

# STATE OF NEW YORK

8470

## IN SENATE

March 4, 2022

Introduced by Sen. KENNEDY -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance

AN ACT to amend the insurance law, in relation to imposing a tax on out-of-state transfers, dividends, payments, and loans by certain accident and health insurance companies and health maintenance organizations

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The insurance law is amended by adding a new section 9112  
2 to read as follows:

3 § 9112. Tax on out-of-state transfers, dividends, payments, and loans  
4 by accident and health insurance companies licensed under article  
5 forty-two of this chapter and health maintenance organizations. (a) As  
6 used in this section the following terms shall have the following mean-  
7 ings:

8 (1) "Domestic insurer" means an insurer that is an accident and health  
9 insurance company licensed under article forty-two of this chapter or an  
10 organization complying with the provisions of article forty-four of the  
11 public health law.

12 (2) "Commercial program" means any program of health insurance other  
13 than (i) programs for individuals covered by article five of the social  
14 services law, article twenty-five of the public health law, titles  
15 XVIII, XIX, and XXI of the federal social security act, or chapter 89 of  
16 title 5 of the United States code or (ii) programs of insurance avail-  
17 able on the health benefit exchange established by section two hundred  
18 sixty-eight of the public health law.

19 (b) Effective on and after April first, two thousand twenty-two, there  
20 shall be paid by every domestic insurer to the superintendent, on or  
21 before the first day of March, a tax equal to nine and sixty-three one  
22 hundredths percent of any dividends, ordinary, extraordinary, or other-  
23 wise, or other funds deriving from subscriber prepayments or premiums  
24 received for the domestic insurer's commercial programs that are paid,  
25 transferred, distributed, or loaned to an entity in such domestic insur-  
26 er's holding company system that is domiciled in any other state;

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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1 provided, however, that payments for services performed, including  
2 pursuant to reinsurance treaties or agreements, or agreements for the  
3 rendering of services on a regular or systematic basis, shall not be  
4 subject to such tax. Such tax shall be in addition to any tax due under  
5 article thirty-three of the tax law and shall apply only to a payment,  
6 transfer, distribution, or loan made to an entity domiciled out-of-state  
7 within the domestic insurer's holding company system, and not also to  
8 subsequent dividends or distributions to shareholders or other persons  
9 or entities made after the initial payment, transfer, distribution, or  
10 loan that is taxed in accordance with this section.

11 (c) Each domestic insurer shall report all payments, transfers,  
12 distributions and loans subject to subsection (b) of this section, and  
13 taxes paid thereon, to the superintendent in the manner and form  
14 prescribed by the superintendent.

15 (d) All taxes collected or received under this section shall be depos-  
16 ited into the New York state agency trust fund, distressed provider  
17 assistance account.

18 § 2. Subsection (a) of section 1109 of the insurance law, as amended  
19 by section 1 of part A of chapter 78 of the laws of 2014, is amended to  
20 read as follows:

21 (a) An organization complying with the provisions of article forty-  
22 four of the public health law may operate without being licensed under  
23 this chapter and without being subject to any provisions of this chap-  
24 ter, except: (1) to the extent that such organization must comply with  
25 the provisions of this chapter by virtue of such article, and (2) the  
26 provisions of sections three hundred eight, one thousand three hundred  
27 one, one thousand three hundred two, one thousand three hundred seven,  
28 one thousand three hundred twenty-two, nine thousand one hundred six and  
29 nine thousand one hundred twelve, with regard to health maintenance  
30 organizations that are domiciled in this state and certified or operat-  
31 ing in at least one other state, two thousand one hundred three, two  
32 thousand one hundred twelve, two thousand one hundred fourteen, two  
33 thousand one hundred fifteen, two thousand one hundred seventeen, two  
34 thousand one hundred twenty-three, two thousand six hundred eight-a, two  
35 thousand six hundred twelve, three thousand two hundred twenty-four-a,  
36 four thousand three hundred eight, four thousand three hundred seven-  
37 teen, four thousand three hundred eighteen, four thousand three hundred  
38 twenty, four thousand three hundred twenty-one, four thousand three  
39 hundred twenty-two and four thousand three hundred twenty-three of this  
40 chapter.

41 § 3. Subsection (d) of section 9106 of the insurance law is amended to  
42 read as follows:

43 (d) any corporation otherwise subject to the provisions of this arti-  
44 cle which as a health maintenance organization offers a comprehensive  
45 health services plan pursuant to the provisions of article forty-four of  
46 the public health law to subscribers. Such exemption shall be limited to  
47 that income derived from subscriber prepayments to such plan. Notwith-  
48 standing the foregoing, section nine thousand one hundred twelve of this  
49 article shall apply to all domestic insurers within the meaning of that  
50 section.

51 § 4. This act shall take effect immediately, except that if this act  
52 shall have become a law on or after April 1, 2022 this act shall take  
53 effect immediately and shall be deemed to have been in full force and  
54 effect on and after April 1, 2022.