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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 2299 Session of  
2004

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INTRODUCED BY PAYNE, ALLEN, BAKER, BALDWIN, BOYD, CLYMER,  
DENLINGER, GODSHALL, HERMAN, HERSHEY, HUTCHINSON, KILLION,  
MAITLAND, MAJOR, McILHATTAN, MUSTIO, PICKETT, REED, REICHLEY,  
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HENNESSEY, METCALFE, CREIGHTON, CAPPELLI, GINGRICH, DALLY,  
CRAHALLA, HARHART, EGOLF, BENNINGHOFF, BROWNE AND  
E. Z. TAYLOR, JANUARY 26, 2004

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REFERRED TO COMMITTEE ON HEALTH AND HUMAN SERVICES,  
JANUARY 26, 2004

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AN ACT

1 Authorizing the establishment and maintenance of health savings  
2 accounts; exempting contributions from taxation; imposing  
3 restrictions on health savings accounts; and prescribing  
4 penalties.

5 The General Assembly of the Commonwealth of Pennsylvania  
6 hereby enacts as follows:

7 Section 1. Short title.

8 This act shall be known and may be cited as the Health  
9 Savings Account Act.

10 Section 2. Definitions.

11 The following words and phrases when used in this act shall  
12 have the meanings given to them in this section unless the  
13 context clearly indicates otherwise:

14 "Account administrator." Any of the following:

15 (1) A national or State-chartered bank or Federal or

1 State-chartered savings and loan association, savings bank or  
2 credit union.

3 (2) A trust company authorized to act as a fiduciary.

4 (3) An insurance company authorized to do business in  
5 this Commonwealth pursuant to the act of May 17, 1921  
6 (P.L.682, No.284), known as The Insurance Company Law of  
7 1921, or a health care corporation operating pursuant to 40  
8 Pa.C.S. Ch. 61 (relating to hospital plan corporations).

9 (4) A broker-dealer, commodity issuer, investment  
10 advisor or agent registered pursuant to the act of December  
11 5, 1972 (P.L.1280, No.284), known as the Pennsylvania  
12 Securities Act of 1972.

13 (5) A third-party administrator with a current  
14 certificate of authority issued pursuant to the laws of this  
15 Commonwealth.

16 (6) A certified public accountant licensed to practice  
17 in this Commonwealth pursuant to the act of May 26, 1947  
18 (P.L.318, No.140), known as the CPA Law.

19 (7) An attorney licensed to practice in this  
20 Commonwealth.

21 (8) An employer, if the employer has a self-insured  
22 health plan under the Employee Retirement Income Security Act  
23 of 1974 (ERISA).

24 (9) An employer that participates in a health savings  
25 account program.

26 "Account holder." An individual taxpayer, including an  
27 employee of an employer who contributes to a health savings  
28 account on the employee's behalf, who:

29 (1) Is covered by a high deductible health plan  
30 individually or with dependents.

(2) May not be covered under any health plan that is not a high deductible health plan except for any of the following:

(i) Coverage for accidents, disability, dental care, vision care or long-term care.

(ii) Workers' compensation coverage.

(iii) Insurance for a specified disease or illness.

(iv) Insurance paying a fixed amount per day per hospitalization.

(3) Establishes or on whose behalf the health savings account is established.

"Deductible." The total deductible for an account holder and all the dependents of that account holder for a calendar year.

"Dependent." The spouse or a child of the account holder if the child is any of the following:

(1) Under 19 years of age or under 23 years of age and enrolled as a full-time student at an accredited college or university.

(2) Legally entitled to the provision of proper or necessary subsistence, education, medical care or other care necessary for that individual's health, guidance or well-being and not otherwise emancipated, self-supporting, married or a member of the armed forces of the United States.

(3) Mentally or physically incapacitated to the extent that that individual is not self-sufficient.

"Domicile." A place of an individual's true, fixed and permanent home and principal establishment to which, whenever absent, that individual intends to return. Domicile continues until another permanent home or principal establishment is established.

1 "Eligible medical expense." An expense paid by a taxpayer  
2 for medical care described in section 213(d) of the Internal  
3 Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 213(d)).

4 "Employee." An individual for whose benefit or for the  
5 benefit of whose dependents a health savings account is  
6 established. The term includes a self-employed individual.

7 "ERISA." The Employee Retirement Income Security Act of 1974  
8 (Public Law 93-406, 88 Stat. 829).

