Education Reconciliation Act of
17 2010," Pub.L.111-152 (ACA), become unavailable due to the
18 federal government repealing that section or failing to fund the
19 premium tax credits, the State shared responsibility tax under this
20 act shall not be enforced.¹

21

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

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

44

45 6. a. Except as otherwise provided in this section, any federal
46 regulations implementing 26 U.S.C. s.5000A, as that section and
47 those regulations are in effect on December 15, 2017, shall apply as

1 though incorporated into this act. Federal guidance interpreting
2 these federal regulations shall similarly apply.

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

8 ¹c. All references in this act to any of the provisions of 26
9 U.S.C. s.5000A shall be to that provision as in effect on December
10 15, 2017.¹

11

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

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

25

26 8. a. The Legislature finds that:

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

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

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

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

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

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

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

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

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

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

43 d. As used in this section:

44 "Applicable entity" shall include the following:

45 (1) An employer or other sponsor of an employment-based
46 health plan with respect to employment-based minimum essential
47 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.
29
30

31 _____
32
33 "New Jersey Health Insurance Market Preservation Act."

ASSEMBLY, No. 3380

STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED FEBRUARY 12, 2018

Sponsored by:

Assemblyman JOHN F. MCKEON

District 27 (Essex and Morris)

Assemblywoman CAROL A. MURPHY

District 7 (Burlington)

Assemblywoman PAMELA R. LAMPITT

District 6 (Burlington and Camden)

Co-Sponsored by:

Assemblyman Mukherji, Assemblywomen Pinkin and Jasey

SYNOPSIS

“New Jersey Health Insurance Market Preservation Act.”

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 4/6/2018)

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

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3380

with committee amendments

STATE OF NEW JERSEY

DATED: APRIL 5, 2018

The Assembly Appropriations Committee reports favorably Assembly Bill No. 3380, with committee amendments.

As amended, this bill, entitled the “New Jersey Health Insurance Market Preservation Act,” restores, at the State level, the recently repealed shared responsibility tax provided under the Affordable Care Act (ACA), which requires most individuals, other than those who qualify for certain exemptions, to obtain health insurance or pay a penalty.

Specifically, the bill requires that every resident taxpayer of the State obtain health insurance coverage that qualifies as minimum essential coverage under the bill. If the taxpayer does not obtain coverage, the bill imposes a State shared responsibility tax equal to a taxpayer’s federal penalty under the ACA prior to the repeal of that provision.

To determine the State shared responsibility tax, the bill largely adopts the rules adopted pursuant to the ACA, with the following changes:

(1) The amount of the tax imposed is determined, if applicable, using the State average premium for bronze-level plans, rather than the national average premium for bronze-level plans;

(2) Instead of the United States Secretary of Health and Human Services, in coordination with the United States Secretary of the Treasury, the Commissioner of Banking and Insurance, in coordination with the State Treasurer, has the authority to recognize additional health benefits coverage as “minimum essential” coverage;

(3) For purposes of the exemption for individuals who cannot afford coverage:

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

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

- the income threshold for coverage to be considered unaffordable shall be determined by the State Treasurer consistent with the federal law; and

- no tax shall be imposed with respect to any applicable individual for any month during a calendar year if the taxpayer's taxable income for the taxable year is below the State's minimum taxable income threshold;

(4) No tax shall be imposed with respect to any applicable individual for any month during which the individual is a nonresident taxpayer;

(5) Determinations as to religious conscience or hardship exemptions shall be made by the State Treasurer;

(6) If a taxpayer is subject to both the State shared responsibility tax and the federal penalty, the taxpayer is allowed a credit against the taxpayer's State gross income tax obligation for that taxable year, in the amount of the taxpayer's federal penalty payment, but not to exceed the amount of the taxpayer's State tax imposed by this act in the taxable year; and

(7) Health coverage provided under a multiple employer welfare arrangement shall not qualify as minimum essential coverage when the plan complies with the requirements of applicable New Jersey law.

Additionally, the State shared responsibility tax imposed by the bill is to be assessed and collected in the same manner as under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. However, any funds collected under the bill shall not be gross income tax revenue for purposes of N.J.S.54A:9-25 and, accordingly, shall not be dedicated to the Property Tax Relief Fund.

The State Treasurer will establish a program for determining whether to grant a certification that an individual is entitled to an exemption from either the individual responsibility requirement or the tax by reason of religious conscience or hardship.

Any funds collected pursuant to the bill shall be deposited in the New Jersey Health Insurance Premium Security Fund created pursuant to the Assembly Committee Substitute for Assembly Bill No. 3379 of 2018, which establishes an individual health insurance reinsurance plan. If that fund is not created, the funds collected pursuant to the bill shall be deposited in the Health Care Subsidy Fund for subsidized children's health insurance in the NJ FamilyCare Program to maximize federal funding under Title XXI of the federal Social Security Act, subject to the approval of the Director of the Division of Budget and Accounting in the Department of the Treasury.

The bill also expresses the Legislature's intent as to the collection of data necessary for the successful implementation of the tax imposed by the bill. The bill provides that the reporting

requirement is necessary to protect various compelling State interests.

Accordingly, the bill provides that, for purposes of administering the tax on individuals who fail to maintain minimum essential coverage, every applicable entity, including employers and insurers, that provides minimum essential coverage to an individual during a calendar year shall, at such time as the State Treasurer may prescribe, make a return with information about individuals and their coverage. The return is to be in the form the State Treasurer prescribes, and contain the name, address and Social Security number or taxpayer identification number of the primary insured and the name and Social Security number or taxpayer identification number of each other individual obtaining coverage under the policy; the dates during which that individual was covered under minimum essential coverage during the calendar year and such other information as the State Treasurer may require. To minimize the reporting burden, the return may also be in the form of a return under the ACA.

The bill also provides that, not earlier than November 1 nor later than November 30 of each year, the State Treasurer, in consultation with the Commissioner of Banking and Insurance, shall send a notification to each taxpayer who files a gross income tax return indicating if the taxpayer or one of the taxpayer's dependents is not enrolled in minimum essential coverage as required by this bill. That notification shall contain information on the services available to obtain coverage.

The bill takes effect on January 1, 2019.

With the committee amendments, the bill is identical to Senate Bill No. 1877 (3R).

COMMITTEE AMENDMENTS:

The proposed committee amendments:

- Remove the term "affiliated company" from the definitions;
- Provide that determinations as to religious conscience or hardship under the bill will be made by the State Treasurer;
- Provide that any funds collected pursuant to the bill shall be deposited in the New Jersey Health Insurance Premium Security Fund created pursuant to the Assembly Committee Substitute for Assembly Bill No. 3379 of 2018, which establishes an individual health insurance reinsurance plan. If a health insurance reinsurance plan is not created, the funds shall be deposited in the Health Care Subsidy Fund, which may be used to improve and expand children's health insurance in the NJ FamilyCare Program, subject to the approval of the Director of the Division of Budget and Accounting in the Department of the Treasury;

- For purposes of the exemption for individuals who cannot afford coverage:
 - (1) clarify the method for calculating the required contribution for an individual; and
 - (2) provide that the income threshold for coverage to be considered unaffordable shall be determined by the State Treasurer consistent with the federal law;
- Use the term “nonresident taxpayer,” rather than “bona fide resident of another state;”
- Remove the provision requiring a grandfathered plan, in order to qualify as minimum essential coverage, to satisfy the requirements that apply to non-grandfathered plans sold in the market in which the grandfathered plan is sold;
- Clarify that reference to the “director” refers to the Director of the Division of Taxation;
- Provide that health coverage provided under a multiple employer welfare arrangement, as defined in subsection (40) of 29 U.S.C. s.10021, shall not qualify as minimum essential coverage unless the plan complies with certain requirements of New Jersey law;
- Clarify that all references in the bill to any of the provisions of 26 U.S.C. s.5000A shall be to that provision as in effect on December 15, 2017;
- Revise the effective date to take effect January 1, 2019.

FISCAL IMPACT:

The Office of Legislative Services (OLS) concludes that the bill will have an indeterminate impact on State finances.

