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H.696

Introduced by Representatives Briglin of Thetford, Poirier of Barre City, Pugh  
of South Burlington, Ancel of Calais, Christensen of  
Weathersfield, Christie of Hartford, Deen of Westminster,  
Emmons of Springfield, Jickling of Randolph, Lucke of  
Hartford, Masland of Thetford, O’Sullivan of Burlington, and  
Till of Jericho

Referred to Committee on

Date:

Subject: Health; health insurance; individual mandate

Statement of purpose of bill as introduced: This bill proposes to require all  
Vermont residents to maintain minimum essential health coverage or pay a  
penalty.

An act relating to establishing a State individual mandate

It is hereby enacted by the General Assembly of the State of Vermont:

~~Sec. 1. 32 V.S.A. chapter 244 is added to read:~~

~~CHAPTER 244. REQUIREMENT TO MAINTAIN~~

~~MINIMUM ESSENTIAL COVERAGE~~

~~§ 10451. DEFINITIONS~~

1 As used in this chapter:

2 (1) “Applicable individual” means, with respect to any month, an  
3 individual other than the following:

4 (A) an individual with a religious conscience exemption pursuant to  
5 section 10456 of this chapter;

6 (B) an individual not lawfully present in the United States; or

7 (C) an individual for any month if for the month the individual is  
8 incarcerated, other than incarceration pending the disposition of charges.

9 (2) “Eligible employer-sponsored plan” means, with respect to any  
10 employee, a group health plan or group health insurance coverage offered by  
11 an employer to the employee that is:

12 (A) a governmental plan within the meaning of Section 2791(d)(8) of  
13 the federal Public Health Service Act; or

14 (B) any other plan or coverage offered in the small or large group  
15 market within the State, including a grandfathered plan.

16 (3) “Family size” with respect to any taxpayer means the number of  
17 individuals for whom the taxpayer is allowed a deduction under federal law for  
18 the taxable year.

19 (4) “Household income” means, with respect to any taxpayer for any  
20 taxable year, an amount equal to the sum of:

21 (A) the taxpayer’s modified adjusted gross income, plus

1 ~~(B) the aggregate modified adjusted gross incomes of all other~~  
2 individuals who:  
3 (i) were taken into account in determining the taxpayer's family  
4 size; and  
5 (ii) were required to file a federal tax return for the taxable year.  
6 (5)(A) "Minimum essential coverage" means any of the following:  
7 (i) Coverage under government-sponsored programs, including:  
8 (I) Medicare;  
9 (II) Medicaid;  
10 (III) the Children's Health Insurance Program (CHIP);  
11 (IV) medical coverage under 10 U.S.C. chapter 55, including  
12 coverage under the TRICARE program;  
13 (V) comprehensive medical coverage through the U.S.  
14 Department of Veterans Affairs health care program;  
15 (VI) a health plan for Peace Corps volunteers pursuant to  
16 22 U.S.C. § 2504(e); and  
17 (VII) the Nonappropriated Fund Health Benefits Program of  
18 the Department of Defense, established under Section 249 of the National  
19 Defense Authorization Act for Fiscal Year 1995, Pub. L. No. 103-337;  
20 (ii) coverage under an eligible employer-sponsored plan;  
21 ~~(iii) coverage under a health plan offered in the individual market;~~

1 (iv) coverage under a grandfathered plan issued pursuant to

2 8 V.S.A. § 4080g; and

3 (v) such other coverage as the Department of Financial  
4 Regulation, in consultation with the Department of Vermont Health Access and  
5 the Green Mountain Care Board, recognizes as providing minimum essential  
6 coverage.

7 (B) The term “minimum essential coverage” does not include any of  
8 the following:

9 (i) health insurance coverage that consists of coverage of excepted  
10 benefits:

11 (I) described in Section 2791(c)(1) of the Public Health Service  
12 Act; or

13 (II) described in Section 2791(c)(2), (3), or (4) of the Public  
14 Health Service Act if the benefits are provided under a separate policy,  
15 certificate, or contract of insurance; or

16 (ii) such other coverage as the Department of Financial  
17 Regulation, in consultation with the Department of Vermont Health Access and  
18 the Green Mountain Care Board, determines does not provide minimum  
19 essential coverage.

20 (6) “Modified adjusted gross income” means adjusted gross income  
21 increased by.

