

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

H

1

HOUSE BILL 114*

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

Sponsors: Representatives Lambeth, Dobson, and Howard (Primary Sponsors).
For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Insurance, if favorable, Finance, if favorable, Rules, Calendar, and Operations of
the House

February 21, 2019

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.



1 (b) Tax Base. –

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- 5 (2) Repealed by Session Laws 2006-196, effective for taxable years beginning on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

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

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

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

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

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

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

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

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

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

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

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

23 a. Federal Employees Health Benefits Plan premiums.

24 b. ~~Medicaid or Medicare~~ premiums.

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

27 (d) Tax Rates; Disposition. –

28 (1) Workers' Compensation. – The tax rate to be applied to gross premiums, or
29 the equivalent thereof in the case of self-insurers, on contracts applicable to
30 liabilities under the Workers' Compensation Act is two and five-tenths percent
31 (2.5%). The net proceeds shall be credited to the General Fund.

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

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

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

1 G.S. 58-87-10(f), must be credited to the Workers' Compensation Fund. The
2 remaining net proceeds must be credited to the General Fund. The additional
3 tax imposed on property coverage contracts under this subdivision is a special
4 purpose assessment based on gross premiums and not a gross premiums tax.

5 The following definitions apply in this subdivision:

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

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

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

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

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

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

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

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

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

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

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

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

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