The State shared responsibility tax will generate additional revenues to be deposited in the New Jersey Health Insurance Premium Security Fund created by Assembly Bill No. 3379 of 2018. Enactment of the bill may cause some individuals, who would otherwise drop their health insurance, to maintain their NJ FamilyCare coverage, thereby maintaining State expenditures at a higher level. Some individuals may decide to purchase health insurance in order to avoid paying the State shared responsibility tax. To the extent that these individuals enroll in NJ FamilyCare, the State will incur additional costs. Changes in the number of individuals who have health insurance may also result in a reduction in State Charity Care expenditures.

The OLS cannot predict how many individuals will not maintain their health insurance after the repeal of the individual health insurance mandate or the number of individuals who may be incentivized to obtain health insurance in order to avoid paying the State shared responsibility tax.

Data on the number of New Jersey resident taxpayers who may be required to pay the State share responsibility tax are not available at

this time. According to the federal Centers for Medicare and Medicaid Services, approximately 244,000 individuals in New Jersey had effectuated coverage through the ACA Marketplace as of March 2017. Internal Revenue Service data for Tax Year 2015 show that 188,750 New Jersey tax returns were subject to the federal shared responsibility payment, remitting a total of \$93.3 million.

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

ASSEMBLY, No. 3380

STATE OF NEW JERSEY 218th LEGISLATURE

DATED: APRIL 16, 2018

SUMMARY

- Synopsis:** “New Jersey Health Insurance Market Preservation Act”
- Type of Impact:** Indeterminate increase in State revenues.
Indeterminate increase in State costs.
- Agencies Affected:** Department of Banking and Insurance.
Department of the Treasury.

Office of Legislative Services Estimate

Fiscal Impact	<u>Annual Impact</u>
State Revenue	Indeterminate Increase
State Cost	Indeterminate Increase

- The Office of Legislative Services (OLS) concludes that the enactment of the bill will have an indeterminate net impact on State finances. The State shared responsibility tax will generate new revenues to support a reinsurance program established through separate legislation.
- Enactment of the bill may cause State to incur additional expenditures if eligible uninsured individuals obtain health insurance through Medicaid and NJ FamilyCare. Changes in the number of persons with health insurance may also affect Charity Care expenditures.
- Information on the number of New Jersey resident taxpayers who may be subject to the State shared responsibility tax is not available at this time. Internal Revenue Service data indicate that approximately 189,000 New Jersey income tax filers paid the federal shared responsibility payment in Tax Year 2015.
- The bill requires the State Treasurer to determine the amount of the State shared responsibility tax using the State average premium for qualified health plans which provide a bronze-level of coverage, which is unavailable at this time.

BILL DESCRIPTION

The “New Jersey Health Insurance Market Preservation Act,” restores, at the State level, the recently repealed shared responsibility payment established by the federal Affordable Care Act (ACA). The ACA requires most individuals, other than those who qualify for certain exemptions, to obtain health insurance or pay a penalty (also known as the shared responsibility payment). Federal tax legislation recently enacted into law effectively eliminated the shared responsibility tax by reducing the penalty to \$0 beginning with tax year 2019.

The bill requires every New Jersey resident taxpayer to obtain health insurance coverage that qualifies as minimum essential health insurance coverage. If the taxpayer does not obtain coverage, the bill imposes a State shared responsibility tax equal to a taxpayer’s federal penalty under the ACA prior to the repeal of that provision, with certain modifications. The amount of the State shared responsibility tax is determined using the State average premium for qualified health plans which provide a bronze-level of coverage.

The bill requires the State Treasurer to establish a program for determining whether to certify that an individual is entitled to an exemption from either the individual responsibility requirement or the State shared responsibility tax by reason of religious conscience or hardship. The threshold to qualify for a hardship exemption is determined based on an individual’s required contribution for health insurance coverage under the ACA.

The bill also requires the State Treasurer to determine the income threshold for minimum essential coverage to be considered unaffordable. The shared responsibility tax is not imposed for any month during a calendar year if the taxpayer’s gross income is below the State minimum taxable threshold. If a taxpayer is subject to the State shared responsibility tax and the federal penalty, the taxpayer is allowed a credit against the taxpayer’s State gross income tax obligation for that taxable year, in the amount of the taxpayer’s federal penalty payment, but not to exceed the amount of the taxpayer’s State tax imposed by the bill in the taxable year.

The bill requires State shared responsibility tax revenues to be deposited into the New Jersey Health Insurance Premium Security Fund established by separate legislation. If the reinsurance program is not established, the State shared responsibility tax revenues are to be deposited into the Health Care Subsidy Fund to support the Children’s Health Insurance Program.

For purposes of administering the tax, the bill requires applicable entities, including employers, insurers, and the Department of Human Services (with respect to the Medicaid and NJ FamilyCare programs), that provide minimum essential coverage to an individual during a calendar year to submit a return to the State Treasurer with information about individuals and their coverage. To minimize the reporting burden, the return may also be in the form of a return required under the ACA. Finally, the bill requires the State Treasurer, in consultation with the Commissioner of Banking and Insurance, to send a notification containing information on the services available to obtain minimum essential coverage to each gross income taxpayer who files a gross income tax return indicating that the taxpayer or one of their dependents is not enrolled in minimum essential coverage as required by the bill.

The bill is scheduled to take effect on January 1, 2019.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS concludes that the enactment of the bill will have an indeterminate net impact on State finances. The overall fiscal impact of the bill will be affected by the behavior of: (1) New Jersey resident taxpayers who are enrolled in a health insurance plan through the ACA and choose not to maintain their coverage, even if they are subject to the State shared responsibility tax; (2) New Jersey resident taxpayers who are enrolled in a health insurance plan and choose to maintain their coverage in order to avoid the State shared responsibility tax; and (3) New Jersey resident taxpayers who currently do not maintain minimum essential coverage and choose to obtain health insurance. The OLS cannot predict how many individuals will not maintain their health insurance after the repeal of the individual health insurance mandate or the number of individuals who may be incentivized to obtain health insurance in order to avoid paying the State shared responsibility tax.

The State shared responsibility tax established by the bill will generate additional revenues to be deposited in the New Jersey Health Insurance Premium Security Fund. Enactment of the bill may cause some individuals, who would otherwise drop their health insurance absent the bill, to maintain their Medicaid and NJ FamilyCare coverage, thereby maintaining State expenditures at a higher level. Some individuals may decide to acquire health insurance in order to avoid paying the State shared responsibility tax. To the extent that these individuals enroll in Medicaid and NJ FamilyCare, the State will incur additional costs. An increase or decrease in the number of individuals who have health insurance may also affect State Charity Care expenditures. For example, if more individuals obtain health insurance, incidence of Charity Care will be lower than otherwise, thereby lowering State expenditures in future years.

Information on the number of New Jersey resident taxpayers who may be required to pay the State shared responsibility tax and the amount of the State shared responsibility tax are not available at this time. Data available through the federal Centers for Medicare and Medicaid Services indicates that approximately 244,000 individuals in New Jersey had effectuated coverage through the ACA Marketplace as of March 15, 2017. According to the Internal Revenue Service's Statistics of Income (SOI) for Tax Year 2014, 221,150 New Jersey resident tax returns were subject to the ACA shared responsibility payment, remitting a total of \$51.1 million to the federal government. The SOI data for Tax Year 2015 (the most recent year for which data are available) show that 188,750 New Jersey tax returns were subject to the shared responsibility payment, remitting a total of \$93.3 million. It is unclear from this data whether the decline in the number of returns indicating the remittance of a shared responsibility payment is due to an increase in the number of individuals obtaining health insurance, an increase in the number of individual mandate exemptions, or both.

The bill requires New Jersey resident taxpayers, if they do not maintain health insurance coverage that qualifies as minimum health insurance coverage, to pay the State shared responsibility tax. For 2016 through 2018, the federal shared responsibility payment is the greater of: (1) 2.5 percent of applicable income (generally household income in excess of filing thresholds); or (2) \$695 per taxpayer and \$347.50 per child, up to a family maximum of \$2,085. After 2016, the flat dollar amounts are adjusted for inflation. The payment amount is capped at the cost of the national average premium for a bronze-level health plan available through the ACA Marketplace. In 2017 the national average premium for a bronze-level health plan available through the marketplace was \$3,264 per year (\$272 per month) for an individual and \$16,320 per year (\$1,360 per month) for a family with five or more members.

