

1 Introduced by Representatives Briglin of Thetford, Poirier of Barre City, and  
2 Pugh of South Burlington

3 Referred to Committee on

4 Date:

5 Subject: Health; health insurance; individual mandate

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

9 An act relating to establishing a State individual mandate

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

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

12 CHAPTER 244. REQUIREMENT TO MAINTAIN

13 MINIMUM ESSENTIAL COVERAGE

14 § 10451. DEFINITIONS

15 As used in this chapter:

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

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

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

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

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

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

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

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

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

15           (A) the taxpayer’s modified adjusted gross income; plus

16           (B) the aggregate modified adjusted gross incomes of all other  
17           individuals who:

18           (i) were taken into account in determining the taxpayer’s family  
19           size; and

20           (ii) were required to file a federal tax return for the taxable year.

- 1           (5)(A) “Minimum essential coverage” means any of the following:
- 2                   (i) Coverage under government-sponsored programs, including:
- 3                           (I) Medicare;
- 4                           (II) Medicaid;
- 5                           (III) the Children’s Health Insurance Program (CHIP);
- 6                           (IV) medical coverage under 10 U.S.C. chapter 55, including
- 7 coverage under the TRICARE program;
- 8                           (V) comprehensive medical coverage through the U.S.
- 9 Department of Veterans Affairs health care program;
- 10                           (VI) a health plan for Peace Corps volunteers pursuant to
- 11 22 U.S.C. § 2504(e); and
- 12                           (VII) the Nonappropriated Fund Health Benefits Program of
- 13 the Department of Defense, established under Section 249 of the National
- 14 Defense Authorization Act for Fiscal Year 1995, Pub. L. No. 103-337;
- 15                           (ii) coverage under an eligible employer-sponsored plan;
- 16                           (iii) coverage under a health plan offered in the individual market;
- 17                           (iv) coverage under a grandfathered plan issued pursuant to
- 18 8 V.S.A. § 4080g; and
- 19                           (v) such other coverage as the Department of Financial
- 20 Regulation, in consultation with the Department of Vermont Health Access

1 and the Green Mountain Care Board, recognizes as providing minimum  
2 essential coverage.

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

5 (i) health insurance coverage that consists of coverage of excepted  
6 benefits:

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

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

12 (ii) such other coverage as the Department of Financial  
13 Regulation, in consultation with the Department of Vermont Health Access  
14 and the Green Mountain Care Board, determines does not provide minimum  
15 essential coverage.

16 (6) “Modified adjusted gross income” means adjusted gross income  
17 increased by:

18 (A) any amount excluded from gross income under 26 U.S.C.  
19 § 911; and

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

1     § 10452. REQUIREMENT TO MAINTAIN MINIMUM ESSENTIAL

2             COVERAGE

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

6     § 10453. SHARED RESPONSIBILITY REQUIREMENT; PENALTY

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

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

17            (c) If an individual with respect to whom a penalty is imposed by this  
18            section for any month:

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

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

3           § 10454. AMOUNT OF PENALTY

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

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

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

14           (b) Monthly payment amounts. For purposes of subdivision (a)(1) of this  
15           section, the monthly penalty amount with respect to any taxpayer for any  
16           month during which a failure to maintain minimum essential coverage  
17           occurred is an amount equal to one-twelfth of the greater of the amounts  
18           determined pursuant to subdivisions (1) and (2) of this subsection:

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

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

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

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

12           (c) Applicable dollar amount.

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

17                   (2) Notwithstanding the provisions of subdivision (1) of this subsection,  
18           if an applicable individual has not attained 18 years of age as of the beginning  
19           of a month, the applicable dollar amount with respect to that individual shall be  
20           equal to one-half of the applicable dollar amount for the calendar year in which  
21           the month occurs.

1     § 10455. EXEMPTIONS

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

4             (1) Individuals who cannot afford coverage.

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

12                     (B)(i) As used in this subdivision (1), “required contribution” means:

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

17                             (II) in the case of an individual eligible only to purchase  
18 minimum essential coverage in the individual market, the annual premium for  
19 the lowest-cost bronze-level plan available through the Vermont Health  
20 Benefit Exchange, reduced by the amount of the federal premium tax credit for  
21 which the individual would be eligible under 26 U.S.C. § 36B and the amount



1 of Vermont premium assistance available to the individual under 33 V.S.A.  
2 § 1812(a).

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

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

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

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

4           (4) Months during short coverage gaps.

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

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

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

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

1           (5) Hardships.

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

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

15           § 10456. RELIGIOUS EXEMPTIONS

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

20           (1) a member of a recognized religious sect or division thereof that is  
21 described in 26 U.S.C. § 1402(g)(1); and

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

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

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

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

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

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

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

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

4           § 10457. ADMINISTRATION AND PROCEDURE

5           (a) Generally.

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

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

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

14           (B) the Commissioner of Taxes shall not:

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

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

18           (b) Reporting coverage.

19           (1) Each applicable individual who files or is required to file an  
20           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.

1       Sec. 2. EFFECTIVE DATE

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