

By: Representatives Dedeaux, Howell

To: Insurance

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1213

1 AN ACT TO AMEND SECTION 71-9-3, MISSISSIPPI CODE OF 1972, TO
2 REVISE THE DEFINITION OF MEDICAL SAVINGS ACCOUNTS TO INCLUDE
3 HEALTH SAVINGS ACCOUNTS; TO CREATE A NEW SECTION TO BE CODIFIED AS
4 SECTION 71-9-11, MISSISSIPPI CODE OF 1972, TO PERMIT THE
5 ESTABLISHMENT AND MAINTENANCE OF HEALTH SAVINGS ACCOUNTS AND TO
6 EXEMPT CONTRIBUTIONS FROM GROSS INCOME UNDER THE STATE INCOME TAX
7 LAW; TO CREATE NEW SECTIONS TO BE CODIFIED AS SECTION 71-9-13 AND
8 71-9-15, MISSISSIPPI CODE OF 1972, TO PRESCRIBE THE REQUIREMENTS
9 OF AND RESTRICTIONS ON HEALTH SAVINGS ACCOUNTS; AND FOR RELATED
10 PURPOSES.

11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

12 **SECTION 1.** Section 71-9-3, Mississippi Code of 1972, is
13 amended as follows:

14 71-9-3. As used in this chapter:

15 (a) "Account administrator" means a state chartered
16 bank, savings and loan association, credit union or trust company
17 authorized to act as a fiduciary and under the supervision of the
18 Department of Banking and Consumer Finance or the Department of
19 Savings Associations, as appropriate; a national bank, national
20 lending association or federal savings and loan association or
21 credit union authorized to act as a fiduciary in this state; an
22 insurer licensed and admitted to do business in this state; a
23 third party administrator licensed by the Mississippi Commissioner
24 of Insurance; or an employer, if the employer has a self-insured
25 health plan meeting federal ERISA requirements.

26 (b) "Account holder" means a resident individual or an
27 employee for whose benefit a medical savings account is
28 established.

29 (c) "Dependent" means the spouse of an account holder
30 or the child of an account holder if the child is:

31 (i) Legally entitled to the provision of proper or
32 necessary subsistence, education, medical care, or other care
33 necessary for his or her health, guidance or well-being and not
34 otherwise emancipated, self-supporting, married or a member of the
35 Armed Forces of the United States; or

36 (ii) Mentally or physically incapacitated to the
37 extent that he or she is not self-sufficient.

38 (d) "Domicile" means a place where an individual has
39 his or her true, fixed and permanent home and principal
40 establishment, to which, whenever absent, he or she intends to
41 return.

42 (e) "Eligible medical expense" means an expense paid by
43 a taxpayer for medical care described in Section 213(d) of the
44 Internal Revenue Code.

45 (f) "Health savings account" means a trust or custodian
46 established in this state in accordance with a health savings
47 account program exclusively to pay the eligible medical expenses
48 of an account holder or his or her dependents, but only if the
49 written governing instrument creating the account meets the
50 following requirements:

51 (i) Except in the case of a rollover contribution,
52 no contribution shall be accepted unless it is in cash; or, to the
53 extent such contribution, when added to the previous contributions
54 to the account for the calendar year, exceeds one hundred percent
55 (100%) of the account holder's deductible or Two Thousand Six
56 Hundred Dollars (\$2,600.00) for an individual or Five Thousand One
57 Hundred Fifty Dollars (\$5,150.00) per family, whichever is lower;

58 (ii) The trustee or custodian is a bank, an
59 insurance company or another person approved by the Commissioner
60 of Insurance;

61 (iii) No part of the trust assets shall be
62 invested in life insurance contracts;

63 (iv) The assets of the account shall not be
64 commingled with other property except as allowed for under
65 Individual Retirement Accounts; and

66 (v) Eligible individual's interest in the account
67 is nonforfeitable.

68 (g) "Health savings account program" means a program
69 that includes all of the following:

70 (i) The purchase by an eligible individual or by
71 an employer of a high deductible health plan; and

72 (ii) The contribution into a health savings
73 account by an eligible individual or on behalf of an employee or
74 by his or her employer. The total annual contribution may not
75 exceed the amount of the plan's higher deductible or the amounts
76 listed herein.

77 (h) "High deductible health plan" means a health
78 coverage policy, certificate or contract that provides for
79 payments for covered benefits that exceed the higher deductible.

80 (i) "Higher deductible" means a deductible of not less
81 than One Thousand Five Hundred Dollars (\$1,500.00) but not more
82 than Two Thousand Two Hundred Fifty Dollars (\$2,250.00) for
83 individual health coverage, and not less than Three Thousand
84 Dollars (\$3,000.00) but not more than Four Thousand Five Hundred
85 Dollars (\$4,500.00) for health coverage provided to an individual
86 and his or her dependents, in tax year 1994. Beginning after
87 1998, such deductible limits thereafter shall be adjusted annually
88 in fifty-dollar increments for increases in the cost of living, as
89 measured by the medical costs component of the Consumer Price
90 Index.

91 (j) "Medical savings account" means an account
92 established to pay eligible medical expense of the account holder
93 and his or her dependents and includes the term "health savings
94 account" as defined in paragraph (f) of this section.

