S.8470 (Kennedy) / A.9519 (Dilan)

STAFF CONTACT : Lev Ginsburg, Esq. | Counsel | 518-694-4462

BILL
S.8470 (Kennedy) / A.9519 (Dilan)
SUBJECT
Imposes a Tax on Out-of-State Transfers, Dividends, Payments, and Loans by Certain Accident and Health Insurance Companies and Health Maintenance Organizations
DATE
May 09, 2022
OPPOSE

The Business Council strongly opposes S.8470 (Kennedy)/A.9519 (Dilan), which would create and impose a new 9.3% tax on any dividends, payments or loans transferred out-of-state, made by for-profit health insurers and both for-profit and non-profit HMOs that provide coverage in the individual, small group, and large group markets.

This bill is particularly dangerous for the business environment in New York for it signals to businesses throughout the country that New York is willing to target and over-tax specific industries. This tax on dividends and transfers is an unprecedented double-taxing of earnings and would not go unnoticed around the country. This is tantamount to advertising to businesses in and outside of New York to not do business here.

Further, and equally important, this bill is on its face unconstitutional. It creates a discriminatory tax system that imposes higher tax rates on dividends, payments or loans issued to out-of-state individuals or entities than it does on comparable payments made to New York entities. This is a textbook violation of the Commerce Clause of the United States Constitution, which itself and through caselaw specifically, expressly prohibits states from discriminating against interstate commerce by imposing tax structures that would provide a direct commercial advantage to in-state business, which this bill so clearly does. Additionally, the bill violates the Equal Protection Clause of the 14th Amendment by favoring its own residents over other Americans.

New York's employers already pay the lion's share of health premiums in New York and the taxes associated with them. We have long advocated for lowering the $6 billion collected annually through Health Care Reform Act (HCRA) taxes because they very much increase the financial burdens on small and large business alike. The proposed tax in this bill, while seemingly on insurers, will increase the costs of doing business in New York, further limit participating plans and will, like most taxes on good and services, increase the cost of the product in the long run.

It is for these reasons that this bill is especially damaging to business in New York State and why The Business Council strongly opposes S.8470 (Kennedy)/A.9519 (Dilan).