

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

## HOUSE BILL

No. 2299 Session of  
2004

INTRODUCED BY PAYNE, ALLEN, BAKER, BALDWIN, BOYD, CLYMER,  
DENLINGER, GODSHALL, HERMAN, HERSHEY, HUTCHINSON, KILLION,  
MAITLAND, MAJOR, McILHATTAN, MUSTIO, PICKETT, REED, REICHLEY,  
SCAVELLO, R. STEVENSON, TIGUE, TURZAI, LEH, MARSICO,  
FAIRCHILD, T. STEVENSON, CAUSER, HARRIS, S. MILLER,  
HENNESSEY, METCALFE, CREIGHTON, CAPPELLI, GINGRICH, DALLY,  
CRAHALLA, HARHART, EGOLF, BENNINGHOFF, BROWNE, E. Z. TAYLOR,  
WILT, WEBER, RUBLEY, FORCIER, SOLOBAY, GERGELY, SAYLOR,  
ARMSTRONG, HARPER, YOUNGBLOOD, MACKERETH, O'NEILL,  
WASHINGTON, ZUG, PALLONE, WRIGHT, GABIG, LEWIS, WALKO AND  
WATSON, JANUARY 26, 2004

AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,  
OCTOBER 18, 2004

## 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.~~ AUTHORIZING THE ESTABLISHMENT AND MAINTENANCE OF <—  
5 HEALTH SAVINGS ACCOUNTS; PROVIDING AN EXCLUSION FROM STATE  
6 INCOME TAX; AND IMPOSING RESTRICTIONS ON HEALTH SAVINGS  
7 ACCOUNTS.

8 The General Assembly of the Commonwealth of Pennsylvania  
9 hereby enacts as follows:

10 Section 1. Short title.

11 This act shall be known and may be cited as the Health  
12 Savings Account Act.

13 ~~Section 2. Definitions.~~ <—

14 ~~The following words and phrases when used in this act shall~~  
15 ~~have the meanings given to them in this section unless the~~

1 ~~context clearly indicates otherwise:~~

2 ~~"Account administrator." Any of the following:~~

3 ~~(1) A national or State chartered bank or Federal or~~  
4 ~~State chartered savings and loan association, savings bank or~~  
5 ~~credit union.~~

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

7 ~~(3) An insurance company authorized to do business in~~  
8 ~~this Commonwealth pursuant to the act of May 17, 1921~~  
9 ~~(P.L.682, No.284), known as The Insurance Company Law of~~  
10 ~~1921, or a health care corporation operating pursuant to 40~~  
11 ~~Pa.C.S. Ch. 61 (relating to hospital plan corporations).~~

12 ~~(4) A broker dealer, commodity issuer, investment~~  
13 ~~advisor or agent registered pursuant to the act of December~~  
14 ~~5, 1972 (P.L.1280, No.284), known as the Pennsylvania~~  
15 ~~Securities Act of 1972.~~

16 ~~(5) A third party administrator with a current~~  
17 ~~certificate of authority issued pursuant to the laws of this~~  
18 ~~Commonwealth.~~

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

22 ~~(7) An attorney licensed to practice in this~~  
23 ~~Commonwealth.~~

24 ~~(8) An employer, if the employer has a self insured~~  
25 ~~health plan under the Employee Retirement Income Security Act~~  
26 ~~of 1974 (ERISA).~~

27 ~~(9) An employer that participates in a health savings~~  
28 ~~account program.~~

29 ~~"Account holder." An individual taxpayer, including an~~  
30 ~~employee of an employer who contributes to a health savings~~

~~account on the employee's behalf, who:~~

~~(1) Is covered by a high deductible health plan 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~~

1 ~~absent, that individual intends to return. Domicile continues~~  
2 ~~until another permanent home or principal establishment is~~  
3 ~~established.~~

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

7 ~~"Employee." An individual for whose benefit or for the~~  
8 ~~benefit of whose dependents a health savings account is~~  
9 ~~established. The term includes a self-employed individual.~~

10 ~~"ERISA." The Employee Retirement Income Security Act of 1974~~  
11 ~~(Public Law 93 406, 88 Stat. 829).~~

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

18 ~~(1) Except in the case of a rollover contribution, no~~  
19 ~~contribution may be accepted:~~

