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SENATE BILL DRS55018-MRxf-8B\*

Short Title: Gross Premium Tax/PHPs. (Public)

Sponsors: Senator Hise (Primary Sponsor).

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO SUBJECT PREPAID HEALTH PLANS LICENSED BY THE DEPARTMENT  
3 OF INSURANCE TO THE GROSS PREMIUM TAX.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.(a)** The title of Article 8B of Chapter 105 of the General Statutes reads  
6 as rewritten:

7 "Article 8B.

8 Taxes Upon Insurance ~~Companies.~~ Companies and Prepaid Health Plans."

9 **SECTION 1.(b)** G.S. 105-228.3 reads as rewritten:

10 **"§ 105-228.3. Definitions.**

11 The following definitions apply in this Article:

12 (1) Article 65 corporation. – A corporation subject to Article 65 of Chapter 58 of  
13 the General Statutes, regulating hospital, medical, and dental service  
14 corporations.

15 ~~(1a)~~(2) Captive insurance company. – Defined in G.S. 58-10-340.

16 (3) Capitation payment. – As defined in 42 CFR 438.2.

17 ~~(1b)~~(4) Foreign captive insurance company. – A captive insurance company as  
18 defined in G.S. 58-10-340(9), except that such company is not formed or  
19 licensed under the laws of this State but is formed and licensed under the laws  
20 of any jurisdiction within the United States other than this State.

21 ~~(2)~~(5) Insurer. – An insurer as defined in G.S. 58-1-5 or a group of employers who  
22 have pooled their liabilities pursuant to G.S. 97-93 of the Workers'  
23 Compensation Act.

24 (6) Prepaid Health Plan. – An entity holding a prepaid health plan license under  
25 Article 93 of Chapter 58 of the General Statutes.

26 ~~(3)~~(7) Self-insurer. – An employer that carries its own risk pursuant to G.S. 97-93 of  
27 the Workers' Compensation Act."

28 **SECTION 1.(c)** G.S. 105-228.5 reads as rewritten:

29 **"§ 105-228.5. Taxes measured by gross premiums.**

30 (a) Tax Levied. – A tax is levied in this section on insurers, Article 65 corporations, health  
31 maintenance organizations, prepaid health plans, and self-insurers. An insurer, health  
32 maintenance organization, prepaid health plan, or Article 65 corporation that is subject to the tax  
33 levied by this section is not subject to franchise or income taxes imposed by Articles 3 and 4,  
34 respectively, of this Chapter.

35 (b) Tax Base. –



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- 1 (1) Insurers. – The tax imposed by this section on an insurer or a health  
2 maintenance organization shall be measured by gross premiums from business  
3 done in this State during the preceding calendar year.
- 4 (2) Repealed by Session Laws 2006-196, effective for taxable years beginning on  
5 or after January 1, 2008.
- 6 (3) Article 65 Corporations. – The tax imposed by this section on an Article 65  
7 corporation shall be measured by gross collections from membership dues,  
8 exclusive of receipts from cost plus plans, received by the corporation during  
9 the preceding calendar year.
- 10 (4) Self-insurers. – The tax imposed by this section on a self-insurer shall be  
11 measured by the gross premiums that would be charged against the same or  
12 most similar industry or business, taken from the manual insurance rate then  
13 in force in this State, applied to the self-insurer's payroll for the previous  
14 calendar year as determined under Article 36 of Chapter 58 of the General  
15 Statutes modified by the self-insurer's approved experience modifier.
- 16 (5) Prepaid Health Plans. – The tax imposed by this section on a prepaid health  
17 plan shall be measured by gross capitation payments received by the prepaid  
18 health plan from the Department of Health and Human Services for services  
19 provided to enrollees in the State Medicaid program or NC Health Choice  
20 program in the preceding calendar year.

21 (b1) Calculation of Tax Base. – In determining the amount of gross premiums from  
22 business in this State, all gross premiums received in this State, credited to policies written or  
23 procured in this State, or derived from business written in this State shall be deemed to be for  
24 contracts covering persons, property, or risks resident or located in this State unless one of the  
25 following applies:

- 26 (1) The premiums are properly reported and properly allocated as being received  
27 from business done in some other nation, territory, state, or states.
- 28 (2) The premiums are from policies written in federal areas for persons in military  
29 service who pay premiums by assignment of service pay.

