

SENATE
STATE OF MINNESOTA
NINETY-FIRST SESSION

S.F. No. 2766

(SENATE AUTHORS: KLEIN)

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Introduction and first reading
Referred to Taxes

OFFICIAL STATUS

1.1 A bill for an act

1.2 relating to taxation; modifying provisions related to gross revenues taxes, income

1.3 taxes, and health insurance; providing for an insurance premium credit for

1.4 individuals and advanced payment of the credit; providing for disclosure of certain

1.5 taxpayer data; providing an addition for certain deducted health insurance

1.6 premiums; making changes to taxpayer nexus for the health care provider tax;

1.7 clarifying payment of interest on overpayments; appropriating money; amending

1.8 Minnesota Statutes 2018, sections 270B.12, by adding a subdivision; 290.0131,

1.9 by adding a subdivision; 295.51, subdivision 1a; 295.57, subdivision 3; proposing

1.10 coding for new law in Minnesota Statutes, chapters 62V; 290.

1.11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.12 Section 1. **[62V.12] ADVANCED PAYMENT OF STATE-BASED HEALTH**

1.13 **INSURANCE PREMIUM TAX CREDIT.**

1.14 **Subdivision 1. Determination of eligibility for advanced payment of state-based**

1.15 **health insurance premium tax credit. (a) The Board of Directors of MNsure shall assess**

1.16 **an individual's eligibility for an advanced payment of the state-based health insurance tax**

1.17 **credit under section 290.0693 when an individual applies for an eligibility determination**

1.18 **through MNsure, basing the eligibility determination upon income for the relevant tax year**

1.19 **as projected by the individual. MNsure shall equally divide the value of the potential**

1.20 **state-based tax credit across the monthly premiums to be charged to the individual. If the**

1.21 **individual selects a plan through MNsure, MNsure shall notify the relevant health carrier**

1.22 **of the amount of the advanced payment of the state-based insurance premium tax credit**

1.23 **amount and direct the health carrier to deduct the amount from the eligible individual's**

1.24 **premiums.**

1.25 **(b) An individual is eligible for an advanced payment of the state-based health insurance**

1.26 **premium tax credit if they are a Minnesota resident who:**

2.1 (1) had at least one month of coverage by a qualified health plan offered through MNsure
2.2 during the tax year;

2.3 (2) was not enrolled in public program coverage under section 256B.055 or 256L.04
2.4 during the months of coverage by the qualified health plan; and

2.5 (3) is eligible for the health insurance tax credit in section 290.0693.

2.6 (c) To be eligible for an advanced payment of the state-based health insurance premium
2.7 tax credit, the individual must attest that the individual will file a state tax return in order
2.8 to reconcile any advanced payment of the credit and will file a joint tax return with their
2.9 spouse, if married.

2.10 (d) An individual is not eligible for an advanced payment of the state-based health
2.11 insurance premium tax credit for the taxable year if MNsure is notified by the commissioner
2.12 of revenue that the individual received an advanced payment in a prior tax year and has not
2.13 filed a tax return for the relevant tax year and has not fully paid any amount necessary to
2.14 reconcile the advanced payment.

2.15 Subd. 2. **Payments to health carriers.** The board shall make payments to health carriers
2.16 equal to the amount of the advance state-based health insurance premium tax credit amounts
2.17 provided to eligible individuals effectuating coverage for the months in which the individual
2.18 has paid the net premium amount to the health carrier.

2.19 Subd. 3. **Health carrier responsibilities.** A health carrier that receives notice from
2.20 MNsure that an individual enrolled in the health carrier's qualified health plan is eligible
2.21 for an advanced payment of the state-based health insurance premium tax credit shall:

2.22 (1) reduce the portion of the premium charged to the individual for the applicable months
2.23 by the amount of the state-based health insurance tax credit determined by MNsure;

2.24 (2) include the amount of advanced state-based health insurance premium tax credit
2.25 determined by MNsure on each billing statement for which an advanced state-based health
2.26 insurance tax credit has been applied; and

2.27 (3) reconcile advanced payments of state-based health insurance premium tax credits
2.28 with MNsure at least once a month.