20 ~~(i) unless it is in cash; or~~

21 ~~(ii) to the extent such contribution, when added to~~  
22 ~~previous contributions to the account for the calendar~~  
23 ~~year, exceeds 100% of the account holder's deductible or~~  
24 ~~\$2,600 for an individual or \$5,150 per family, whichever~~  
25 ~~is lower.~~

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

30 ~~(3) No part of the trust assets may be invested in life~~

~~insurance contracts.~~

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

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

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

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

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

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

~~"Higher deductible." The term means:~~

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

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

~~"Qualified high deductible health plan." A health coverage policy, certificate or contract that provides for payments for covered benefits that exceed the higher deductible and that is purchased by an account holder or an employer for the benefit of an employee and the employee's dependents.~~

~~Section 3. Nature of program.~~

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

~~(b) Scope.~~

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

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

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

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

1 ~~of 1971.~~

2 ~~Section 4. Distribution of account funds.~~

3 ~~(a) Authorized purposes.~~

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

6 ~~(i) Paying the eligible medical expenses of the~~  
7 ~~account holder or the account holder's dependents.~~

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

13 ~~(iii) Paying for health insurance other than a~~  
14 ~~Medicare supplemental policy for those who are Medicare~~  
15 ~~eligible.~~

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

20 ~~(i) medical expense covered pursuant to an~~  
21 ~~automobile insurance policy;~~

22 ~~(ii) workers' compensation insurance policy or self-~~  
23 ~~insured plan; or~~

24 ~~(iii) another employer funded health coverage~~  
25 ~~policy, certificate or contract.~~

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

1 ~~medical expenses.~~

2 ~~(c) Limitation. Funds held in a health savings account may~~  
3 ~~not be used to cover medical expenses of the account holder or~~  
4 ~~the account holder's covered dependents that are otherwise~~  
5 ~~covered by any other health plan.~~

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

14 ~~Section 5. Account withdrawals.~~

15 ~~(a) General rule. Notwithstanding subsections (c), (d), (e)~~  
16 ~~and (f), an account holder may withdraw money from the account~~  
17 ~~holder's health savings account for any purpose other than a~~  
18 ~~purpose described in section 4(a) only on the last business day~~  
19 ~~of the account administrator's business year. Money withdrawn~~  
20 ~~pursuant to this subsection is income for the purpose of the act~~  
21 ~~of March 4, 1971 (P.L. 6, No. 2), known as the Tax Reform Code of~~  
22 ~~1971.~~

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

27 ~~(1) The amount of the withdrawal is income for the~~  
28 ~~purposes of the Tax Reform Code of 1971 in the tax year of~~  
29 ~~the withdrawal.~~

30 ~~(2) Interest earned on the account during the tax year~~

~~in which a withdrawal under this subsection is made is income for purposes of the Tax Reform Code of 1971.~~

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

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

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

~~(f) Postemployment account maintenance.—~~

~~(1) If an employee is no longer employed by an employer that participates in a medical savings account program and the employee, not more than 60 days after the individual's final day of employment requests in writing to the former employer's account administrator that the account remain with that administrator and that account administrator agrees to retain the account, the money in the health savings account~~

1 ~~may be utilized for the benefit of the employee or the~~  
2 ~~employee's dependents subject to this act and remain exempt~~  
3 ~~from taxation pursuant to this act.~~

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

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

15 ~~Section 6. Effective date.~~

16 ~~This act shall take effect in 60 days.~~

17 SECTION 2. LEGISLATIVE INTENT.

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18 IT IS THE INTENT OF THE GENERAL ASSEMBLY TO EXTEND TO HEALTH  
19 SAVINGS ACCOUNTS ESTABLISHED PURSUANT TO SECTION 223 OF THE  
20 INTERNAL REVENUE CODE OF 1986 (PUBLIC LAW 99-514, 26 U.S.C. §  
21 223) AN EXCLUSION FROM STATE INCOME TAX.

22 SECTION 3. DEFINITIONS.

23 THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS ACT SHALL  
24 HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION UNLESS THE  
25 CONTEXT CLEARLY INDICATES OTHERWISE:

26 "HEALTH INSURANCE POLICY." AN INDIVIDUAL OR GROUP HEALTH,  
27 SICKNESS OR ACCIDENT POLICY OR SUBSCRIBER CONTRACT OR  
28 CERTIFICATE ISSUED BY AN ENTITY SUBJECT TO ANY ONE OF THE  
29 FOLLOWING:

30 (1) THE ACT OF MAY 17, 1921 (P.L.682, NO.284), KNOWN AS

1 THE INSURANCE COMPANY LAW OF 1921.

2 (2) THE ACT OF DECEMBER 29, 1972 (P.L.1701, NO.364),  
3 KNOWN AS THE HEALTH MAINTENANCE ORGANIZATION ACT.