1 ~~(A) any amount excluded from gross income under 26 U.S.C.~~  
2 ~~§ 911; and~~

3 ~~(B) any amount of interest received or accrued by the taxpayer~~  
4 ~~during the taxable year that is exempt from taxation.~~

5 § 10452. REQUIREMENT TO MAINTAIN MINIMUM ESSENTIAL  
6 COVERAGE

7 An applicable individual shall ensure that the individual and any dependent  
8 of the individual who is also an applicable individual is covered at all times  
9 under minimum essential coverage.

10 § 10453. SHARED RESPONSIBILITY REQUIREMENT; PENALTY

11 (a) If a taxpayer who is an applicable individual, or any applicable  
12 individual for whom the taxpayer is liable, fails to meet the requirement to  
13 maintain minimum essential coverage set forth in section 10452 of this chapter  
14 for one or more months of the taxable year, then, unless the taxpayer qualifies  
15 for an exemption under section 10455 or 10456 of this chapter, there shall be  
16 imposed on the taxpayer a penalty in an amount determined under subsection  
17 (c) of this section.

18 (b) Any penalty imposed pursuant to this section for any month shall be  
19 included with the taxpayer's return under chapter 151 of this title for the  
20 taxable year that includes that month.

21 ~~(c) If an individual with respect to whom a penalty is imposed by this~~

1 section for any month:

2 (1) is a dependent, as defined in 26 U.S.C. § 152, of another taxpayer  
3 for the taxable year including that month, the other taxpayer shall be liable for  
4 the penalty, or

5 (2) files a joint return for the taxable year including that month, the  
6 individual and his or her spouse shall be jointly liable for the penalty.

7 § 10454. AMOUNT OF PENALTY

8 (a) In general. The amount of the penalty imposed by this section on any  
9 taxpayer for any taxable year for failure to maintain minimum essential  
10 coverage during one or more months of that year shall be equal to the lesser  
11 of:

12 (1) the sum of the monthly penalty amounts determined in subsection  
13 (b) of this section for the month or months during the taxable year in which  
14 one or more such failures occurred; or

15 (2) an amount equal to the average premium for the applicable family  
16 size involved for a bronze-level plan offered through the Vermont Health  
17 Benefit Exchange in the calendar year with or within which the taxable  
18 year ends.

19 (b) Monthly payment amounts. For purposes of subdivision (a)(1) of this  
20 section, the monthly penalty amount with respect to any taxpayer for any  
21 month during which a failure to maintain minimum essential coverage

1 ~~occurred is an amount equal to one twelfth of the greater of the amounts~~

2 ~~determined pursuant to subdivisions (1) and (2) of this subsection:~~

3 ~~(1) Flat dollar amounts. An amount equal to the lesser of:~~

4 ~~(A) the sum of the applicable dollar amounts set forth in subsection~~  
5 ~~(c) of this section for all individuals with respect to whom the failure occurred~~  
6 ~~during that month; or~~

7 ~~(B) 300 percent of the applicable dollar amount, determined without~~  
8 ~~regard to subdivision (c)(2) of this section, for the calendar year with or within~~  
9 ~~which the taxable year ends.~~

10 ~~(2) Percentage of income. An amount equal to 2.5 percent of the excess~~  
11 ~~of the taxpayer's household income for the taxable year over the amount of~~  
12 ~~gross income specified in 26 U.S.C. § 6012(a)(1) with respect to the taxpayer~~  
13 ~~for the taxable year.~~

14 ~~(c) Applicable dollar amount.~~

15 ~~(1) The applicable dollar amount shall be \$695.00. For each calendar~~  
16 ~~year after 2019, the applicable dollar amount shall be adjusted by a percentage~~  
17 ~~equal to any percentage change in the premium for the second lowest-cost~~  
18 ~~bronze-level plan in the Vermont Health Benefit Exchange.~~

19 ~~(2) Notwithstanding the provisions of subdivision (1) of this subsection,~~  
20 ~~if an applicable individual has not attained 18 years of age as of the beginning~~  
21 ~~of a month, the applicable dollar amount with respect to that individual shall~~

1 ~~be equal to one-half of the applicable dollar amount for the calendar year in~~  
2 ~~which the month occurs.~~

3 § 10453. EXEMPTIONS

4 No penalty shall be imposed pursuant to section 10453 of this chapter with  
5 respect to any of the following:

6 (1) Individuals who cannot afford coverage.