The bill requires the State shared responsibility tax to be calculated using the State average premium for bronze-level plans. Information available through the National Conference of State Legislatures indicates that the average monthly premium for a bronze-level plan increased by

nine percent from \$481 per month in 2017 to \$522 in 2018. In November 2017, the Congressional Budget Office estimated that repealing the individual health insurance mandate would cause average premiums in the non-group market to increase by 10 percent per year over the next decade. Increases in health insurance premiums may cause some individuals to drop their health insurance coverage, thereby increasing the pool of taxpayers required to pay the State shared responsibility tax.

The OLS notes that the federal government has recently implemented a number of policy changes, such as the cessation of federal reimbursement for cost-sharing reductions, shorter open enrollment periods, reduced funding for state outreach and enrollment assistance, and the elimination of the individual mandate penalty, that may affect the number of individuals who obtain health insurance through the ACA Marketplace. In February 2018, the Urban Institute issued a report analyzing the impact of certain ACA policy changes, such as repeal of the individual health insurance mandate and changes to proposed regulations governing short-term, limited duration health insurance policies, on health insurance coverage, premiums in the ACA-compliant non-group insurance market, and federal spending in 2019.

The Urban Institute estimates that 456,000 people in New Jersey have ACA-compliant non-group health insurance either through the ACA Marketplace or the purchase of individual health insurance policies. The Urban Institute estimates that ACA policy changes implemented since 2017, including repeal of the individual health insurance mandate, would cause the number of persons covered by ACA-compliant non-group health insurance to decline by 106,000, or 23.2 percent. The Urban Institute also projected that number of uninsured persons is anticipated to increase by 92,000 persons. The OLS notes that New Jersey does not allow insurers to offer short-term, limited duration policies so it is likely that the decline in the number of insured individuals and the increase in the number of uninsured individuals is due to other ACA policy changes, such as repeal of the individual mandate and increases in health insurance premiums.

Section: Revenue, Finance, and Appropriations

*Analyst: Scott A. Brodsky
Senior Fiscal Analyst*

*Approved: Frank W. Haines III
Legislative Budget and Finance Officer*

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

SENATE, No. 1877

STATE OF NEW JERSEY
218th LEGISLATURE

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;

S1877 VITALE

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

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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.

SENATE COMMERCE COMMITTEE

STATEMENT TO

SENATE, No. 1877

with committee amendments

STATE OF NEW JERSEY

DATED: FEBRUARY 15, 2018

The Senate Commerce Committee reports favorably and with committee amendments Senate Bill No. 1877.

This amended bill, entitled the “New Jersey Health Insurance Market Preservation Act,” restores, at the State level, the recently repealed shared responsibility tax provided under the Affordable Care Act (ACA), which requires most individuals, other than those who qualify for certain exemptions, to obtain health insurance or pay a penalty. The bill is intended to ensure that health insurance markets in New Jersey remain robust and affordable by ensuring that individuals who can afford to purchase insurance participate in the market.

Specifically, the amended bill requires that every resident taxpayer of the State obtain health insurance coverage that qualifies as minimum essential coverage under the bill. If the taxpayer does not obtain coverage, the bill imposes a State shared responsibility tax equal to a taxpayer’s federal penalty under the ACA prior to the repeal of that provision.

To determine the State shared responsibility tax, the bill largely adopts the rules adopted pursuant to the ACA, with the following changes:

(1) The amount of the tax imposed is determined, if applicable, using the State average premium for bronze-level plans, rather than the national average premium for bronze-level plans;

(2) “Minimum essential coverage” includes, in addition to the types of coverage included under the ACA, the coverage required pursuant to the New Jersey Individual Health Coverage Program;

(3) Instead of the United States Secretary of Health and Human Services, in coordination with the United States Secretary of the Treasury, the Commissioner of Banking and Insurance, in coordination with the State Treasurer, has the authority to recognize additional health benefits coverage as “minimum essential” coverage;

(4) For purposes of the exemption for individuals who cannot afford coverage:

- the threshold to qualify for the exemption shall be calculated based on the lesser amount that the individual would be required to

pay for minimum essential coverage under either: (a) an eligible employer-sponsored plan; or (b) a qualified individual health plan;

- the income threshold for coverage to be considered unaffordable shall be determined by the State Treasurer; and

- no tax shall be imposed with respect to any applicable individual for any month during a calendar year if the taxpayer's gross income for the taxable year is below the State's minimum taxable income threshold;

(5) No tax shall be imposed with respect to any applicable individual for any month during which the individual is a bona fide resident of another state;

(6) Determinations as to religious conscience or hardship exemptions shall be made by the State Treasurer;

(7) A grandfathered plan shall qualify as minimum essential coverage only if it satisfies the requirements that apply to non-grandfathered plans sold in the market in which the grandfathered plan is sold;

(8) If a taxpayer is subject to both the tax imposed by this bill and the federal penalty, the amount of the taxpayer's State income tax is reduced, but not below zero, by the amount of the taxpayer's federal penalty payment; and

(9) Health coverage provided under a plan obtained through an association, trust, or multiple employer arrangement, including an out-of-State trust or association, shall not qualify as minimum essential coverage unless the plan complies with the requirements of applicable New Jersey law.

Additionally, the tax imposed by the bill is to be assessed and collected in the same manner as under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq.

The State Treasurer will establish a program for determining whether to grant a certification that an individual is entitled to an exemption from either the individual responsibility requirement or the tax by reason of religious conscience or hardship.

The amended bill also provides that any funds collected pursuant to the bill shall be deposited in the New Jersey Health Insurance Premium Security Fund created pursuant to Senate Bill No. 1878 of 2018, which establishes an individual health insurance reinsurance plan.

As amended, the bill also expresses the Legislature's intent as to the collection of data necessary for the successful implementation of the tax imposed by the bill. The bill provides that the reporting requirement is necessary to protect various compelling State interests.

Accordingly, the amended bill provides that, for purposes of administering the tax on individuals who fail to maintain minimum essential coverage, every applicable entity, including employers and insurers, that provides minimum essential coverage to an individual

during a calendar year shall, at such time as the State Treasurer may prescribe, make a return with information about individuals and their coverage. The return is to be in the form the State Treasurer prescribes, and contain the name, address and Social Security number or taxpayer identification number of the primary insured and the name and Social Security number or taxpayer identification number of each other individual obtaining coverage under the policy; the dates during which that individual was covered under minimum essential coverage during the calendar year and such other information as the State Treasurer may require. To minimize the reporting burden, the return may also be in the form of a return under the ACA.

The bill also provides that, not earlier than November 1 nor later than November 30 of each year, the State Treasurer, in consultation with the Commissioner of Banking and Insurance, shall send a notification to each taxpayer who files a gross income tax return indicating if the taxpayer or one of the taxpayer's dependents is not enrolled in minimum essential coverage as required by this bill. That notification shall contain information on the services available to obtain coverage.

As amended, the bill takes effect on January 1, 2019.

Committee Amendments:

The committee amendments:

- Remove the term "affiliated company" from the definitions;
- Clarify that, for individuals who cannot afford coverage from the requirements in the bill, the threshold to qualify for the exemption shall be calculated based on the lesser amount that the individual would be required to pay for minimum essential coverage under either: (a) an eligible employer-sponsored plan; or (b) a qualified individual health plan;
- Provide that determinations as to religious conscience or hardship under the bill will be made by the State Treasurer;
- Provide that any funds collected pursuant to the bill shall be deposited in the New Jersey Health Insurance Premium Security Fund created pursuant to Senate Bill No. 1878 of 2018, which establishes an individual health insurance reinsurance plan;
- Revise the effective date to take effect January 1, 2019, but continue to allow the State Treasurer and Commissioner of Banking and Insurance to take such anticipatory administrative action in advance thereof as shall be necessary for the implementation of the bill.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 1877

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 5, 2018

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 1877 (1R), with committee amendments.

As amended, this bill, entitled the “New Jersey Health Insurance Market Preservation Act,” restores, at the State level, the recently repealed shared responsibility tax provided under the Affordable Care Act (ACA), which requires most individuals, other than those who qualify for certain exemptions, to obtain health insurance or pay a penalty.