4 (3) THE ACT OF MAY 18, 1976 (P.L.123, NO.54), KNOWN AS  
5 THE INDIVIDUAL ACCIDENT AND SICKNESS INSURANCE MINIMUM  
6 STANDARDS ACT.

7 (4) 40 PA.C.S. CH. 61 (RELATING TO HOSPITAL PLAN  
8 CORPORATIONS) OR 63 (RELATING TO PROFESSIONAL HEALTH SERVICES  
9 PLAN CORPORATIONS).

10 "HEALTH SAVINGS ACCOUNT." AS DEFINED IN SECTION 223(D) OF  
11 THE INTERNAL REVENUE CODE OF 1986 (PUBLIC LAW 99-514, 26 U.S.C.  
12 § 223(D)).

13 "QUALIFIED MEDICAL EXPENSES." AS DEFINED IN SECTION 223(D)  
14 OF THE INTERNAL REVENUE CODE OF 1986 (PUBLIC LAW 99-514, 26  
15 U.S.C. § 223(D)).

16 SECTION 4. STATE INCOME TAX EXCLUSION.

17 (A) GENERAL RULE.--ANY INCREASE IN THE VALUE OF A HEALTH  
18 SAVINGS ACCOUNT AND ANY PAYMENT OR DISTRIBUTION FROM A HEALTH  
19 SAVINGS ACCOUNT THAT IS USED EXCLUSIVELY TO PAY QUALIFIED  
20 MEDICAL EXPENSES SHALL BE EXCLUDED FROM TAXATION UNDER ARTICLE  
21 III OF THE ACT OF MARCH 4, 1971 (P.L.6, NO.2), KNOWN AS THE TAX  
22 REFORM CODE OF 1971.

23 (B) NONQUALIFIED PAYMENTS OR DISTRIBUTIONS.--A PAYMENT OR  
24 DISTRIBUTION FROM A HEALTH SAVINGS ACCOUNT THAT IS USED FOR ANY  
25 PURPOSE OTHER THAN TO PAY QUALIFIED MEDICAL EXPENSES SHALL BE  
26 INCLUDED IN INCOME UNDER ARTICLE III OF THE TAX REFORM CODE OF  
27 1971 TO THE EXTENT THAT THE AMOUNTS PAID OR DISTRIBUTED WERE NOT  
28 PREVIOUSLY INCLUDED IN INCOME. THE COST RECOVERY METHOD SHALL BE  
29 USED TO DETERMINE THE PORTION OF THE PAYMENT OR DISTRIBUTION TO  
30 BE INCLUDED IN INCOME.

1 SECTION 5. MANDATED BENEFITS.

2 (A) GENERAL RULE.--A HEALTH INSURANCE POLICY THAT WOULD  
3 QUALIFY AS A HIGH DEDUCTIBLE HEALTH PLAN UNDER SECTION 223(C)(2)  
4 OF THE INTERNAL REVENUE CODE OF 1986 (PUBLIC LAW 99-514, 26  
5 U.S.C. § 223(C)(2)) SHALL BE SUBJECT TO ANY PROVISION OF LAW  
6 MANDATING A MINIMUM HEALTH INSURANCE BENEFIT OR REIMBURSEMENT.

7 (B) CONSTRUCTION.--NOTHING IN THIS ACT SHALL BE CONSTRUED TO  
8 PROHIBIT OR PREVENT A HEALTH INSURANCE POLICY THAT WOULD QUALIFY  
9 AS A HIGH DEDUCTIBLE HEALTH PLAN UNDER SECTION 223(C)(2) OF THE  
10 INTERNAL REVENUE CODE OF 1986 FROM APPLYING DEDUCTIBLES OR  
11 COPAYMENTS TO BENEFITS OFFERED UNDER THESE MANDATED MINIMUM  
12 HEALTH INSURANCE BENEFITS.

13 SECTION 6. APPLICABILITY.

14 SECTION 4 SHALL APPLY TO TAXABLE YEARS BEGINNING AFTER  
15 DECEMBER 31, 2003.

16 SECTION 7. EFFECTIVE DATE.

17 THIS ACT SHALL TAKE EFFECT IN 60 DAYS.