7 (A) No penalty shall be imposed on any applicable individual for any  
8 month if the individual's required contribution, determined on an annual basis,  
9 for coverage for the month exceeds 8.3 percent of the individual's household  
10 income for the taxable year. For purposes of this subdivision (A), the  
11 taxpayer's household income shall be increased by any exclusion from gross  
12 income for any portion of the required contribution made through a salary  
13 reduction arrangement.

14 (B)(i) As used in this subdivision (1), "required contribution" means:

15 (I) in the case of an individual eligible to purchase minimum  
16 essential coverage through an eligible employer-sponsored plan, the portion of  
17 the annual premium that would be paid by the individual for self-only  
18 coverage; and

19 (II) in the case of an individual eligible only to purchase  
20 minimum essential coverage in the individual market, the annual premium for  
21 the lowest-cost bronze-level plan available through the Vermont Health Benefit

1 ~~Exchange, reduced by the amount of the federal premium tax credit for which~~  
2 ~~the individual would be eligible under 26 U.S.C. § 36B and the amount of~~  
3 ~~Vermont premium assistance available to the individual under 33 V.S.A.~~  
4 ~~§ 1812(a).~~

5 ~~(ii) For purposes of subdivision (i)(I) of this subdivision (1)(B), if~~  
6 ~~an applicable individual is eligible for minimum essential coverage through an~~  
7 ~~employer by reason of a relationship to an employee, the determination under~~  
8 ~~subdivision (A) of this subdivision (1) shall be made by reference to the~~  
9 ~~required contribution of the employee.~~

10 ~~(C) For each plan year after 2019, the percentage in subdivision (A)~~  
11 ~~of this subdivision (1) shall be substituted with the percentage that the~~  
12 ~~Commissioner of Financial Regulation, in consultation with the Commissioner~~  
13 ~~of Vermont Health Access and the Chair of the Green Mountain Care Board,~~  
14 ~~determines reflects the excess of the rate of premium growth for health benefit~~  
15 ~~plans between the preceding calendar year and 2018 over the rate of income~~  
16 ~~growth in this State for the same period.~~

17 ~~(2) Taxpayers with income below the federal filing threshold. No~~  
18 ~~penalty shall be imposed on any applicable individual for any month during a~~  
19 ~~calendar year if the individual's household income for the most recent taxable~~  
20 ~~year for which the Department of Taxes determines information is available is~~  
21 ~~less than the amount of gross income specified in 26 U.S.C. § 6012(a)(1) with~~

1 respect to the taxpayer.

2 (3) Members of Indian tribes. No penalty shall be imposed on any  
3 applicable individual for any month during which the individual is a member  
4 of an Indian tribe as defined in 26 U.S.C. § 45A(c)(6).

5 (4) Months during short coverage gaps.

6 (A) No penalty shall be imposed for any month the last day of which  
7 occurred during a period in which the applicable individual was not covered  
8 by minimum essential coverage for a continuous period of less than three  
9 months. For purposes of this subdivision (4), the length of a continuous period  
10 shall be determined without regard to the calendar years in which the months  
11 of the period occurred.

12 (B) If a continuous period is greater than three months, no exemption  
13 shall be provided for any month in the period.

14 (C) If an applicable individual was not covered by minimum  
15 essential coverage for more than one continuous period of less than three  
16 months during the same calendar year, the exemption provided by this  
17 subdivision (4) shall apply only to the months in the first of such periods.

18 (D) The Commissioner of Taxes, in consultation with the  
19 Commissioner of Financial Regulation, shall adopt rules pursuant to 3 V.S.A.  
20 chapter 25 for collecting the penalty imposed by section 10453 of this chapter  
21 in cases in which a continuous period includes months in more than one

1 taxable year.

2 (5) Hardships.

3 (A) No penalty shall be imposed on any applicable individual who  
4 for any month is determined by the Commissioner of Vermont Health Access  
5 to have suffered a hardship with respect to the capability to obtain coverage  
6 under a qualified health plan, including if there is no affordable qualified  
7 health plan available through the Vermont Health Benefit Exchange or through  
8 the individual's employer to cover the individual, or if the individual meets the  
9 requirements for any other hardship exemption established by the  
10 Commissioner of Vermont Health Access by rule.

11 (B) The Commissioner of Vermont Health Access shall adopt rules  
12 pursuant to 3 V.S.A. chapter 25 defining the additional circumstances under  
13 which an applicable individual shall be deemed to have suffered a hardship  
14 under this subdivision (5) and setting forth the process for obtaining an  
15 exemption from the penalty.

