

1 SENATE BILL NO. 253

2 INTRODUCED BY G. HERTZ

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 4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING MEDICAL CARE SAVINGS ACCOUNT
 5 LAWS; ALLOWING INVESTMENT OF MEDICAL CARE SAVINGS ACCOUNT FUNDS IN STOCKS, BONDS,
 6 AND MUTUAL FUNDS; PROVIDING THAT INVESTMENT OPTIONS THAT QUALIFY UNDER A FEDERAL
 7 HEALTH SAVINGS ACCOUNT ARE PERMISSIBLE; PROVIDING A TRANSITION CLAUSE TO ALLOW A
 8 TAX-FREE ROLLOVER FROM AN EXISTING MEDICAL CARE SAVINGS ACCOUNT; AMENDING SECTION
 9 15-61-204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE
 10 APPLICABILITY DATE."
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12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
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14 **Section 1.** Section 15-61-204, MCA, is amended to read:

15 **"15-61-204. Administration of account.** (1) (a) An account administrator shall administer the
 16 medical care savings account from which the payment of claims is made and, except as provided in subsection
 17 (1)(b), has a fiduciary duty to the person for whose benefit the account is administered.

18 (b) Except for reporting and remitting of penalties to the department of revenue, a financial institution
 19 shall administer a medical care savings account ~~as a regular deposit or share account~~ and has the same rights
 20 and duties pertaining to the account as ~~pertain to a regular deposit or share account~~ the person for whose
 21 benefit the account is administered. A financial institution may provide investment options to each employee
 22 and account holder, including a regular deposit account, share account, stock account, bond account, mutual
 23 fund account, or a combination of these accounts. An investment option that is allowable for a health savings
 24 account under 26 U.S.C. 223 automatically qualifies. Notwithstanding any other provision of this chapter, a
 25 financial institution is not responsible for:

26 (i) losses that are based on an investment option that is selected by an employee or account holder;

27 and

28 (ii) determining whether a medical expense is eligible or nonreimbursable or for the use or application

1 of funds if the account holder attests that withdrawals are for eligible and nonreimbursable medical expenses.

2 (2) Not more than 30 days after an account administrator begins to administer an account, the
3 account administrator shall notify in writing each employee and account holder on whose behalf the account
4 administrator administers an account of the date of the last business day of the account administrator's
5 business year.

6 (3) An account administrator may use funds held in a medical care savings account only for the
7 purpose of paying eligible medical expenses or for paying the expenses of administering the account. Funds
8 held in a medical care savings account may not be used to pay medical expenses or for a long-term care
9 insurance policy or annuity that is otherwise reimbursable, including medical expenses payable pursuant to an
10 automobile insurance policy, workers' compensation insurance policy or self-insured plan, or another health
11 coverage policy, certificate, or contract.

12 (4) The employee or account holder may submit documentation of eligible medical expenses paid by
13 the employee or account holder in the tax year to the account administrator, and the account administrator shall
14 reimburse the employee or account holder from the employee's or account holder's account for eligible medical
15 expenses. The burden of proving that a withdrawal from a medical care savings account was made for an
16 eligible medical expense is upon the account holder and not upon the account administrator or the employer of
17 the account holder.

18 (5) The employee or account holder may submit documentation of the purchase of long-term care
19 insurance or a long-term care annuity for the employee or account holder or a dependent of the employee or
20 account holder to the account administrator, and the account administrator shall reimburse the employee or
21 account holder from the employee's or account holder's account for payments made for the purchase of the
22 insurance or annuity. The account administrator may also provide for a system of automatic withdrawals from
23 the account for the payment of long-term care insurance premiums or an annuity.

24 (6) The employee or account holder must annually report to the department the starting balance and
25 ending balance of a medical care savings account.

26 (7) If an employer makes contributions to a medical care savings account on a periodic installment
27 basis, the employer may advance to an employee, interest free, an amount necessary to cover medical
28 expenses incurred that exceeds the amount in the employee's medical care savings account at the time that the

1 expense is incurred if the employee agrees to repay the advance from future installments or when the
2 employee ceases employment with the employer.

3 (8) In the case of an account administrator who is also the account holder or an employee:

4 (a) notice by the account administrator to the account holder pursuant to subsection (2) is not
5 required;

6 (b) the account administrator may not use funds held in an account to pay expenses of administering
7 the account, except that a service fee may be deducted from the account by a financial institution or other
8 holder of the account;

9 (c) documentation of eligible medical expenses must be maintained but is not required to be
10 submitted to the account administrator;

11 (d) contributions to a medical care savings account must be established in a separate account and be
12 segregated from other funds;

13 (e) the account holder is subject to the same yearend reporting requirements as all other account
14 administrators; and

15 (f) the account holder is required to forward the 10% penalty on funds withdrawn for noneligible
16 medical expenses to the state."

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18 **NEW SECTION. Section 2. Transition -- rollover.** Each employee and account holder with a
19 medical care savings account that was in existence before [the effective date of this act] may withdraw money
20 in the account and deposit the money in another account with a different account administrator or with the same
21 account administrator without incurring tax liability.

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23 **NEW SECTION. Section 3. Saving clause.** [This act] does not affect rights and duties that matured,
24 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

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26 **NEW SECTION. Section 4. Effective date.** [This act] is effective on passage and approval.

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28 **NEW SECTION. Section 5. Retroactive applicability.** [This act] applies retroactively, within the

1 meaning of 1-2-109, to income tax years beginning after December 31, 2020.

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