30 Gross premiums from business done in this State in the case of life insurance contracts,  
31 including supplemental contracts providing for disability benefits, accidental death benefits, or  
32 other special benefits that are not annuities, means all premiums collected in the calendar year,  
33 other than for contracts of reinsurance, for policies the premiums on which are paid by or credited  
34 to persons, firms, or corporations resident in this State, or in the case of group policies, for  
35 contracts of insurance covering persons resident within this State. The only deductions allowed  
36 shall be for premiums refunded on policies rescinded for fraud or other breach of contract and  
37 premiums that were paid in advance on life insurance contracts and subsequently refunded to the  
38 insured, premium payer, beneficiary or estate. Gross premiums shall be deemed to have been  
39 collected for the amounts as provided in the policy contracts for the time in force during the year,  
40 whether satisfied by cash payment, notes, loans, automatic premium loans, applied dividend, or  
41 by any other means except waiver of premiums by companies under a contract for waiver of  
42 premium in case of disability.

43 Gross premiums from business done in this State in the case of prepaid health plans means  
44 all capitation payments received by a prepaid health plan from the Department of Health and  
45 Human Services for services provided to enrollees in the State Medicaid program or NC Health  
46 Choice program in the calendar year. Capitation payments refunded by a prepaid health plan to  
47 the State are the only allowable deductions.

48 Gross premiums from business done in this State for all other health care plans and contracts  
49 of insurance, including contracts of insurance required to be carried by the Workers'  
50 Compensation Act, means all premiums written during the calendar year, or the equivalent  
51 thereof in the case of self-insurers under the Workers' Compensation Act, for contracts covering

1 property or risks in this State, other than for contracts of reinsurance, whether the premiums are  
2 designated as premiums, deposits, premium deposits, policy fees, membership fees, or  
3 assessments. Gross premiums shall be deemed to have been written for the amounts as provided  
4 in the policy contracts, new and renewal, becoming effective during the year irrespective of the  
5 time or method of making payment or settlement for the premiums, and with no deduction for  
6 dividends whether returned in cash or allowed in payment or reduction of premiums or for  
7 additional insurance, and without any other deduction except for return of premiums, deposits,  
8 fees, or assessments for adjustment of policy rates or for cancellation or surrender of policies.

9 (c) Exclusions. – Every insurer, in computing the premium tax, shall exclude all of the  
10 following from the gross amount of premiums, and the gross amount of excluded premiums is  
11 exempt from the tax imposed by this section:

12 (1) All premiums received on or after July 1, 1973, from policies or contracts  
13 issued in connection with the funding of a pension, annuity, or profit-sharing  
14 plan qualified or exempt under section 401, 403, 404, 408, 457 or 501 of the  
15 Code as defined in G.S. 105-228.90.

16 (2) Premiums or considerations received from annuities, as defined in  
17 G.S. 58-7-15.

18 (3) Funds or considerations received in connection with funding agreements, as  
19 defined in G.S. 58-7-16.

20 (4) The following premiums, to the extent federal law prohibits their taxation  
21 under this Article:

22 a. Federal Employees Health Benefits Plan premiums.

23 b. ~~Medicaid or Medicare~~ premiums.

24 c. Medicaid premiums, other than capitation payments, paid by or on  
25 behalf of a Medicaid beneficiary.

26 (d) Tax Rates; Disposition. –

27 (1) Workers' Compensation. – The tax rate to be applied to gross premiums, or  
28 the equivalent thereof in the case of self-insurers, on contracts applicable to  
29 liabilities under the Workers' Compensation Act is two and five-tenths percent  
30 (2.5%). The net proceeds shall be credited to the General Fund.

31 (2) Other Insurance Contracts. – The tax rate to be applied to gross premiums on  
32 all other taxable contracts issued by insurers or health maintenance  
33 organizations and to be applied to gross premiums and gross collections from  
34 membership dues, exclusive of receipts from cost plus plans, received by  
35 Article 65 corporations is one and nine-tenths percent (1.9%). The net  
36 proceeds shall be credited to the General Fund.

37 (2a) Prepaid Health Plans. – The tax rate to be applied to gross premiums is one  
38 and nine-tenths percent (1.9%). The net proceeds shall be credited to the  
39 General Fund.