16 § 10456. RELIGIOUS EXEMPTIONS

17 (a) An individual shall be exempt from the requirement to maintain  
18 minimum essential coverage and shall not be subject to a penalty under this  
19 chapter for any month if the individual has in effect an exemption from the  
20 Commissioner of Vermont Health Access certifying that the individual is:

21 (1) a member of a recognized religious sect or division thereof that is

1 described in 26 U.S.C. § 1402(g)(1); and

2 (2) an adherent of established tenets or teachings of that sect or division  
3 as described in 26 U.S.C. § 1402(g)(1).

4 (b)(1) An individual shall be exempt from the requirement to maintain  
5 minimum essential coverage and shall not be subject to a penalty under this  
6 chapter for any month if the individual is a member for the month of a health  
7 care sharing ministry.

8 (2) As used in this subsection, “health care sharing ministry” means an  
9 organization:

10 (A) that is described in 26 U.S.C. § 501(c)(3) and is exempt from  
11 taxation under 26 U.S.C. § 501(a);

12 (B) the members of which share a common set of ethical or religious  
13 beliefs and share medical expenses among members in accordance with those  
14 beliefs and without regard to the State in which a member resides or is  
15 employed;

16 (C) the members of which retain membership even after they develop  
17 a medical condition;

18 (D) that, or the predecessor of which, has been in existence at all  
19 times since December 31, 1999, and medical expenses of its members have  
20 been shared continuously and without interruption since at least December 31,  
21 1999, and

1 (E) that conducts an annual audit that is performed by an  
2 independent certified public accounting firm in accordance with generally  
3 accepted accounting principles and that is made available to the public upon  
4 request.

5 § 10457. ADMINISTRATION AND PROCEDURE

6 (a) Generally.

7 (1) The penalty provided in section 10453 of this chapter shall be paid  
8 upon notice and demand by the Department of Taxes and, except as provided  
9 in subdivision (2) of this subsection, shall be assessed and collected in the  
10 same manner as an assessable penalty under chapter 151 of this title.

11 (2) Notwithstanding any provision of law to the contrary:

12 (A) in the case of any failure by a taxpayer to pay timely any penalty  
13 imposed by this chapter, the taxpayer shall not be subject to any criminal  
14 prosecution or criminal penalty with respect to the failure; and

15 (B) the Commissioner of Taxes shall not:

16 (i) file notice of lien with respect to any property of a taxpayer by  
17 reason of any failure to pay the penalty imposed by this chapter; or

18 (ii) levy on any such property with respect to such failure.

19 (b) Reporting coverage.

20 (1) Each applicable individual who files or is required to file an  
21 individual income tax return as a resident of Vermont, either separately or

1 ~~jointly with a spouse, shall indicate on the return, in a manner prescribed by~~

2 the Commissioner of Taxes, whether the individual:

3 (A) had minimum essential coverage in effect for each of the 12  
4 months of the taxable year for which the return is filed as required by section  
5 10452 of this chapter, whether covered as an individual or as a named  
6 beneficiary of a policy covering multiple individuals; or

7 (B) claims an exemption under section 10455 or 10456 of this  
8 chapter.

9 (2) Unless exempted from the penalty pursuant to section 10455 or  
10 10456 of this chapter, a penalty shall be assessed on the return if:

11 (A) the applicable individual fails to indicate on the return as  
12 required by subdivision (1) of this subsection (b) or indicates that he or she did  
13 not have minimum essential coverage in effect, or

14 (B) the applicable individual indicates that he or she had minimum  
15 essential coverage in effect but the Commissioner of Financial Regulation, in  
16 consultation with the Commissioner of Vermont Health Access and the Chair  
17 of the Green Mountain Care Board, determines, based on the information  
18 available to him or her, that the requirement to maintain minimum essential  
19 coverage was not met.

20 (c) Collection of penalties. The Department of Taxes shall have all

21 enforcement and collection procedures available under chapter 151 of this title

1 ~~to collect any penalties assessed pursuant to this chapter. All penalties~~  
2 ~~assessed pursuant to this chapter shall be deposited into the State Health Care~~  
3 ~~Resources Fund established by 33 V.S.A. § 1901d.~~

4 ~~(1) If in any taxable year, in whole or in part, a taxpayer does not~~  
5 ~~comply with the requirement to maintain minimum essential coverage, the~~  
6 ~~Commissioner shall retain any amount overpaid by the taxpayer for purposes~~  
7 ~~of making payments; provided, however, that the amount retained shall not~~  
8 ~~exceed 50 percent of the premium for the lowest-cost bronze-level qualified~~  
9 ~~health benefit plan offered through the Vermont Health Benefit Exchange~~  
10 ~~during the previous year.~~