2.29 Subd. 4. **Appeals.** MNsure appeals are available for Minnesota residents for initial
2.30 determinations and redeterminations made by MNsure of eligibility for and level of an
2.31 advanced payment of the state-based health insurance premium tax credit. The appeals must
2.32 follow the procedures enumerated in Minnesota Rules, chapter 7700.

3.1 Subd. 5. **Data practices.** The data classifications in section 62V.06, subdivision 3, apply
3.2 to data on individuals applying for or receiving a state-based health insurance tax credit
3.3 pursuant to this subdivision.

3.4 Subd. 6. **Data sharing.** Notwithstanding any law to the contrary, the board is permitted
3.5 to share or disseminate data in subdivision 5 as described in section 62V.06, subdivision 5.

3.6 Subd. 7. **Appropriations.** Beginning in fiscal year 2021 and each fiscal year thereafter
3.7 an amount sufficient to make advanced payments of the state-based health insurance tax
3.8 credit is appropriated from the health care access fund to the board for payment of advanced
3.9 state-based health insurance premium tax credits under this section

3.10 **EFFECTIVE DATE.** This section is effective for advanced payment of the state-based
3.11 health insurance premium tax credit applied to premiums for plan year 2021.

3.12 Sec. 2. Minnesota Statutes 2018, section 270B.12, is amended by adding a subdivision to
3.13 read:

3.14 Subd. 15. **Board of Directors of MNsure.** The commissioner may disclose return
3.15 information to the extent necessary to the Board of Directors of MNsure to determine
3.16 eligibility under section 62V.12, subdivision 1.

3.17 **EFFECTIVE DATE.** This section is effective for taxable years beginning after December
3.18 31, 2020.

3.19 Sec. 3. Minnesota Statutes 2018, section 290.0131, is amended by adding a subdivision
3.20 to read:

3.21 Subd. 15. **Health insurance premiums.** The amount of health insurance premiums
3.22 deducted on the taxpayer's federal return, to the extent used to calculate the credit under
3.23 section 290.0693, is an addition.

3.24 **EFFECTIVE DATE.** This section is effective for taxable years beginning after December
3.25 31, 2020.

3.26 Sec. 4. **[290.0693] HEALTH INSURANCE PREMIUM CREDIT.**

3.27 Subdivision 1. **Credit allowed.** (a) An individual who is a resident of Minnesota is
3.28 allowed a credit against the tax due under this chapter if the individual would be allowed a
3.29 credit under section 36B of the Internal Revenue Code, except that the individual's household
3.30 income, as defined in section 36B(d)(2) of the Internal Revenue Code, exceeds 400 percent

4.1 of the poverty line for the individual's family size as defined in section 36B(d)(3) of the
4.2 Internal Revenue Code.

4.3 (b) In the determination of "coverage month" under section 36B(c)(2) of the Internal
4.4 Revenue Code, section 36B(c)(2)(B) and (C) must not apply.

4.5 (c) The credit is equal to what the credit would have been under section 36B of the
4.6 Internal Revenue Code, except the applicable percentage for purposes of section
4.7 36B(b)(2)(B)(ii) of the Internal Revenue Code, is the highest premium percentage in section
4.8 36B(b)(3)(A) of the Internal Revenue Code.

4.9 (d) The amount of monthly premiums taken into account under section 36B(b)(2)(A) of
4.10 the Internal Revenue Code must be reduced by the amount of premium subsidy made by
4.11 MNsure and applied to the gross premium.

4.12 Subd. 2. **Advanced payment of credit.** (a) An individual may claim the credit on the
4.13 individual's tax return or have the credit paid in advance pursuant to section 62V.12.

4.14 (b) If an individual elects to have the credit paid in advance, the credit claimed under
4.15 subdivision 1 must be reduced by the amount of the advanced payments. If the amount of
4.16 the advance payments exceeds the amount of credit the individual is eligible for, the tax
4.17 imposed by this chapter for the taxable year must be increased by the amount of the excess.

4.18 (c) If the amount of credit that the individual is allowed under subdivision 1, after
4.19 subtracting any advanced payments, exceeds the individual's tax liability under this chapter,
4.20 the commissioner shall refund the excess to the individual.