Specifically, the bill requires that every resident taxpayer of the State obtain health insurance coverage that qualifies as minimum essential coverage under the bill. If the taxpayer does not obtain coverage, the bill imposes a State shared responsibility tax equal to a taxpayer’s federal penalty under the ACA prior to the repeal of that provision.

To determine the State shared responsibility tax, the bill largely adopts the rules adopted pursuant to the ACA, with the following changes:

(1) The amount of the tax imposed is determined, if applicable, using the State average premium for bronze-level plans, rather than the national average premium for bronze-level plans;

(2) Instead of the United States Secretary of Health and Human Services, in coordination with the United States Secretary of the Treasury, the Commissioner of Banking and Insurance, in coordination with the State Treasurer, has the authority to recognize additional health benefits coverage as “minimum essential” coverage;

(3) For purposes of the exemption for individuals who cannot afford coverage:

- the threshold to qualify for the exemption shall be calculated based on the lesser amount that the individual would be required to pay for minimum essential coverage under either: (a) an eligible employer-sponsored plan; or (b) a qualified individual health plan;

- the income threshold for coverage to be considered unaffordable shall be determined by the State Treasurer; and

- no tax shall be imposed with respect to any applicable individual for any month during a calendar year if the taxpayer's taxable income for the taxable year is below the State's minimum taxable income threshold;

(4) No tax shall be imposed with respect to any applicable individual for any month during which the individual is a bona fide resident of another state;

(5) Determinations as to religious conscience or hardship exemptions shall be made by the State Treasurer;

(6) A grandfathered plan shall qualify as minimum essential coverage only if it satisfies the requirements that apply to non-grandfathered plans sold in the market in which the grandfathered plan is sold;

(7) If a taxpayer is subject to both the State shared responsibility tax and the federal penalty, the taxpayer is allowed a credit against the taxpayer's State gross income tax obligation for that taxable year, in the amount of the taxpayer's federal penalty payment; and

(8) Health coverage provided under a plan obtained through an association, trust, or multiple employer arrangement, including an out-of-State trust or association, shall not qualify as minimum essential coverage unless the plan complies with the requirements of applicable New Jersey law.

Additionally, the State shared responsibility tax imposed by the bill is to be assessed and collected in the same manner as under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. However, any funds collected under the bill shall not be gross income tax revenue for purposes of N.J.S.54A:9-25 and, accordingly, shall not be dedicated to the Property Tax Relief Fund.

The State Treasurer will establish a program for determining whether to grant a certification that an individual is entitled to an exemption from either the individual responsibility requirement or the tax by reason of religious conscience or hardship.

Any funds collected pursuant to the bill shall be deposited in the New Jersey Health Insurance Premium Security Fund created pursuant to Senate Bill No. 1878 of 2018, which establishes an individual health insurance reinsurance plan. If that fund is not created, the funds collected pursuant to the bill shall be deposited in the Health Care Subsidy Fund for subsidized children's health insurance in the NJ FamilyCare Program to maximize federal funding under Title XXI of the federal Social Security Act, subject to the approval of the Director of the Division of Budget and Accounting in the Department of the Treasury.

The bill also expresses the Legislature's intent as to the collection of data necessary for the successful implementation of the tax imposed by the bill. The bill provides that the reporting requirement is necessary to protect various compelling State interests.

Accordingly, the bill provides that, for purposes of administering the tax on individuals who fail to maintain minimum essential coverage, every applicable entity, including employers and insurers, that provides minimum essential coverage to an individual during a calendar year shall, at such time as the State Treasurer may prescribe, make a return with information about individuals and their coverage. The return is to be in the form the State Treasurer prescribes, and contain the name, address and Social Security number or taxpayer identification number of the primary insured and the name and Social Security number or taxpayer identification number of each other individual obtaining coverage under the policy; the dates during which that individual was covered under minimum essential coverage during the calendar year and such other information as the State Treasurer may require. To minimize the reporting burden, the return may also be in the form of a return under the ACA.

The bill also provides that, not earlier than November 1 nor later than November 30 of each year, the State Treasurer, in consultation with the Commissioner of Banking and Insurance, shall send a notification to each taxpayer who files a gross income tax return indicating if the taxpayer or one of the taxpayer's dependents is not enrolled in minimum essential coverage as required by this bill. That notification shall contain information on the services available to obtain coverage.

The bill takes effect on January 1, 2019.

COMMITTEE AMENDMENTS:

The committee amended the bill as follows:

- Remove certain definitions, including terms already defined under the "New Jersey Gross Income Tax Act";
- Remove the provision in the bill that provides that "minimum essential coverage" shall include, in addition to the types of coverage included under 26 U.S.C. s.5000A, the coverage required pursuant to the New Jersey Individual Health Coverage Program, since that coverage is already included as "minimum essential coverage" under the federal law;
- Clarify the language concerning if a taxpayer is subject to both the tax imposed by the bill and the federal penalty under 26 U.S.C. s.5000A for a taxable year, the taxpayer is allowed a credit against the tax otherwise due for the taxable year under the "New Jersey Gross Income Tax Act," in an amount of the taxpayer's federal penalty payment;
- Provide that for any taxable year in which federal premium tax credits, available pursuant to 26 U.S.C. s.36B, enacted as part of the Affordable Care Act, become unavailable due to the federal government repealing that section or failing to fund the

premium tax credits, the State shared responsibility tax shall not be enforced;

- Provide that any funds collected under the bill shall not be gross income tax revenue for purposes of N.J.S.54A:9-25, thereby clarifying that such funds will not be deposited in the Property Tax Relief Fund as required by that law, but instead shall be used as directed in the bill;
- Stipulate that, if the Commissioner of Banking and Insurance does not establish a health insurance reinsurance plan pursuant to Senate Bill No. 1878 of 2018, the funds collected pursuant to the bill shall be deposited in the Health Care Subsidy Fund for subsidized children's health insurance in the NJ FamilyCare Program to maximize federal funding under Title XXI of the federal Social Security Act, subject to the approval of the Director of the Division of Budget and Accounting in the Department of the Treasury; and
- Clarify internal cross-references that link the State shared responsibility tax with the provision that provides for a State gross income tax credit available to taxpayers who incur both the State shared responsibility tax and a federal penalty per 26 U.S.C. s.5000A, in a taxable year.

FISCAL IMPACT:

The OLS concludes that the bill will have an indeterminate net impact on State finances. The State shared responsibility tax will generate additional revenues to be deposited in the New Jersey Health Insurance Premium Fund, created pursuant to Senate Bill No. 1878. Enactment of the bill may cause some individuals, who would otherwise drop their health insurance, to maintain their NJ FamilyCare coverage thereby maintaining State expenditures at a higher level. Some individuals may decide to purchase health insurance in order to avoid paying the State shared responsibility tax. To the extent that these individuals enroll in NJ Family Care, the State will incur additional costs. Changes in the number of individuals who have health insurance may also result in a reduction in State Charity Care expenditures. The OLS cannot predict how many individuals will not maintain their health insurance after the repeal of the individual health insurance mandate or the number of individuals who may be incentivized to obtain health insurance in order to avoid paying the State shared responsibility tax.

Data on the number of New Jersey resident taxpayers who may be required to pay the State shared responsibility tax are not available at this time. According to the federal Centers for Medicare and Medicaid Services, approximately 244,000 individuals in New Jersey had effectuated coverage through the ACA Marketplace as of March 2017. Internal Revenue Service data for Tax Year 2015 show that 188,750

New Jersey tax returns were subject to the federal shared responsibility payment, remitting a total of \$93.3 million.

The Departments of the Treasury and Banking and Insurance may incur additional administrative costs, in indeterminate amounts, associated with implementation of the bill.

SENATE COMMERCE COMMITTEE

STATEMENT TO

[Second Reprint]

SENATE, No. 1877

STATE OF NEW JERSEY

DATED: APRIL 5, 2018

The Senate Commerce Committee reports favorably and with committee amendments Senate Bill No. 1877 (2R).