95 (k) "Medical savings account program" means a program
96 that includes all of the following:

97 (i) The purchase by an employer of a qualified
98 higher deductible health plan for the benefit of an employee and
99 his or her dependents or the purchase by a resident individual of
100 a qualified higher deductible health plan for his or her benefit
101 or for the benefit of his or her dependents, or both;

102 (ii) The payment on behalf of an employee into a
103 medical savings account by his or her employer or payment into a
104 medical savings account by a resident individual on his or her
105 behalf of at least sixty-six and two-thirds percent (66-2/3%) of
106 the premium reduction realized by the purchase of a qualified
107 higher deductible health plan; and

108 (iii) An account administrator to administer the
109 medical savings account and the reimbursement of eligible medical
110 expenses therefrom.

111 (l) "Qualified higher deductible health plan" means an
112 accident and health insurance policy, certificate or contract
113 that:

114 (i) Is purchased by an employer for the benefit of
115 an employee or by a resident individual for his or her benefit;
116 and

117 (ii) Provides for payment of covered expenses that
118 exceed the higher deductible, but shall not exceed the maximum
119 out-of-pocket expenses of Three Thousand Dollars (\$3,000.00) for
120 individual coverage and Five Thousand Five Hundred Dollars
121 (\$5,500.00) for family coverage.

122 (m) "Resident individual" means an individual who has a
123 domicile in this state.

124 **SECTION 2.** The following shall be codified as Section
125 71-9-11, Mississippi Code of 1972:

126 71-9-11. (1) The provisions of Sections 2 through 4 of this
127 act shall apply also to taxpayers who are not receiving preferred

128 federal tax treatment for a health savings account under Internal
129 Revenue Code Section 223.

130 (2) For taxable years beginning after January 1, 2005, a
131 resident of Mississippi or an employer shall be allowed to deposit
132 contributions to a health savings account. The amount of deposit
133 for 2005 shall not exceed the amount of the plan's high
134 deductible, or Two Thousand Six Hundred Dollars (\$2,600.00) for an
135 individual policy or Five Thousand One Hundred Fifty Dollars
136 (\$5,150.00) for a family policy.

137 (3) Except as provided in Section 4 of this act, or except
138 as otherwise provided by law, the principal contributed to and the
139 interest earned on a health savings account and money reimbursed
140 to an eligible individual or an employee for qualified medical
141 expenses shall be excluded from the taxable gross income of the
142 account holder under Section 27-7-15.

143 **SECTION 3.** The following section shall be codified as
144 Section 71-9-13, Mississippi Code of 1972:

145 71-9-13. The trustee or custodian shall utilize the funds
146 held in a health savings account solely for the purpose of:

147 (a) Paying the qualified medical expenses of the
148 eligible individual or his or her dependents;

149 (b) Purchasing a health coverage policy certificate, or
150 contract, for an eligible individual who is receiving unemployment
151 compensation, is exercising continuation privileges under federal
152 law or is purchasing a long-term care insurance contract; or

153 (c) Paying for health insurance other than a Medicare
154 supplemental policy for those who are Medicare eligible. Funds
155 held in a health savings account shall not be used to cover
156 expenses of the eligible individual or his or her dependents that
157 are otherwise covered, including, but not limited to, medical
158 expenses covered under an automobile insurance policy, workers'
159 compensation insurance policy or self-insured plan or another
160 employer-funded health coverage policy, certificate or contract.

161 **SECTION 4.** The following section shall be codified as
162 Section 71-9-15, Mississippi Code of 1972:

163 71-9-15. (1) Notwithstanding subsections (3), (4), (5) or
164 (6) of this section, an eligible individual may withdraw money
165 from his or her health savings account for any purpose other than
166 a purpose described in Section 3 of this act.

167 (2) Subject to subsection (3) of this section, if the
168 eligible individual withdraws money for any purpose other than a
169 purpose described in Section 3 of this act at any other time, all
170 of the following apply:

171 (a) The amount of the withdrawal is considered taxable
172 gross income of the account holder under Section 27-7-15 in the
173 tax year of the withdrawal.

174 (b) Interest earned on the account during the tax year
175 in which a withdrawal under this subsection is made is considered
176 taxable gross income of the account holder under Section 27-7-15.

177 (3) The amount of disbursement of any assets of a health
178 savings account pursuant to a filing for protection under Title 11
179 of the United States Code, 11 USCS 101 et seq. by an eligible
180 individual or person for whose benefit the account was established
181 is not considered a withdrawal for purposes of this section. The
182 amount of a disbursement is not considered taxable gross income of
183 the account holder under Section 27-7-15 and subsection (2) of
184 this section does not apply.

185 (4) The transfer of an eligible individual's interest in a
186 health savings account to an eligible individual's spouse or
187 former spouse under a divorce or separation instrument shall not
188 be considered a taxable transfer made by such eligible individual,
189 and such interest shall, after such transfer, be treated as a
190 health savings account with respect to which such spouse is the
191 eligible individual.

192 (5) Upon the death of the eligible individual, the trustee
193 or custodian shall distribute the principle and accumulated

194 interest of the health savings account to the estate of the
195 deceased.

196 (6) If an employee becomes employed with a different
197 employer that participates in a health savings account program,
198 the employee may transfer his or her health savings account to
199 that new employer's trustee or custodian or to an individually
200 purchased account program.

201 **SECTION 5.** This act shall take effect and be in force from
202 and after its passage.