

# ANALYSIS OF ORIGINAL BILL

## Franchise Tax Board

Author: Donnelly Analyst: Jane Raboy Bill Number: AB 2367  
Related Bills: See Legislative History Telephone: 845-5718 Introduced Date: February 21, 2014  
Attorney: Bruce Langston Sponsor: \_\_\_\_\_

**SUBJECT:** Health Care Coverage Credit

### SUMMARY

This bill would create a tax credit, under the Personal Income Tax Law (PITL), for health insurance expenses.

### RECOMMENDATION

No position.

### REASON FOR THE BILL

The reason for this bill is to provide tax relief to individuals that experience an increase in health insurance premiums resulting from the cancellation of existing health insurance plans.

### EFFECTIVE/OPERATIVE DATE

As a tax levy, this bill would be effective immediately upon enactment and specifically operative for taxable years beginning on or after January 1, 2014, and before January 1, \_\_\_\_\_.

### ANALYSIS

#### FEDERAL/STATE LAW

Existing state and federal laws provide various tax credits designed to provide tax relief for taxpayers who incur certain expenses (e.g., child adoption) or to influence behavior, including business practices and decisions (e.g., research credits or economic development area hiring credits). These credits generally are designed to provide incentives for taxpayers to perform various actions or activities that they may not otherwise undertake.

There are currently no federal or state credits comparable to the credit this bill would create.

Board Position:

\_\_\_\_\_ S      \_\_\_\_\_ NA        X   NP  
\_\_\_\_\_ SA      \_\_\_\_\_ O      \_\_\_\_\_ NAR  
\_\_\_\_\_ N      \_\_\_\_\_ OUA

Executive Officer

Date

Selvi Stanislaus

04/10/14

## State Law

The following sections of state law are referenced in the bill to define certain phrases.

Section 1345 of the Health and Safety Code defines a health care service plan or specialized health care service plan to mean either of the following:

- Any person who undertakes to arrange for the provision of health care services to subscribers or enrollees, or to pay for or to reimburse any part of the cost for those services, in return for a prepaid or periodic charge paid by or on behalf of the subscribers or enrollees.
- Any person, whether located within or outside of this state, who solicits or contracts with a subscriber or enrollee in this state to pay for or reimburse any part of the cost of, or who undertakes to arrange or arranges for, the provision of health care services that are to be provided wholly or in part in a foreign country in return for a prepaid or periodic charge paid by or on behalf of the subscriber or enrollee.

Section 106 of the Insurance Code includes the following provisions:

Disability insurance includes insurance appertaining to injury, disablement, or death resulting to the insured from accidents, and appertaining to disablements resulting to the insured from sickness.

In statutes that become effective on or after January 1, 2002, the term "health insurance" for purposes of this code means an individual or group disability insurance policy that provides coverage for hospital, medical, or surgical benefits. The term "health insurance" excludes any of the following kinds of insurance:

- Accidental death and accidental death and dismemberment.
- Disability insurance, including hospital indemnity, accident only, and specified disease insurance that pays benefits on a fixed benefit, cash payment only basis.
- Credit disability, as defined in subdivision (2) of Section 779.2.
- Coverage issued as a supplement to liability insurance.
- Disability income, as defined in subdivision (i) of Section 799.01.
- Insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.
- Insurance arising out of a workers' compensation or similar law.
- Long-term care.

In a statute that becomes effective on or after January 1, 2008, the term "specialized health insurance policy" as used in this code means a policy of health insurance for covered benefits in a single specialized area of health care, including dental-only, vision-only, and behavioral health-only policies.