4.21 (d) By January 31 of each year, the Board of Directors of MNsure must provide to each
4.22 individual who applied for assistance and enrolled in a qualified health plan and to the
4.23 commissioner a statement containing information on the preceding year necessary to reconcile
4.24 the credit with the advance payments. The Board of Directors of MNsure and the
4.25 commissioner must consult to develop the form and manner of the report.

4.26 (e) Each year, 60 days prior to MNsure's open enrollment, the commissioner shall provide
4.27 information to MNsure about which individuals received an advanced payment of the
4.28 state-based health insurance tax credit under section 62V.12 in a prior taxable year and did
4.29 not file a return and reconcile the payments for that taxable year.

4.30 Subd. 3. **Reporting requirements.** (a) If the individual has a change in eligibility status
4.31 determination by MNsure, after the taxable year is complete, the individual and MNsure
4.32 must notify the commissioner of the change in eligibility within six months of the change.

5.1 (b) Notwithstanding any law to the contrary, the commissioner may recompute the tax
5.2 due based on the determination of eligibility.

5.3 Subd. 4. **Appropriation.** (a) An amount sufficient to pay the refunds required by this
5.4 section is appropriated to the commissioner from the health care access fund.

5.5 (b) \$1,037,000 in fiscal year 2022 and \$880,000 in each fiscal year thereafter are
5.6 appropriated from the general fund to the commissioner of revenue for administering this
5.7 section.

5.8 **EFFECTIVE DATE.** This section is effective for taxable years beginning after December
5.9 31, 2020.

5.10 Sec. 5. Minnesota Statutes 2018, section 295.51, subdivision 1a, is amended to read:

5.11 Subd. 1a. **Nexus in Minnesota.** (a) To the extent allowed by the United States
5.12 Constitution and the laws of the United States, a person who is a wholesale drug distributor
5.13 ~~has nexus in Minnesota if its contacts with or presence in Minnesota is sufficient to satisfy~~
5.14 ~~the requirements of the United States Constitution.~~, a person who receives legend drugs for
5.15 resale or use in Minnesota other than from a wholesale drug distributor that is subject to
5.16 tax, or a person who sells or repairs hearing aids and related equipment or prescription
5.17 eyewear is subject to the taxes imposed by this chapter if the person:

5.18 (1) has or maintains within this state, directly or by a subsidiary or an affiliate, an office,
5.19 place of distribution, sales, storage, or sample room or place, warehouse, or other place of
5.20 business, including the employment of a resident of this state who works from a home office
5.21 in this state;

5.22 (2) has a representative, including but not limited to an employee, affiliate, agent,
5.23 salesperson, canvasser, solicitor, independent contractor, or other third party operating in
5.24 this state under the person's authority or the authority of the person's subsidiary, for any
5.25 purpose, including the repairing, selling, delivering, installing, facilitating sales, processing
5.26 sales, or soliciting of orders for the person's goods or services, or the leasing of tangible
5.27 personal property located in this state, whether the place of business or the agent,
5.28 representative, affiliate, salesperson, canvasser, or solicitor is located in the state permanently
5.29 or temporarily, or whether or not the person, subsidiary, or affiliate is authorized to do
5.30 business in this state;

5.31 (3) owns or leases real property that is located in this state; or

5.32 (4) owns or leases tangible personal property that is present in this state, including but
5.33 not limited to mobile property.

6.1 (b) To the extent allowed by the United States Constitution and the laws of the United
6.2 States, a person who is a wholesale drug distributor, or a person who receives legend drugs
6.3 for resale or use in Minnesota other than from a wholesale drug distributor that is subject
6.4 to tax, is subject to the taxes imposed by this chapter if the person:

6.5 (1) conducts a trade or business not described in paragraph (a) and sells, delivers, or
6.6 distributes legend drugs from outside this state to a destination within this state by common
6.7 carrier or otherwise; and

6.8 (2) meets one of the following thresholds:

6.9 (i) makes 100 or more sales, deliveries, or distributions described in clause (1) during
6.10 any taxable year;

6.11 (ii) the gross revenues of a wholesale drug distributor that sells or distributes legend
6.12 drugs as described in clause (1) totals more than \$100,000 during any taxable year; or

6.13 (iii) the price paid by a person who receives legend drugs for resale or use in Minnesota
6.14 other than from a wholesale drug distributor that is subject to tax for legend drugs as
6.15 described in clause (1) totals more than \$100,000 during any taxable year.