11 ~~(2) If the amount retained pursuant to subdivision (1) of this subsection~~  
12 ~~is insufficient to satisfy the penalty assessed, the Commissioner shall notify the~~  
13 ~~taxpayer of the balance due on the penalty and any related interest.~~

14 ~~(d) Appeals. Any applicable individual shall have the right to appeal a~~  
15 ~~penalty collected pursuant to section 10453 of this chapter or the denial of an~~  
16 ~~exemption pursuant to section 10455 or 10456 of this chapter.~~

17 ~~(e) Rulemaking. The Commissioner of Taxes, in consultation with the~~  
18 ~~Department of Financial Regulation, the Department of Vermont Health~~  
19 ~~Access, and the Green Mountain Care Board, shall adopt rules pursuant to~~  
20 ~~3 V.S.A. chapter 25 as needed to carry out the purposes of this chapter.~~

21 ~~Sec. 2. EFFECTIVE DATE~~

1 ~~This act shall take effect on January 1, 2019.~~

*Sec. 1. 32 V.S.A. chapter 244 is added to read:*

CHAPTER 244. REQUIREMENT TO MAINTAIN

MINIMUM ESSENTIAL COVERAGE

§ 10451. DEFINITIONS

*As used in this chapter:*

*(1) "Applicable individual" means, with respect to any month, an individual other than the following:*

*(A) an individual with a religious conscience exemption;*

*(B) an individual not lawfully present in the United States; or*

*(C) an individual for any month if for the month the individual is incarcerated, other than incarceration pending the disposition of charges.*

*(2) "Eligible employer-sponsored plan" shall have the same meaning as in 26 U.S.C. § 5000A, as amended, and as in effect on December 31, 2017, and any related regulations.*

*(3) "Minimum essential health coverage" shall have the same meaning as in 26 U.S.C. § 5000A, as amended, and as in effect on December 31, 2017, and any related regulations.*

§ 10452. REQUIREMENT TO MAINTAIN MINIMUM ESSENTIAL COVERAGE

*An applicable individual shall ensure that the individual and any dependent*

of the individual who is also an applicable individual is covered at all times under minimum essential coverage.

*Sec. 2. INDIVIDUAL MANDATE WORKING GROUP; REPORT*

(a) Creation. There is created the Individual Mandate Working Group to develop recommendations regarding administration and enforcement of the individual mandate to maintain minimum essential health coverage.

(b) Membership. The Working Group shall be composed of the following members:

(1) the Secretary of Human Services or designee;

(2) the Commissioner of Financial Regulation or designee;

(3) the Commissioner of Taxes or designee;

(4) the Chair of the Green Mountain Care Board or designee;

(5) the Chief Health Care Advocate or designee; and

(6) one representative of each health insurer offering qualified health benefit plans through the Vermont Health Benefit Exchange.

(c) Powers and duties. The Working Group shall develop recommendations regarding administration and enforcement of the individual mandate to maintain minimum essential health coverage, including:

(1) enforcement mechanisms, such as financial penalties for failure to maintain minimum essential health coverage;

(2) additional forms of coverage that should or should not be considered

minimum essential coverage;

(3) exemptions from compliance with the individual mandate, including exemptions related to religion, affordability, hardship, and short gaps in coverage; and

(4) procedures for administration of the individual mandate and for collection of any financial penalties by the Department of Taxes.

(d) Assistance. The Working Group shall have the administrative, technical, and legal assistance of the Green Mountain Care Board, the Department of Vermont Health Access, the Department of Financial Regulation, and the Department of Taxes.

(e) Report. On or before November 1, 2018, the Working Group shall provide its recommendations for administration and enforcement of the individual mandate to the House Committees on Health Care and on Ways and Means, the Senate Committees on Health and Welfare and on Finance, the Joint Fiscal Committee, and the Health Reform Oversight Committee.

(f) Meetings.

(1) The Chair of the Green Mountain Care Board or designee shall call the first meeting of the Working Group to occur on or before July 1, 2018.

(2) The Working Group shall cease to exist on January 1, 2019.

### *Sec. 3. EFFECTIVE DATES*

(a) Sec. 1 (32 V.S.A. chapter 244) shall take effect on January 1, 2019.

(b) Sec. 2 (Individual Mandate Working Group) and this section shall take effect on passage.