Paragraph (5) or (6) of subdivision (a) of Section 1365 of the Health and Safety Code includes the following provisions:

Paragraph 5: If the plan ceases to provide or arrange for the provision of health benefits for new health care service plan contracts in the individual or group market, or all markets, in this state, provided, however, that the following conditions are satisfied:

- Notice of the decision to cease new or existing health benefit plans in the state is provided to the director, the individual or group contractholder or employer, and the enrollees covered under those contracts, at least 180 days prior to discontinuation of those contracts.
- Health benefit plans shall not be canceled for 180 days after the date of the notice required under subparagraph (A) and, for that business of a plan that remains in force, any plan that ceases to offer for sale new health benefit plans shall continue to be governed by this section with respect to business conducted under this section.
- Except as authorized under subdivision (b) of Section 1357.09 and Section 1357.10, a plan that ceases to write new health benefit plans in the individual or group market, or all markets, in this state shall be prohibited from offering for sale health benefit plans in that market or markets in this state for a period of five years from the date of the discontinuation of the last coverage not so renewed.

Paragraph 6: If the plan withdraws a health benefit plan from the market, provided that all of the following conditions are satisfied:

- The plan notifies all affected subscribers, contractholders, employers, and enrollees and the director at least 90 days prior to the discontinuation of the plan.
- The plan makes available to the individual or group contractholder or employer all health benefit plans that it makes available to new individual or group business, respectively.
- In exercising the option to discontinue a health benefit plan under this paragraph and in offering the option of coverage under subparagraph (B), the plan acts uniformly without regard to the claims experience of the individual or contractholder or employer, or any health status-related factor relating to enrollees or potential enrollees.
- For small employer health care service plan contracts offered under Article 3.1 (commencing with Section 1357), the premium for the new plan contract complies with the renewal increase requirements set forth in Section 1357.12. This subparagraph shall not apply after December 31, 2013.

Subdivision (d) or (e) of Section 10273.6 of the Insurance Code includes the following provisions:

Subdivision (d): If the disability insurer ceases to provide or arrange for the provision of health care services for new individual health benefit plans in this state; provided, however, that the following conditions are satisfied:

- Notice of the decision to cease new or existing individual health benefit plans in this state is provided to the commissioner and to the individual policy or contractholder at least 180 days prior to discontinuation of that coverage.
- Individual health benefit plans shall not be canceled for 180 days after the date of the notice required under paragraph (1) and for that business of a disability insurer that remains in force, any disability insurer that ceases to offer for sale new individual health benefit plans shall continue to be governed by this section with respect to business conducted under this section.
- A disability insurer that ceases to write new individual health benefit plans in this state after the effective date of this section shall be prohibited from offering for sale individual health benefit plans in this state for a period of five years from the date of notice to the commissioner.

Subdivision (e): If the disability insurer withdraws an individual health benefit plan from the market; provided, that the disability insurer notifies all affected individuals and the commissioner at least 90 days prior to the discontinuation of these plans, and that the disability insurer makes available to the individual all health benefit plans that it makes available to new individual businesses without regard to a health status-related factor of enrolled individuals or individuals who may become eligible for the coverage.

### THIS BILL

For each taxable year beginning on or after January 1, 2014, and before January 1, \_\_\_\_\_, this bill would allow a qualified taxpayer a tax credit in an amount equal to the difference between the annual premium amount paid or incurred during the taxable year and the annual premium amount paid or incurred prior to March 31, 2014, for an individual health care service plan contract or individual policy of health insurance.

This bill would do the following:

- Allow unused credits to be carried over to subsequent tax years for up to eight years.
- Reduce the amount of the deduction paid or incurred by the qualified taxpayer by the amount of the credit.
- Require the credit to be claimed on a timely filed original return.
- Allow the Franchise Tax Board (FTB) to prescribe rules, guidelines, or procedures necessary or appropriate to carry out the purpose of this section.
- Exempt the rules, guidelines, or procedures prescribed by the FTB from the requirements of the Administrative Procedures Act.<sup>1</sup>

---

<sup>1</sup> Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

This bill would define the following phrases:

- “Individual health care service plan contract” means a plan contract, as defined in Section 1345 of the Health and Safety Code,<sup>2</sup> issued to an individual.
- “Individual policy of health insurance” means a policy issued to an individual for health insurance, as defined in Section 106 of the Insurance Code<sup>3</sup>.
- “Qualified taxpayer” means an individual whose individual health care service plan contract or individual policy of health insurance was canceled between December 31, 2013, and March 31, 2014, pursuant to paragraph (5) or (6) of subdivision (a) of Section 1365 of the Health and Safety Code,<sup>4</sup> or subdivision (d) or (e) of Section 10273.6 of the Insurance Code<sup>5</sup> inclusive, and who purchased a new individual plan contract or policy and paid or incurred an annual premium amount that exceeded the annual premium amount paid or incurred prior to the cancellation of his or her individual plan contract or policy.