This amended bill, entitled the “New Jersey Health Insurance Market Preservation Act,” restores, at the State level, the recently repealed shared responsibility tax provided under the Affordable Care Act (ACA), which requires most individuals, other than those who qualify for certain exemptions, to obtain health insurance or pay a penalty.

Specifically, the bill requires that every resident taxpayer of the State obtain health insurance coverage that qualifies as minimum essential coverage under the bill. If the taxpayer does not obtain coverage, the bill imposes a State shared responsibility tax equal to a taxpayer’s federal penalty under the ACA prior to the repeal of that provision.

To determine the State shared responsibility tax, the bill largely adopts the rules adopted pursuant to the ACA, with the following changes:

(1) The amount of the tax imposed is determined, if applicable, using the State average premium for bronze-level plans, rather than the national average premium for bronze-level plans;

(2) Instead of the United States Secretary of Health and Human Services, in coordination with the United States Secretary of the Treasury, the Commissioner of Banking and Insurance, in coordination with the State Treasurer, has the authority to recognize additional health benefits coverage as “minimum essential” coverage;

(3) For purposes of the exemption for individuals who cannot afford coverage:

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

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

- the income threshold for coverage to be considered unaffordable shall be determined by the State Treasurer consistent with the federal law; and

- no tax shall be imposed with respect to any applicable individual for any month during a calendar year if the taxpayer's taxable income for the taxable year is below the State's minimum taxable income threshold;

(4) No tax shall be imposed with respect to any applicable individual for any month during which the individual is a nonresident taxpayer;

(5) Determinations as to religious conscience or hardship exemptions shall be made by the State Treasurer; and

(6) If a taxpayer is subject to both the State shared responsibility tax and the federal penalty, the taxpayer is allowed a credit against the taxpayer's State gross income tax obligation for that taxable year, in the amount of the taxpayer's federal penalty payment, but not to exceed the amount of the taxpayer's State tax imposed by this act in the taxable year; and

(7) Health coverage provided under a multiple employer welfare arrangement shall not qualify as minimum essential coverage unless the plan complies with the requirements of applicable New Jersey law.

Additionally, the State shared responsibility tax imposed by the bill is to be assessed and collected in the same manner as under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. However, any funds collected under the bill shall not be gross income tax revenue for purposes of N.J.S.54A:9-25 and, accordingly, shall not be dedicated to the Property Tax Relief Fund.

The State Treasurer will establish a program for determining whether to grant a certification that an individual is entitled to an exemption from either the individual responsibility requirement or the tax by reason of religious conscience or hardship.

Any funds collected pursuant to the bill shall be deposited in the New Jersey Health Insurance Premium Security Fund created pursuant to the Senate Committee Substitute for Senate Bill No. 1878 of 2018, which establishes an individual health insurance reinsurance plan. If that fund is not created, the funds collected pursuant to the bill shall be deposited in the Health Care Subsidy Fund for subsidized children's health insurance in the NJ FamilyCare Program to maximize federal funding under Title XXI of the federal Social Security Act, subject to the approval of the Director of the Division of Budget and Accounting in the Department of the Treasury.

The bill also expresses the Legislature's intent as to the collection of data necessary for the successful implementation of the tax imposed by the bill. The bill provides that the reporting

requirement is necessary to protect various compelling State interests.

Accordingly, the bill provides that, for purposes of administering the tax on individuals who fail to maintain minimum essential coverage, every applicable entity, including employers and insurers, that provides minimum essential coverage to an individual during a calendar year shall, at such time as the State Treasurer may prescribe, make a return with information about individuals and their coverage. The return is to be in the form the State Treasurer prescribes, and contain the name, address and Social Security number or taxpayer identification number of the primary insured and the name and Social Security number or taxpayer identification number of each other individual obtaining coverage under the policy; the dates during which that individual was covered under minimum essential coverage during the calendar year and such other information as the State Treasurer may require. To minimize the reporting burden, the return may also be in the form of a return under the ACA.

The bill also provides that, not earlier than November 1 nor later than November 30 of each year, the State Treasurer, in consultation with the Commissioner of Banking and Insurance, shall send a notification to each taxpayer who files a gross income tax return indicating if the taxpayer or one of the taxpayer's dependents is not enrolled in minimum essential coverage as required by this bill. That notification shall contain information on the services available to obtain coverage.

The bill takes effect on January 1, 2019.

With the committee amendments, the bill is identical to Assembly Bill No. 3380 (1R).

Committee Amendments:

The committee amendments:

- Clarify that, for purposes of the exemption for individuals who cannot afford coverage:
 - (1) the required contribution for an individual eligible for minimum essential coverage under both an eligible employer-sponsored plan and a qualified health plan is the lesser of the amounts described in 26 U.S.C. s.5000A(e)(1)(B)(i) and 26 U.S.C. s.5000A(e)(1)(B)(ii); and
 - (2) the income threshold for coverage to be considered unaffordable shall be determined by the State Treasurer consistent with the federal law;
- Use the term "nonresident taxpayer," rather than "bona fide resident of another state;"
- Remove the provision requiring a grandfathered plan, in order to qualify as minimum essential coverage, to satisfy the

requirements that apply to non-grandfathered plans sold in the market in which the grandfathered plan is sold;

- Clarify that reference to the “director” refers to the Director of the Division of Taxation;
- Provide that health coverage provided under a multiple employer welfare arrangement, as defined in subsection (40) of 29 U.S.C. s.10021, shall not qualify as minimum essential coverage unless the plan complies with certain requirements of New Jersey law;
- Clarify that all references in the bill to any of the provisions of 26 U.S.C. s.5000A shall be to that provision as in effect on December 15, 2017.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[Third Reprint]

SENATE, No. 1877

STATE OF NEW JERSEY

DATED: APRIL 5, 2018

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 1877 (3R).

This bill, entitled the “New Jersey Health Insurance Market Preservation Act,” restores, at the State level, the recently repealed shared responsibility tax provided under the Affordable Care Act (ACA), which requires most individuals, other than those who qualify for certain exemptions, to obtain health insurance or pay a penalty.

The bill requires that every resident taxpayer of the State obtain health insurance coverage that qualifies as minimum essential coverage under the bill. If the taxpayer does not obtain coverage, the bill imposes a State shared responsibility tax equal to a taxpayer’s federal penalty under the ACA prior to the repeal of that provision.

To determine the State shared responsibility tax, the bill largely adopts the rules adopted pursuant to the ACA, with the following changes:

(1) The amount of the tax imposed is determined, if applicable, using the State average premium for bronze-level plans, rather than the national average premium for bronze-level plans;

(2) Instead of the United States Secretary of Health and Human Services, in coordination with the United States Secretary of the Treasury, the Commissioner of Banking and Insurance, in coordination with the State Treasurer, has the authority to recognize additional health benefits coverage as “minimum essential” coverage;

(3) For purposes of the exemption for individuals who cannot afford coverage:

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

- the required contribution for an individual only eligible for minimum essential coverage under a qualified health plan in the

amount described in 26 U.S.C. s.5000A(e)(1)(B)(i) and 26 U.S.C. s.5000A(e)(1)(B)(ii);

- the income threshold for coverage to be considered unaffordable shall be determined by the State Treasurer consistent with the federal law; and

- no tax shall be imposed with respect to any applicable individual for any month during a calendar year if the taxpayer's taxable income for the taxable year is below the State's minimum taxable income threshold;

(4) No tax shall be imposed with respect to any applicable individual for any month during which the individual is a nonresident taxpayer;

(5) Determinations as to religious conscience or hardship exemptions shall be made by the State Treasurer;

(6) If a taxpayer is subject to both the State shared responsibility tax and the federal penalty, the taxpayer is allowed a credit against the taxpayer's State gross income tax obligation for that taxable year, in the amount of the taxpayer's federal penalty payment, but not to exceed the amount of the taxpayer's State tax imposed by this act in the taxable year; and

(7) Health coverage provided under a multiple employer welfare arrangement shall not qualify as minimum essential coverage unless the plan complies with the requirements of applicable New Jersey law.

The State shared responsibility tax imposed by the bill is to be assessed and collected in the same manner as under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. However, any funds collected under the bill shall not be gross income tax revenue for purposes of N.J.S.54A:9-25 and, accordingly, shall not be dedicated to the Property Tax Relief Fund.