40 (3) Additional Rate on Property Coverage Contracts. – An additional tax at the  
41 rate of seventy-four hundredths percent (0.74%) applies to gross premiums on  
42 insurance contracts for property coverage. The tax is imposed on ten percent  
43 (10%) of the gross premiums from insurance contracts for automobile  
44 physical damage coverage and on one hundred percent (100%) of the gross  
45 premiums from all other contracts for property coverage. Twenty percent  
46 (20%) of the net proceeds of this additional tax must be credited to the  
47 Volunteer Fire Department Fund established in Article 87 of Chapter 58 of  
48 the General Statutes. Twenty percent (20%) of the net proceeds must be  
49 credited to the Department of Insurance for disbursement pursuant to  
50 G.S. 58-84-25. Up to twenty percent (20%), as determined in accordance with  
51 G.S. 58-87-10(f), must be credited to the Workers' Compensation Fund. The

1 remaining net proceeds must be credited to the General Fund. The additional  
2 tax imposed on property coverage contracts under this subdivision is a special  
3 purpose assessment based on gross premiums and not a gross premiums tax.

4 The following definitions apply in this subdivision:

5 a. Automobile physical damage. – The following lines of business  
6 identified by the NAIC: private passenger automobile physical  
7 damage and commercial automobile physical damage.

8 b. Property coverage. – The following lines of business identified by the  
9 NAIC: fire, farm owners multiple peril, homeowners multiple peril,  
10 nonliability portion of commercial multiple peril, ocean marine, inland  
11 marine, earthquake, private passenger automobile physical damage,  
12 commercial automobile physical damage, aircraft, and boiler and  
13 machinery. The term also includes insurance contracts for wind  
14 damage.

15 c. NAIC. – National Association of Insurance Commissioners.

16 (4) Repealed by Session Laws 2006-196, effective for taxable years beginning on  
17 or after January 1, 2008.

18 (5) Repealed by Session Laws 2003-284, s. 43.1, effective for taxable years  
19 beginning on or after January 1, 2004.

20 (6) Repealed by Session Laws 2005-276, s. 38.4(a), effective for taxable years  
21 beginning on or after January 1, 2007.

22 (e) Report and Payment. – Each taxpayer doing business in this State shall, within the  
23 first 15 days of March, file with the Secretary of Revenue a full and accurate report of the total  
24 gross premiums as defined in this section, the payroll and other information required by the  
25 Secretary in the case of a self-insurer, or the total gross collections from membership dues  
26 exclusive of receipts from cost plus plans collected in this State during the preceding calendar  
27 year. The taxes imposed by this section shall be remitted to the Secretary with the report.

28 (f) Installment Payments Required. – Taxpayers that are subject to the tax imposed by  
29 this section and have a premium tax liability of ten thousand dollars (\$10,000) or more for  
30 business done in North Carolina during the immediately preceding year shall remit three equal  
31 quarterly installments with each installment equal to at least thirty-three and one-third percent  
32 (33 1/3%) of the premium tax liability incurred in the immediately preceding taxable year. The  
33 quarterly installment payments shall be made on or before April 15, June 15, and October 15 of  
34 each taxable year. The ~~company~~ taxpayer shall remit the balance by the following March 15 in  
35 the same manner provided in this section for annual returns.

36 The Secretary may permit an insurance company or prepaid health plan to pay less than the  
37 required estimated payment when the insurer or prepaid health plan reasonably believes that the  
38 total estimated payments made for the current year will exceed the total anticipated tax liability  
39 for the year.

40 An underpayment or an overpayment of an installment payment required by this subsection  
41 accrues interest in accordance with G.S. 105-241.21. An overpayment of tax shall be credited to  
42 the ~~company~~ taxpayer and applied against the taxes imposed upon the ~~company~~ taxpayer under  
43 this Article.

44 (g) Exemptions. – This section does not apply to farmers' mutual assessment fire  
45 insurance companies or to fraternal orders or societies that do not operate for a profit and do not  
46 issue policies on any person except members. This section does not apply to a captive insurance  
47 company taxed under G.S. 105-228.4A."

48 **SECTION 2.** In accordance with Section 8(d) of S.L. 2018-49, the provisions of  
49 G.S. 143C-5-2 do not apply to this act.

50 **SECTION 3.** This act is effective October 1, 2019, and applies to capitation  
51 payments received by prepaid health plans on or after that date.