STATE OF NEW YORK

3122

2023-2024 Regular Sessions

IN SENATE

January 27, 2023

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:

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

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

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

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

(b) Effective on and after April first, two thousand twenty-three, there shall be paid by every domestic insurer to the superintendent, on or before the first day of March, a tax equal to nine and sixty-three one hundredths percent of any dividends, ordinary, extraordinary, or otherwise, or other funds deriving from subscriber prepayments or premiums received for the domestic insurer's commercial programs that are paid, transferred, distributed, or loaned to an entity in such domestic insurer'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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provided, however, that payments for services performed, including pursuant to reinsurance treaties or agreements, or agreements for the rendering of services on a regular or systematic basis, shall not be subject to such tax. Such tax shall be in addition to any tax due under article thirty-three of the tax law and shall apply only to a payment, transfer, distribution, or loan made to an entity domiciled out-of-state within the domestic insurer's holding company system, and not also to subsequent dividends or distributions to shareholders or other persons or entities made after the initial payment, transfer, distribution, or loan that is taxed in accordance with this section.

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

(d) All taxes collected or received under this section shall be deposited into the New York state agency trust fund, distressed provider assistance account.

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

(a) An organization complying with the provisions of article forty-four of the public health law may operate without being licensed under this chapter and without being subject to any provisions of this chapter, except: (1) to the extent that such organization must comply with the provisions of this chapter by virtue of such article, and (2) the provisions of sections three hundred eight, one thousand three hundred one, one thousand three hundred two, one thousand three hundred seven, one thousand three hundred twenty-two, **nine thousand one hundred six and nine thousand one hundred twelve,** with regard to health maintenance organizations that are domiciled in this state and certified or operating in at least one other state, two thousand one hundred three, two thousand one hundred twelve, two thousand one hundred fourteen, two thousand one hundred fifteen, two thousand one hundred seventeen, two thousand one hundred twenty-three, two thousand six hundred eight-a, two thousand six hundred twelve, three thousand two hundred twenty-four-a, four thousand three hundred eight, four thousand three hundred seventeen, four thousand three hundred eighteen, four thousand three hundred twenty, four thousand three hundred twenty-one, four thousand three hundred twenty-two and four thousand three hundred twenty-three of this chapter.

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

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

§ 4. This act shall take effect immediately, except that if this act shall have become a law on or after April 1, 2023 this act shall take effect immediately and shall be deemed to have been in full force and effect on and after April 1, 2023.