9 "Health savings account" or "account." A trust or custodian  
10 account established in this Commonwealth pursuant to a health  
11 savings account program exclusively to pay the eligible medical  
12 expenses of an account holder or the account holder's dependents  
13 but only if the written governing instrument creating the  
14 account meets the following requirements:

15 (1) Except in the case of a rollover contribution, no  
16 contribution may be accepted:

17 (i) unless it is in cash; or

18 (ii) to the extent such contribution, when added to  
19 previous contributions to the account for the calendar  
20 year, exceeds 100% of the account holder's deductible or  
21 \$2,600 for an individual or \$5,150 per family, whichever  
22 is lower.

23 (2) The trustee or custodian is a bank, an insurance  
24 company or another person who qualified as a trustee under  
25 section 220(d)(1)(B) of the Internal Revenue Code of 1986  
26 (Public Law 99-514, 26 U.S.C. § 220(d)(1)(B)).

27 (3) No part of the trust assets may be invested in life  
28 insurance contracts.

29 (4) The assets of the account may not be commingled with  
30 other property except as allowed for Individual Retirement

1 Accounts.

2 (5) The account holder's interest in the account is  
3 nonforfeitable.

4 "Health savings account program" or "program." A program  
5 that includes all of the following:

6 (1) The purchase by an account holder or by an employer  
7 of a qualified higher deductible health plan.

8 (2) The contribution into a health savings account by an  
9 account holder or on behalf of an employee by the account  
10 holder's or that person's employer, provided that the total  
11 annual contribution does not exceed the amount of the plan's  
12 higher deductible or the amounts listed in paragraph (1)(ii)  
13 of the definition of "health savings account," whichever is  
14 lower.

15 (3) An account administrator to administer the health  
16 savings account from which payment of claims is made provided  
17 that not more than 30 days after the account administrator  
18 begins to administer the account, the account administrator  
19 notifies in writing each account holder on whose behalf the  
20 administrator administers the account of the date of the last  
21 business day of the administrator's business year.

22 "Higher deductible." The term means:

23 (1) In the case of self-only coverage, an annual  
24 deductible which is not less than \$1,000 nor more than  
25 \$5,000.

26 (2) In the case of family coverage, an annual deductible  
27 of not less than \$2,000 nor more than \$10,000.

28 "Qualified high deductible health plan." A health coverage  
29 policy, certificate or contract that provides for payments for  
30 covered benefits that exceed the higher deductible and that is

1 purchased by an account holder or an employer for the benefit of  
2 an employee and the employee's dependents.

3 Section 3. Nature of program.

4 (a) General rule.--The provisions of this act shall apply to  
5 taxpayers who are not receiving preferred Federal tax treatment  
6 for a health savings account under section 220(a) of the  
7 Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. §  
8 220(a)).

9 (b) Scope.--

10 (1) For taxable years beginning after December 31, 2003,  
11 a resident of this Commonwealth shall be allowed to deposit  
12 contributions to a health savings account. The amount of  
13 deposit for calendar year 2004 and subsequent years shall not  
14 exceed the amount of the plan's higher deductible nor \$2,600  
15 for an individual policy and \$5,150 for a family policy.

16 (2) For tax years beginning after December 31, 2003, an  
17 employer may offer a health savings account program to the  
18 employer's employees.

19 (c) Duty to inform employees.--An employer that offers a  
20 health savings account program shall inform all employees in  
21 writing of the Federal tax status of contributions made pursuant  
22 to this act before making contributions.

23 (d) Tax exemption.--Except as provided in section 5,  
24 principal contributed to and interest earned on a health savings  
25 account and money reimbursed to an account holder or an employee  
26 for eligible medical expenses are exempt from taxation under the  
27 act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code  
28 of 1971.

29 Section 4. Distribution of account funds.

30 (a) Authorized purposes.--

1           (1) The account administrator shall utilize the funds  
2 held in a health savings account solely for the purpose of:

3           (i) Paying the eligible medical expenses of the  
4 account holder or the account holder's dependents.

5           (ii) Purchasing a health coverage policy certificate  
6 or contract if the account holder is receiving  
7 unemployment compensation, is exercising continuation  
8 privileges under Federal law or is purchasing a long-term  
9 care insurance contract.

10          (iii) Paying for health insurance other than a  
11 Medicare supplemental policy for those who are Medicare  
12 eligible.