### IMPLEMENTATION CONSIDERATIONS

Implementing this bill would require some changes to existing tax forms and instructions and information systems, which could be accomplished during the normal annual update.

### TECHNICAL CONSIDERATIONS

This bill would be specifically operative for taxable years beginning on or after January 1, 2014, and before January 1, \_\_\_\_\_. Absent a specified year, the credit would be available in perpetuity and the provisions would remain intact until repealed by legislative action.

The definition of “qualified taxpayer” needs to be amended where the phrase “individual plan contract or policy”, to correspond to the definitions in subdivision (b). Suggested amendments 1 and 2, would remedy this technical consideration.

### **LEGISLATIVE HISTORY**

SB 1376 (Gaines, 2013/2014) a similar bill, would create a tax credit under the PITL in an amount equal to 50 percent of the annual premium amount paid or incurred as a result of an increase in an individual health care service plan contract or health insurance. SB 1367 is currently in the Senate Governance and Finance Committee.

SB 92 (Aanestad, 2009/2010) would have, among other things, provided a tax credit for the amount paid or incurred by a qualified taxpayer for qualified health expenses. SB 92 failed to pass out of the Assembly by the constitutional deadline.

### **OTHER STATES’ INFORMATION**

*Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York* laws do not provide a credit comparable to the credit allowed by this bill. These states were selected due to their similarities to California's economy, business entity types, and tax laws.

---

<sup>2</sup> See the State Law section of this analysis for additional information.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

## FISCAL IMPACT

This bill would not significantly impact the department's costs.

## ECONOMIC IMPACT

Estimated Revenue Impact of AB 2367 As Introduced February 21, 2014 For Taxable Years Beginning On or After January 1, 2014 And Before January 1, _____ Assumed Enactment After June 30, 2014 (\$ in Millions)		
2014-15	2015-16	2016-17
- \$320	- \$230	- \$250

This analysis does not account for changes in employment, personal income, or gross state product that could result from this bill.

## SUPPORT/OPPOSITION

Support: None provided.

Opposition: None provided.

## ARGUMENTS

Proponents: Supporters may argue that this tax credit is necessary to defray the unanticipated increase in health insurance premiums.

Opponents: Some may argue that this bill would provide a credit to an individual due to an increase in the individual's age, which occurs annually.

## POLICY CONCERNS

This bill fails to limit the amount of the credit that may be taken. Credits that could potentially be quite costly are sometimes limited by calculating the credit amount as a percentage of the expenses paid or incurred. This bill would provide a 100 percent credit which would be unprecedented.

## LEGISLATIVE STAFF CONTACT

Jane Raboy  
Legislative Analyst, FTB  
(916) 845-5718  
[jane.raboy@ftb.ca.gov](mailto:jane.raboy@ftb.ca.gov)

Mandy Hayes  
Revenue Manager, FTB  
(916) 845-5125  
[mandy.hayes@ftb.ca.gov](mailto:mandy.hayes@ftb.ca.gov)

Jahna Carlson  
Asst. Legislative Director, FTB  
(916) 845-5683  
[jahna.carlson@ftb.ca.gov](mailto:jahna.carlson@ftb.ca.gov)

Analyst	Jane Raboy
Telephone #	(916) 845-5718
Attorney	Bruce Langston

FRANCHISE TAX BOARD'S  
PROPOSED AMENDMENTS TO AB 2367  
AS INTRODUCED FEBRUARY 21, 2014

AMENDMENT 1

On page 2, line 27, strikeout "plan contract or policy" and insert:  
"health care service plan contract or individual policy of health insurance"

AMENDMENT 2

On page 2, line 30 strikeout "plan contract or policy" and insert:  
"health care service plan contract or individual policy of health insurance"