The State Treasurer will establish a program for determining whether to grant a certification that an individual is entitled to an exemption from either the individual responsibility requirement or the tax by reason of religious conscience or hardship.

Any funds collected pursuant to the bill shall be deposited in the New Jersey Health Insurance Premium Security Fund created pursuant to the Senate Committee Substitute for Senate Bill No. 1878 of 2018, which establishes an individual health insurance reinsurance plan. If that fund is not created, the funds collected pursuant to the bill shall be deposited in the Health Care Subsidy Fund for subsidized children's health insurance in the NJ FamilyCare Program to maximize federal funding under Title XXI of the federal Social Security Act, subject to the approval of the Director of the Division of Budget and Accounting in the Department of the Treasury.

The bill also expresses the Legislature's intent as to the collection of data necessary for the successful implementation of

the tax imposed by the bill. The bill provides that the reporting requirement is necessary to protect various compelling State interests.

Accordingly, the bill provides that, for purposes of administering the tax on individuals who fail to maintain minimum essential coverage, every applicable entity, including employers and insurers, that provides minimum essential coverage to an individual during a calendar year shall, at such time as the State Treasurer may prescribe, make a return with information about individuals and their coverage. The return is to be in the form the State Treasurer prescribes, and contain the name, address and Social Security number or taxpayer identification number of the primary insured and the name and Social Security number or taxpayer identification number of each other individual obtaining coverage under the policy; the dates during which that individual was covered under minimum essential coverage during the calendar year and such other information as the State Treasurer may require. To minimize the reporting burden, the return may also be in the form of a return under the ACA.

The bill also provides that, not earlier than November 1 nor later than November 30 of each year, the State Treasurer, in consultation with the Commissioner of Banking and Insurance, shall send a notification to each taxpayer who files a gross income tax return indicating if the taxpayer or one of the taxpayer's dependents is not enrolled in minimum essential coverage as required by this bill. That notification shall contain information on the services available to obtain coverage.

The bill takes effect on January 1, 2019.

FISCAL IMPACT:

The Office of Legislative Services (OLS) concludes that the bill will have an indeterminate impact on State finances.

The State shared responsibility tax will generate additional revenues to be deposited in the New Jersey Health Insurance Premium Security Fund created by the Senate Committee Substitute for Senate Bill No. 1878 of 2018. Enactment of the bill may cause some individuals, who would otherwise drop their health insurance, to maintain their NJ FamilyCare coverage, thereby maintaining State expenditures at a higher level. Some individuals may decide to purchase health insurance in order to avoid paying the State shared responsibility tax. To the extent that these individuals enroll in NJ FamilyCare, the State will incur additional costs. Changes in the number of individuals who have health insurance may also result in a reduction in State Charity Care expenditures.

The OLS cannot predict how many individuals will not maintain their health insurance after the repeal of the individual health insurance mandate or the number of individuals who may be incentivized to

obtain health insurance in order to avoid paying the State shared responsibility tax.

Data on the number of New Jersey resident taxpayers who may be required to pay the State share responsibility tax are not available at this time. According to the federal Centers for Medicare and Medicaid Services, approximately 244,000 individuals in New Jersey had effectuated coverage through the ACA Marketplace as of March 2017. Internal Revenue Service data for Tax Year 2015 show that 188,750 New Jersey tax returns were subject to the federal shared responsibility payment, remitting a total of \$93.3 million.

LEGISLATIVE FISCAL ESTIMATE

[Second Reprint]

SENATE, No. 1877

STATE OF NEW JERSEY 218th LEGISLATURE

DATED: MARCH 28, 2018

SUMMARY

Synopsis: “New Jersey Health Insurance Market Preservation Act.”

Type of Impact: Indeterminate increase in State revenues.
Indeterminate increase in State costs.

Agencies Affected: Department of Banking and Insurance.
Department of the Treasury.

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Revenue		Indeterminate Increase	
State Cost		Indeterminate Increase	

- The Office of Legislative Services (OLS) concludes that the enactment of the bill will have an indeterminate net impact on State finances. The State shared responsibility tax will generate new revenues to support a reinsurance program established through separate legislation.
- Enactment of the bill may cause State to incur additional expenditures if eligible uninsured individuals obtain health insurance through Medicaid and NJ FamilyCare. Changes in the number of persons with health insurance may also affect Charity Care expenditures.
- Information on the number of New Jersey resident taxpayers who may be subject to the State shared responsibility tax is not available at this time. Internal Revenue Service data indicate that approximately 189,000 New Jersey income tax filers paid the federal shared responsibility payment in Tax Year 2015.
- The bill requires the State Treasurer to determine the amount of the State shared responsibility tax using the State average premium for qualified health plans which provide a bronze-level of coverage, which is unavailable at this time.

BILL DESCRIPTION

The “New Jersey Health Insurance Market Preservation Act,” restores, at the State level, the recently repealed shared responsibility payment established by the federal Affordable Care Act (ACA). The ACA requires most individuals, other than those who qualify for certain exemptions, to obtain health insurance or pay a penalty (also known as the shared responsibility payment). Federal tax legislation recently enacted into law effectively eliminated the shared responsibility tax by reducing the penalty to \$0 beginning with tax year 2019.

The bill requires every New Jersey resident taxpayer to obtain health insurance coverage that qualifies as minimum essential health insurance coverage. If the taxpayer does not obtain coverage, the bill imposes a State shared responsibility tax equal to a taxpayer’s federal penalty under the ACA prior to the repeal of that provision. The amount of the State shared responsibility tax is determined using the State average premium for qualified health plans which provide a bronze-level of coverage.

The bill requires the State Treasurer to establish a program for determining whether to certify that an individual is entitled to an exemption from either the individual responsibility requirement or the State shared responsibility tax by reason of religious conscience or hardship. The threshold to qualify for a hardship exemption is calculated based on the lesser amount that an individual would be required to pay for minimum essential coverage under an eligible employer-sponsored plan or a qualified individual health plan.

The bill also requires the State Treasurer to determine the income threshold for minimum essential coverage to be considered unaffordable. The shared responsibility tax is not imposed for any month during a calendar year if the taxpayer’s gross income is below the State minimum taxable threshold. If a taxpayer is subject to the State shared responsibility tax and the federal penalty, the amount of the taxpayer’s State income tax liability is reduced, but not below zero, by the amount of the taxpayer’s federal penalty payment.

The bill requires State shared responsibility tax revenues to be deposited into the New Jersey Health Insurance Premium Security Fund established by separate legislation. If the reinsurance program is not established, the State shared responsibility tax revenues are to be deposited into the Health Care Subsidy Fund to support the Children’s Health Insurance Program.

For purposes of administering the tax, the bill requires applicable entities, including employers, insurers, and the Department of Human Services (with respect to the Medicaid and NJ FamilyCare programs), that provide minimum essential coverage to an individual during a calendar year to submit a return to the State Treasurer with information about individuals and their coverage. To minimize the reporting burden, the return may also be in the form of a return required under the ACA. Finally, the bill requires the State Treasurer, in consultation with the Commissioner of Banking and Insurance, to send a notification containing information on the services available to obtain minimum essential coverage to each gross income taxpayer who files a gross income tax return indicating that the taxpayer or one of their dependents is not enrolled in minimum essential coverage as required by the bill.

The bill is scheduled to take effect on January 1, 2019.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS concludes that the enactment of the bill will have an indeterminate net impact on State finances. The overall fiscal impact of the bill will be affected by the behavior of: (1) New Jersey resident taxpayers who are enrolled in a health insurance plan through the ACA and choose not to maintain their coverage, even if they are subject to the State shared responsibility tax; (2) New Jersey resident taxpayers who are enrolled in a health insurance plan and choose to maintain their coverage in order to avoid the State shared responsibility tax; and (3) New Jersey resident taxpayers who currently do not maintain minimum essential coverage and choose to obtain health insurance. The OLS cannot predict how many individuals will not maintain their health insurance after the repeal of the individual health insurance mandate or the number of individuals who may be incentivized to obtain health insurance in order to avoid paying the State shared responsibility tax.