13          (2) Funds held in a health savings account shall not be  
14 used to cover expenses of the account holder or the account  
15 holder's dependents that are otherwise covered, including,  
16 but not limited to:

17          (i) medical expense covered pursuant to an  
18 automobile insurance policy;

19          (ii) workers' compensation insurance policy or self-  
20 insured plan; or

21          (iii) another employer-funded health coverage  
22 policy, certificate or contract.

23          (b) Submission of documentation.--The account holder may  
24 submit documentation of medical expenses paid by the account  
25 holder or the employee during the tax year to the account  
26 administrator. The account administrator shall reimburse the  
27 account holder from the account holder's account for eligible  
28 medical expenses.

29          (c) Limitation.--Funds held in a health savings account may  
30 not be used to cover medical expenses of the account holder or

1 the account holder's covered dependents that are otherwise  
2 covered by any other health plan.

3 (d) Advances permissible.--If an employer makes  
4 contributions to a health savings account program on a periodic  
5 installment basis, the employer may advance to an employee,  
6 interest free, an amount necessary to cover medical expenses  
7 incurred that exceed the amount in the employees' health savings  
8 account when the expense is incurred, if the employee agrees to  
9 repay the advance from future installments or when the  
10 individual ceases to be an employee of the employer.

#### 11 Section 5. Account withdrawals.

12 (a) General rule.--Notwithstanding subsections (c), (d), (e)  
13 and (f), an account holder may withdraw money from the account  
14 holder's health savings account for any purpose other than a  
15 purpose described in section 4(a) only on the last business day  
16 of the account administrator's business year. Money withdrawn  
17 pursuant to this subsection is income for the purpose of the act  
18 of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of  
19 1971.

20 (b) Effect of withdrawal.--Subject to subsection (c), if the  
21 account holder withdraws money for any purpose other than a  
22 purpose described in section 4(a) at any other time, all of the  
23 following apply:

24 (1) The amount of the withdrawal is income for the  
25 purposes of the Tax Reform Code of 1971 in the tax year of  
26 the withdrawal.

27 (2) Interest earned on the account during the tax year  
28 in which a withdrawal under this subsection is made is income  
29 for purposes of the Tax Reform Code of 1971.

30 (c) Bankruptcy.--The amount of disbursement of any assets of



1 a health savings account pursuant to a filing for protection  
2 under 11 U.S.C. 101, et seq. (relating to bankruptcy) by an  
3 account holder or person for whose benefit the account was  
4 established shall not be construed as a withdrawal for purposes  
5 of this section. The amount of a disbursement shall not be  
6 subject to taxation under the Tax Reform Code of 1971 and  
7 subsection (b) does not apply.

8 (d) Account transfer caused by marital dissolution.--The  
9 transfer of an account holder's interest in a health savings  
10 account to an account holder's spouse or former spouse under a  
11 divorce or separation instrument shall not be construed a  
12 taxable transfer made by such account holder, notwithstanding  
13 any other provision of this act, and such interest shall, after  
14 such transfer, be treated as a health savings account with  
15 respect to which such spouse is the account holder.

16 (e) Death of account holder.--Upon the death of the account  
17 holder, the account administrator shall distribute the principal  
18 and accumulated interest of the health savings to the estate of  
19 the deceased.

20 (f) Postemployment account maintenance.--

21 (1) If an employee is no longer employed by an employer  
22 that participates in a medical savings account program and  
23 the employee, not more than 60 days after the individual's  
24 final day of employment requests in writing to the former  
25 employer's account administrator that the account remain with  
26 that administrator and that account administrator agrees to  
27 retain the account, the money in the health savings account  
28 may be utilized for the benefit of the employee or the  
29 employee's dependents subject to this act and remain exempt  
30 from taxation pursuant to this act.

1           (2) Not more than 30 days after the expiration of the 60  
2 days, if the account administrator does not accept the former  
3 employee's account, the employer shall mail a check to the  
4 former employee at the employee's last known address equal to  
5 the amount in the account on that day that amount is subject  
6 to taxation pursuant to subsection (a).

7           (3) If an employee becomes employed with a different  
8 employer that participates in a health savings account  
9 program, the employee may transfer the individual's health  
10 savings account to that new employer's account administrator  
11 or to an individually purchased account program.

12 Section 6. Effective date.

13 This act shall take effect in 60 days.