6.16 (c) To the extent allowed by the United States Constitution and the laws of the United
6.17 States, a person who sells or repairs hearing aids and related equipment or prescription
6.18 eyewear is subject to the taxes imposed by this chapter if the person:

6.19 (1) conducts a trade or business not described in paragraph (a), and:

6.20 (i) sells, delivers, or distributes hearing aids or prescription eyewear from outside of this
6.21 state to a destination within this state by common carrier or otherwise; or

6.22 (ii) repairs hearing aids or prescription eyewear outside of this state and delivers or
6.23 distributes the hearing aids or prescription eyewear to a destination within this state by
6.24 common carrier or otherwise; and

6.25 (2) meets one of the following thresholds:

6.26 (i) makes 100 or more sales, deliveries, distributions, or repairs described in clause (1)
6.27 during any taxable year; or

6.28 (ii) the gross revenues of the person who sells, delivers, distributes, or repairs hearing
6.29 aids or prescription eyewear described in clause (1) totals more than \$100,000 during any
6.30 taxable year.

6.31 (d) Once a taxpayer has established nexus with Minnesota under paragraph (b) or (c),
6.32 the taxpayer must continue to file an annual return and remit taxes for subsequent years. A

7.1 taxpayer who has established nexus under paragraph (b) or (c) is no longer required to file
 7.2 an annual return and remit taxes if the taxpayer:

7.3 (1) ceases to engage in the activities, or no longer meets any of the applicable thresholds,
 7.4 in paragraph (b) or (c) for an entire taxable year; and

7.5 (2) notifies the commissioner by March 15 of the following calendar year, in a manner
 7.6 prescribed by the commissioner, that the taxpayer no longer engages in any of the activities,
 7.7 or no longer meets any of the applicable thresholds, in paragraph (b) or (c).

7.8 (e) If, after notifying the commissioner pursuant to paragraph (d), the taxpayer
 7.9 subsequently engages in any of the activities, and meets any of the applicable thresholds,
 7.10 in paragraph (b) or (c), the taxpayer shall again comply with the applicable requirements
 7.11 of paragraphs (b), (c), and (d).

7.12 **EFFECTIVE DATE; APPLICATION.** (a) This section is effective the day following
 7.13 final enactment.

7.14 (b) In enacting this section, the legislature confirms that the United States Supreme Court
 7.15 decision in South Dakota v. Wayfair, Inc. et al., Dkt. No. 17-494 (June 21, 2018); 138 S.
 7.16 Ct. 2080 (2018), applied upon the date of that decision to provide Minnesota with jurisdiction
 7.17 over persons described in paragraphs (b) and (c) for purposes of imposing tax under chapter
 7.18 295 to the extent allowed by the United States Constitution and the laws of the United States.

7.19 Sec. 6. Minnesota Statutes 2018, section 295.57, subdivision 3, is amended to read:

7.20 Subd. 3. **Interest on overpayments.** Interest must be paid on an overpayment refunded
 7.21 or credited to the taxpayer ~~from the date of payment of the tax until the date the refund is~~
 7.22 ~~paid or credited. For purposes of this subdivision, the date of payment is the due date of the~~
 7.23 ~~return or the date of actual payment of the tax, whichever is later~~ in the manner provided
 7.24 in section 289A.56, subdivision 2.

7.25 **EFFECTIVE DATE.** This section is effective for overpayments made on or after
 7.26 January 1, 2020.

7.27 Sec. 7. **APPROPRIATION; MNSURE.**

7.28 In addition to the amounts appropriated in Minnesota Statutes, section 62V.12, \$1,241,000
 7.29 in fiscal year 2020 and \$4,539,000 in fiscal year 2021 are appropriated from the health care
 7.30 access fund to the Board of Directors of MNSure for technology and program development
 7.31 and administration related to the management and implementation of the advanced state-based
 7.32 health insurance premium tax credit. This is a onetime appropriation.

8.1 **EFFECTIVE DATE.** This section is effective the day following final enactment.