The State shared responsibility tax established by the bill will generate additional revenues to be deposited in the New Jersey Health Insurance Premium Security Fund. Enactment of the bill may cause some individuals, who would otherwise drop their health insurance absent the bill, to maintain their Medicaid and NJ FamilyCare coverage, thereby maintaining State expenditures at a higher level. Some individuals may decide to acquire health insurance in order to avoid paying the State shared responsibility tax. To the extent that these individuals enroll in Medicaid and NJ FamilyCare, the State will incur additional costs. An increase or decrease in the number of individuals who have health insurance may also affect State Charity Care expenditures. For example, if more individuals obtain health insurance, incidence of Charity Care will be lower than otherwise, thereby lowering State expenditures in future years.

Information on the number of New Jersey resident taxpayers who may be required to pay the State shared responsibility tax and the amount of the State shared responsibility tax are not available at this time. Data available through the federal Centers for Medicare and Medicaid Services indicates that approximately 244,000 individuals in New Jersey had effectuated coverage through the ACA Marketplace as of March 15, 2017. According to the Internal Revenue Service's Statistics of Income (SOI) for Tax Year 2014, 221,150 New Jersey resident tax returns were subject to the ACA shared responsibility payment, remitting a total of \$51.1 million to the federal government. The SOI data for Tax Year 2015 (the most recent year for which data are available) show that 188,750 New Jersey tax returns were subject to the shared responsibility payment, remitting a total of \$93.3 million. It is unclear from this data whether the decline in the number of returns indicating the remittance of a shared responsibility payment is due to an increase in the number of individuals obtaining health insurance, an increase in the number of individual mandate exemptions, or both.

The bill requires New Jersey resident taxpayers, if they do not maintain health insurance coverage that qualifies as minimum health insurance coverage, to pay the State shared responsibility tax. For 2016 through 2018, the federal shared responsibility payment is the greater of: (1) 2.5 percent of applicable income (generally household income in excess of filing thresholds); or (2) \$695 per taxpayer and \$347.50 per child, up to a family maximum of \$2,085. After 2016, the flat dollar amounts are adjusted for inflation. The payment amount is capped at the cost of the national average premium for a bronze-level health plan available through the ACA Marketplace. In 2017 the national average premium for a bronze-level health plan available through the marketplace was \$3,264 per year (\$272 per month) for an individual and \$16,320 per year (\$1,360 per month) for a family with five or more members.

The bill requires the State shared responsibility tax to be calculated using the State average premium for bronze-level plans. Information available through the National Conference of State Legislatures indicates that the average monthly premium for a bronze-level plan increased by

nine percent from \$481 per month in 2017 to \$522 in 2018. In November 2017, the Congressional Budget Office estimated that repealing the individual health insurance mandate would cause average premiums in the non-group market to increase by 10 percent per year over the next decade. Increases in health insurance premiums may cause some individuals to drop their health insurance coverage, thereby increasing the pool of taxpayers required to pay the State shared responsibility tax.

The OLS notes that the federal government has recently implemented a number of policy changes, such as the cessation of federal reimbursement for cost-sharing reductions, shorter open enrollment periods, reduced funding for state outreach and enrollment assistance, and the elimination of the individual mandate penalty, that may affect the number of individuals who obtain health insurance through the ACA Marketplace. In February 2018, the Urban Institute issued a report analyzing the impact of certain ACA policy changes, such as repeal of the individual health insurance mandate and changes to proposed regulations governing short-term, limited duration health insurance policies, on health insurance coverage, premiums in the ACA-compliant non-group insurance market, and federal spending in 2019.

The Urban Institute estimates that 456,000 people in New Jersey have ACA-compliant non-group health insurance either through the ACA Marketplace or the purchase of individual health insurance policies. The Urban Institute estimates that ACA policy changes implemented since 2017, including repeal of the individual health insurance mandate, would cause the number of persons covered by ACA-compliant non-group health insurance to decline by 106,000, or 23.2 percent. The Urban Institute also projected that number of uninsured persons is anticipated to increase by 92,000 persons. The OLS notes that New Jersey does not allow insurers to offer short-term, limited duration policies so it is likely that the decline in the number of insured individuals and the increase in the number of uninsured individuals is due to other ACA policy changes, such as repeal of the individual mandate and increases in health insurance premiums.

Section: Revenue, Finance, and Appropriations

*Analyst: Scott A. Brodsky
Senior Fiscal Analyst*

*Approved: Frank W. Haines III
Legislative Budget and Finance Officer*

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

LEGISLATIVE FISCAL ESTIMATE

[Third Reprint]

SENATE, No. 1877 STATE OF NEW JERSEY 218th LEGISLATURE

DATED: APRIL 23, 2018

SUMMARY

Synopsis: New Jersey Health Insurance Market Preservation Act.”

Type of Impact: Indeterminate increase in State revenues.
Indeterminate increase in State costs.

Agencies Affected: Department of Banking and Insurance.
Department of the Treasury.

Office of Legislative Services Estimate

Fiscal Impact	<u>Annual Impact</u>
State Cost	Indeterminate Increase
State Revenue	Indeterminate Increase

- The Office of Legislative Services (OLS) concludes that the enactment of the bill will have an indeterminate net impact on State finances. The State shared responsibility tax will generate new revenues to support a reinsurance program established through separate legislation.
- Enactment of the bill may cause State to incur additional expenditures if eligible uninsured individuals obtain health insurance through Medicaid and NJ FamilyCare. Changes in the number of persons with health insurance may also affect Charity Care expenditures.
- Information on the number of New Jersey resident taxpayers who may be subject to the State shared responsibility tax is not available at this time. Internal Revenue Service data indicate that approximately 189,000 New Jersey income tax filers paid the federal shared responsibility payment in Tax Year 2015.
- The bill requires the State Treasurer to determine the amount of the State shared responsibility tax using the State average premium for qualified health plans which provide a bronze-level of coverage, which is unavailable at this time.

BILL DESCRIPTION

The “New Jersey Health Insurance Market Preservation Act,” restores, at the State level, the recently repealed shared responsibility payment established by the federal Affordable Care Act (ACA). The ACA requires most individuals, other than those who qualify for certain exemptions, to obtain health insurance or pay a penalty (also known as the shared responsibility payment). Federal tax legislation recently enacted into law effectively eliminated the shared responsibility tax by reducing the penalty to \$0 beginning with tax year 2019.

The bill requires every New Jersey resident taxpayer to obtain health insurance coverage that qualifies as minimum essential health insurance coverage. If the taxpayer does not obtain coverage, the bill imposes a State shared responsibility tax equal to a taxpayer’s federal penalty under the ACA prior to the repeal of that provision, with certain modifications. The amount of the State shared responsibility tax is determined using the State average premium for qualified health plans which provide a bronze-level of coverage.

The bill requires the State Treasurer to establish a program for determining whether to certify that an individual is entitled to an exemption from either the individual responsibility requirement or the State shared responsibility tax by reason of religious conscience or hardship. The threshold to qualify for a hardship exemption is determined based on an individual’s required contribution for health insurance coverage under the ACA.

The bill also requires the State Treasurer to determine the income threshold for minimum essential coverage to be considered unaffordable. The shared responsibility tax is not imposed for any month during a calendar year if the taxpayer’s gross income is below the State minimum taxable threshold. If a taxpayer is subject to the State shared responsibility tax and the federal penalty, the taxpayer is allowed a credit against the taxpayer’s State gross income tax obligation for that taxable year, in the amount of the taxpayer’s federal penalty payment, but not to exceed the amount of the taxpayer’s State tax imposed by the bill in the taxable year.

The bill requires State shared responsibility tax revenues to be deposited into the New Jersey Health Insurance Premium Security Fund established by separate legislation. If the reinsurance program is not established, the State shared responsibility tax revenues are to be deposited into the Health Care Subsidy Fund to support the Children’s Health Insurance Program.

For purposes of administering the tax, the bill requires applicable entities, including employers, insurers, and the Department of Human Services (with respect to the Medicaid and NJ FamilyCare programs), that provide minimum essential coverage to an individual during a calendar year to submit a return to the State Treasurer with information about individuals and their coverage. To minimize the reporting burden, the return may also be in the form of a return required under the ACA. Finally, the bill requires the State Treasurer, in consultation with the Commissioner of Banking and Insurance, to send a notification containing information on the services available to obtain minimum essential coverage to each gross income taxpayer who files a gross income tax return indicating that the taxpayer or one of their dependents is not enrolled in minimum essential coverage as required by the bill.

