



## **Analysis of Amended Bill**

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Sponsor:

Bill Number: AB 2459

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Amended: March 23, 2018, and  
April 11, 2018

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Related Bills: See Legislative  
History

**Subject:** Health Insurance Premiums Refundable Credit

### **Summary**

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

This analysis only addresses the provisions of the bill that would impact the department's programs and operations.

**Recommendation – No position.**

### **Summary of Amendments**

This bill as introduced provided legislative intent language. The March 23, 2018, amendments replaced the legislative intent language with the provisions discussed in this analysis. The April 11, 2018, amendments replaced an unspecified percentage with a specified percentage.

This is the department's first analysis of the bill.

### **Reason for the Bill**

The reason for this bill is to make health insurance coverage more affordable for Californians.

### **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, 2019.

## Program Background

The Affordable Care Act (ACA) was enacted on March 23, 2010.<sup>1</sup> Among its many provisions, the ACA established health insurance exchanges allowing individuals without access to public coverage or affordable employer coverage to purchase insurance. Additionally, the ACA provided premium credits making health care coverage more affordable, and generally required individuals to have health insurance by 2014. The “individual shared responsibility payment” requirement, commonly referred to as the “individual mandate,” established penalties for failure to have insurance, unless otherwise exempted.

Covered California is the State’s insurance exchange where Californians may apply for health insurance coverage. Covered California offers a variety of plans with the least expensive being the “Bronze Plan” that is designed to cover 60 percent of annual medical services on average.<sup>2</sup>

## Federal/State Law

Federal law allows a refundable premium tax credit that helps eligible individuals and families cover the premiums for their health insurance purchased through the Health Insurance Marketplace. Certain requirements must be met, including filing a federal tax return and having household income that falls within a specified range.<sup>3</sup> The premium tax credit is based on a sliding scale with lower income individuals qualifying for a greater credit.

The following additional requirements must be met:

- Have health insurance coverage through a Health Insurance Marketplace.
- Are unable to get affordable coverage through an eligible employer-sponsored plan that provides minimum value.
- Are ineligible for coverage through a government program, like Medicaid, Medicare, Children’s Health Insurance Program (CHIP) or TRICARE, a Department of Defense Military Health System.
- Pay the share of premiums not covered by advance credit payments.

Individuals receiving advance payments of the premium tax credit must file Form 8962 to reconcile the credit with the amount of advance credit payments for the year.

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<sup>1</sup> Public Law (PL) 111-148, known as The Patient Protection and Affordable Care Act.

<sup>2</sup> Additional information on Covered California may be accessed at: [CoveredCalifornia](#)

<sup>3</sup> To be eligible for the premium tax credit, household income generally must be at least 100 – but no more than 400 – percent of the federal poverty line based on family size. The federal poverty line for the 2017 return may be accessed at: [IRS-EligibilityforthePremiumTaxCredit](#)

For 2018, the federal penalty for failure to have insurance, unless otherwise exempt, is the greater of:

- \$695 for each adult and \$347.50 for each child, up to \$2,085 per family.
- 2.5 percent of the tax filer's annual household income minus the federal tax filing threshold.<sup>4</sup>

The shared responsibility payment and related penalties are permanently eliminated for months after December 31, 2018.<sup>5</sup>

Current state law lacks a comparable credit to the one that would be created by this bill.

### **This Bill**

For each taxable year beginning on or after January 1, 2019, this bill, under the PITL, would allow a qualified individual a health insurance premium credit.

The credit would be equal to the cost of health insurance premiums for the lowest cost bronze plan for the qualified individual or the qualified individual's dependent that exceeds eight percent of the qualified individual's modified adjusted gross income.

This bill would define the following terms and phrases:

- "Bronze plan" has the same meaning as "bronze level," under the Health and Safety Code (HSC),<sup>6</sup> which is a health care service plan contract that provides a level of coverage that is actuarially equivalent to 60 percent of the full actuarial value of the benefits provided under the plan contract.
- "Individual market" means an individual market for health insurance benefits plans described in either the HSC or the Insurance Code.<sup>7</sup>
- "Lowest cost bronze plan" means the lowest cost bronze plan available to the qualified individual or the qualified individual's dependent, given the age and geographic region of the individual covered by the health care coverage.

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<sup>4</sup> The federal tax filing threshold varies based on filing status (e.g., single, married filing jointly, head of household), but represents the minimum amount of gross income an individual must make to be required to file a tax return. The filing thresholds may be accessed at: [IRS-IndividualSharedResponsibilityProvision-Reporting andCalculatingthePayment](#)

<sup>5</sup> On December 22, 2017, H.R. 1, originally known as The Tax Cuts and Jobs Act of 2017, was signed into law. Under PL115-97, the shared responsibility payment was reduced from \$695 to "zero" for months beginning after December 31, 2018.

<sup>6</sup> HSC section 1367.008.

<sup>7</sup> Article 11.8 (commencing with Section 1399.845) of Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code or Chapter 9.9 (commencing with Section 10965) of Part 2 of Division 2 of the Insurance Code.

- “Modified adjusted gross income” has the same meaning as in Section 36B(d)(2)(B) of the Internal Revenue Code, relating to modified adjusted gross income.
- “Qualified individual” means a person who purchased health care coverage in the individual market for himself or herself or for a dependent, if that coverage is a standardized benefit design approved by Covered California.<sup>8</sup> A “qualified individual” would exclude an individual who, or whose dependent for which the credit is claimed, is otherwise eligible for minimum essential coverage through employment, Medicare, Medicaid, or other public programs. “Minimum essential coverage through employment” means affordable employer coverage of minimum value, as provided under the federal law.<sup>9</sup>

If the amount allowable as a credit under this section exceeds the tax liability for the taxable year, the excess would be credited against other amounts due, if any, and the balance, if any, upon appropriation by the Legislature, would be refunded to the qualified individual.