The bill is scheduled to take effect on January 1, 2019.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS concludes that the enactment of the bill will have an indeterminate net impact on State finances. The overall fiscal impact of the bill will be affected by the behavior of: (1) New Jersey resident taxpayers who are enrolled in a health insurance plan through the ACA and choose not to maintain their coverage, even if they are subject to the State shared responsibility tax; (2) New Jersey resident taxpayers who are enrolled in a health insurance plan and choose to maintain their coverage in order to avoid the State shared responsibility tax; and (3) New Jersey resident taxpayers who currently do not maintain minimum essential coverage and choose to obtain health insurance. The OLS cannot predict how many individuals will not maintain their health insurance after the repeal of the individual health insurance mandate or the number of individuals who may be incentivized to obtain health insurance in order to avoid paying the State shared responsibility tax.

The State shared responsibility tax established by the bill will generate additional revenues to be deposited in the New Jersey Health Insurance Premium Security Fund. Enactment of the bill may cause some individuals, who would otherwise drop their health insurance absent the bill, to maintain their Medicaid and NJ FamilyCare coverage, thereby maintaining State expenditures at a higher level. Some individuals may decide to acquire health insurance in order to avoid paying the State shared responsibility tax. To the extent that these individuals enroll in Medicaid and NJ FamilyCare, the State will incur additional costs. An increase or decrease in the number of individuals who have health insurance may also affect State Charity Care expenditures. For example, if more individuals obtain health insurance, incidence of Charity Care will be lower than otherwise, thereby lowering State expenditures in future years.

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The bill requires New Jersey resident taxpayers, if they do not maintain health insurance coverage that qualifies as minimum health insurance coverage, to pay the State shared responsibility tax. For 2016 through 2018, the federal shared responsibility payment is the greater of: (1) 2.5% of applicable income (generally household income in excess of filing thresholds); or (2) \$695 per taxpayer and \$347.50 per child, up to a family maximum of \$2,085. After 2016, the flat dollar amounts are adjusted for inflation. The payment amount is capped at the cost of the national average premium for a bronze-level health plan available through the ACA Marketplace. In 2017 the national average premium for a bronze-level health plan available through the marketplace was \$3,264 per year (\$272 per month) for an individual and \$16,320 per year (\$1,360 per month) for a family with five or more members.

The bill requires the State shared responsibility tax to be calculated using the State average premium for bronze-level plans. Information available through the National Conference of State Legislatures indicates that the average monthly premium for a bronze-level plan increased by

nine percent from \$481 per month in 2017 to \$522 in 2018. In November 2017, the Congressional Budget Office estimated that repealing the individual health insurance mandate would cause average premiums in the non-group market to increase by 10 percent per year over the next decade. Increases in health insurance premiums may cause some individuals to drop their health insurance coverage, thereby increasing the pool of taxpayers required to pay the State shared responsibility tax.

The OLS notes that the federal government has recently implemented a number of policy changes, such as the cessation of federal reimbursement for cost-sharing reductions, shorter open enrollment periods, reduced funding for state outreach and enrollment assistance, and the elimination of the individual mandate penalty, that may affect the number of individuals who obtain health insurance through the ACA Marketplace. In February 2018, the Urban Institute issued a report analyzing the impact of certain ACA policy changes, such as repeal of the individual health insurance mandate and changes to proposed regulations governing short-term, limited duration health insurance policies, on health insurance coverage, premiums in the ACA-compliant non-group insurance market, and federal spending in 2019.

The Urban Institute estimates that 456,000 people in New Jersey have ACA-compliant non-group health insurance either through the ACA Marketplace or the purchase of individual health insurance policies. The Urban Institute estimates that ACA policy changes implemented since 2017, including repeal of the individual health insurance mandate, would cause the number of persons covered by ACA-compliant non-group health insurance to decline by 106,000, or 23.2%. The Urban Institute also projected that number of uninsured persons is anticipated to increase by 92,000 persons. The OLS notes that New Jersey does not allow insurers to offer short-term, limited duration policies so it is likely that the decline in the number of insured individuals and the increase in the number of uninsured individuals is due to other ACA policy changes, such as repeal of the individual mandate and increases in health insurance premiums.

Section: Revenue, Finance, & Appropriations
Analyst: Scott A. Brodsky,
Senior Fiscal Analyst
Approved: Frank W. Haines III
Legislative Budget and Finance Officer

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).



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Newark, N.J.

Governor Murphy Takes Action on Legislation

05/30/2018

TRENTON – Today, Governor Phil Murphy announced that he has signed the following bills into law:

A2787 (Dancer, Andrzejczak, Houghtaling, Rooney/Cruz-Perez, Singer) – Extends pilot program authorizing special occasion events at wineries on preserved farmland; implements reporting requirement.

A3380 (McKeon, Murphy, Lampitt, Conaway/Vitale, Singleton) – “New Jersey Health Insurance Market Preservation Act.”

S482 (Vitale/Vainieri Huttle, Quijano, Jasey) – Authorizes certain gestational carrier agreements.

S846 (Turner, Cruz-Perez/Pintor Marin, Mukherji, Gusciora, Jones, Sumter) – Reinstates and extends duration of certain UEZs; requires DCA to study UEZ program and report recommendations to the Legislature.

S868 (Sweeney, Vitale/Coughlin, Jasey, Schaer)– Permits candidates for school board to circulate petitions jointly and be bracketed together on ballot; permits short nonpolitical designation of principles on petitions and ballots.

S1217 (Sweeney, Smith/Mazzeo, Armato, DeAngelo) – Requires BPU consideration and approval of amended application for qualified wind energy project offshore in certain NJ territorial waters.

S1870 (Vitale, Ruiz/Speight, Quijano, McKnight) – Requires Child Fatality and Near Fatality Review Board to study racial and ethnic disparities that contribute to infant mortality.

S1876 (Ruiz, Corrado/Vainieri Huttle, Caputo, Jasey) – Requires Commissioner of Education to include data on chronic absenteeism and disciplinary suspensions on School Report Card and requires public schools to make certain efforts to combat chronic absenteeism.

S1878 (Vitale, Singleton/McKeon, Lampitt, Murphy) – "New Jersey Health Insurance Premium Security Act;" establishes health insurance reinsurance plan.

S1894 (Ruiz, Turner/Lampitt, Sumter, Barclay) – Requires "breakfast after the bell" program in all schools with 70% or more of students eligible for free or reduced price meals.

S1895 (Ruiz, Turner/Lampitt, Jones, Wimberly) – Requires certain school districts to submit report on nonparticipation in "Community Eligibility Provision" of National School Lunch and School Breakfast Programs.

S1896 (Ruiz, Turner/Lampitt, Wimberly, Jones) – Requires school district to report at least biannually to Department of Agriculture number of students who are denied school breakfast or school lunch.

S1897 (Ruiz, Turner/Lampitt, Pintor Marin, Barclay) – Expands summer meal program to all school districts with 50 percent or more of students eligible for free or reduced price meals.

S2247 (Sweeney/Burzichelli, Mukherji, Murphy) – Allows charitable assets set aside from the sale of nonprofit hospital to for-profit entity to be allocated to successor nonprofit charitable entity that is establishing and operating

equivalent nonprofit hospital.

Governor Murphy also announced that he has conditionally vetoed the following bills:

S879 (Sweeney/Burzichelli, Taliaferro, Murphy) – Amends definition of "existing major hazardous waste facility" in "Major Hazardous Waste Facilities Siting Act."

[Copy of message on S879](#)

S976 (Vitale, Bateman/Vainieri Huttie, Lagana, Mukherji) – "Revised State Medical Examiner Act"; establishes Office of the Chief State Medical Examiner in DOH.

[Copy of message on S976](#)

S1968 (Pou/Wimberly, Mukherji, Sumter) – Extends document submission deadline for certain residential and mixed use parking projects under Economic Redevelopment and Growth Grant program; increases maximum credit amounts awarded for certain residential and mixed use parking projects.

[Copy of message on S1968](#)

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