This bill would provide that Section 41 of the Revenue and Taxation Code (R&TC) does not apply to the proposed credit.<sup>10</sup>

### **Implementation Considerations**

Department staff has identified the following implementation considerations for purposes of a high-level discussion; additional concerns may be identified as the bill moves through the legislative process. Department staff is available to work with the author’s office to resolve these and other concerns that may be identified.

This bill lacks administrative details necessary to implement the credit. The amount of the credit and the taxable year the credit would be claimed is unclear. The bill leaves unspecified:

- The cost of the insurance eligible for credit and whether the cost would be capped.
- The amount of modified adjusted gross income.
- The taxable year in which the credit would be claimed. For example, would the credit be claimed in the year the premiums are paid in full, or if the health plan coverage period spans portions of two taxable years would the credit be claimed ratably in the two taxable years?

The department lacks the expertise to determine whether an individual has acquired “bronze level” insurance or would otherwise qualify for “minimum essential coverage.” Typically, credits involving areas for which the department lacks expertise are certified by another

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<sup>8</sup> Pursuant to subdivision (c) of Section 100504 of the Government Code.

<sup>9</sup> Patient Protection and Affordable Care Act (Public Law 111-148), as amended by the federal Health Care and Education Reconciliation Act of 2010 (Public Law 111-152), and any rules and regulations promulgated thereunder.

<sup>10</sup> Under R&TC section 41, legislation that would create a new tax credit is required to include specific goals, purposes, objectives, and performance measures to allow the Legislature to evaluate the credit’s effectiveness.

agency or agencies that possess the relevant expertise. The certification language would specify the responsibilities of both the certifying agency and the taxpayer. It is recommended that this bill be amended to include a certifying agency.

This bill uses terms and phrases that are undefined, i.e., “dependent,” “standardized benefit design,” and “other public programs.” The absence of definitions to clarify these terms could lead to disputes with taxpayers and would complicate the administration of this bill. For clarity and ease of administration, it is recommended that the bill be amended.

This bill would require regular annual appropriations by the Legislature to pay for the refundable portion of this credit. Disallowance of the credit to some taxpayers could result if the amount of credits claimed exceeds the amount of appropriated funds. This concern could be alleviated by providing a continuous appropriation.

### **Legislative History**

AB 2367 (Donnelly, 2013/2014), would have provided a tax credit for the excess annual cost of health insurance premiums over the annual cost in 2014. AB 2367 failed to pass by the constitutional deadline.

SB 1376 (Gaines, 2013/2014), would have provided a tax credit in an amount equal to 50 percent of the annual premium amount paid or incurred as a result of a premium increase. SB 1376 failed to pass by the constitutional deadline.

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 by the constitutional deadline.

### **Other States' Information**

*Review of Illinois, Massachusetts, Michigan, Minnesota, and New York laws found no comparable tax credit to the proposed credit that would be created by this bill. The laws of these states were selected due to their similarities to California's economy, business entity types, and tax laws.*

### **Fiscal Impact**

The department's costs to implement this bill have yet to be determined, but are anticipated to be significant. As the bill moves through the legislative process and the implementation considerations are resolved, costs will be identified.

## Economic Impact

### Revenue Estimate

This bill would result in the following revenue loss:

Estimated Revenue Impact of AB 2459 as Amended April 11, 2018  
For Taxable Years Beginning On or After January 1, 2019  
Assumed Enactment after June 30, 2018

(\$ in Millions)

Fiscal Year	Revenue
2018-2019	- \$550
2019-2020	- \$950
2020-2021	- \$1,000

This estimate assumes annual appropriations are made by the legislature to pay for the refundable portion of the credit.

This analysis does not account for changes in employment, personal income, or gross state product that could result from this bill or for the net final payment method of accrual.

### Revenue Discussion

Based on data from Covered California, the Kaiser Family Foundation, and the U.S. Census Bureau, the number of health exchange enrollments and premium costs were calculated. It is estimated that approximately 1.4 million people would be enrolled in health care plans through Covered California in 2019. About one half of those insured would be enrolled in individual plans and approximately 65 percent of those would meet the specified income limitation of eight percent of MAGI, for a total of 450,000 individuals. The estimated average individual premium cost for the lowest cost bronze plan, before adjusting for federal premium credits, would be about \$3,800 for the 2019 calendar year. Finally, using the Franchise Tax Board (FTB) data, the cost of the lowest cost bronze plan premium that exceeds eight percent of MAGI is calculated by income range. As a result, it is estimated that 60 percent of premiums paid would result in either a full or partial refundable California health insurance premium credit, for individuals, for a total estimated revenue loss of \$950 million in taxable year 2019.

The tax-year estimates are converted to fiscal years and then rounded to arrive at the amounts shown in the above table.

## **Support/Opposition**

Support: None provided.

Opposition: None provided.

## **Arguments**

Proponents: Some may say this bill would increase the number of low-income Californians who have health insurance, thereby increasing economic security for Californians.

Opponents: Some may argue that there are more effective ways to assist taxpayers with health care costs than providing a refundable tax credit that may be prone to improper claims.

## **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 either on a per-expenditure or per-taxpayer basis.

The department is concerned that another refundable credit could increase the trend in refund fraud and identity theft. Historically, both the IRS and the FTB have experienced fraud and improper claims with refundable credits. These concerns are heightened because if a refund is determined to be fraudulent, the refund commonly cannot be recovered.

Taxpayers could potentially receive both the federal premiums credit and the credit that would be created by this bill.

This bill lacks a sunset date. Sunset dates generally are provided to allow periodic review of the effectiveness of the credit by the Legislature.

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