

LEGISLATURE OF NEBRASKA  
ONE HUNDRED FIFTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 362**

Introduced by Riepe, 12.

Read first time January 13, 2017

Committee:

- 1 A BILL FOR AN ACT relating to revenue and taxation; to adopt the Health
- 2 Savings Account Act; and to provide an operative date.
- 3 Be it enacted by the people of the State of Nebraska,

1           Section 1. Sections 1 to 7 of this act shall be known and may be  
2 cited as the Health Savings Account Act.

3           Sec. 2. For purposes of the Health Savings Account Act:

4           (1) Account beneficiary means the individual on whose behalf the  
5 health savings account was established;

6           (2) Archer MSA has the meaning given such term in section 220(d) of  
7 the Internal Revenue Code of 1986, as amended;

8           (3)(a) Eligible individual means, with respect to any month, any  
9 individual if:

10           (i) Such individual is covered under a qualified health insurance  
11 plan as of the first day of such month; and

12           (ii) Such individual is not, while covered under a qualified health  
13 insurance plan, covered under any health plan (A) which is not a  
14 qualified health insurance plan and (B) which provides coverage for any  
15 benefit which is covered under the qualified health insurance plan;

16           (b) Subdivision (3)(a)(ii) of this section shall be applied without  
17 regard to:

18           (i) Coverage for any benefit provided by permitted insurance;

19           (ii) Coverage, whether through insurance or otherwise, for  
20 accidents, disability, dental care, vision care, or long-term care; and

21           (iii) Coverage under a health flexible spending arrangement during  
22 any period immediately following the end of a plan year of such  
23 arrangement during which unused benefits or contributions remaining at  
24 the end of such plan year may be paid or reimbursed to plan participants  
25 for qualified benefit expenses incurred during such period if (A) the  
26 balance in such arrangement at the end of such plan year is zero, or (B)  
27 the individual is making a qualified HSA distribution as defined in  
28 section 106(e) of the Internal Revenue Code of 1986, as amended, in an  
29 amount equal to the remaining balance in such arrangement as of the end  
30 of such plan year;

31           (4) Family coverage means any coverage other than self-only

1 coverage;

2 (5) Health savings account means a trust created or organized in the  
3 United States as a health savings account exclusively for the purpose of  
4 paying the qualified medical expenses of the account beneficiary, but  
5 only if the written governing instrument creating the trust meets the  
6 following requirements:

7 (a) Except in the case of a rollover contribution as defined in  
8 section 4 of this act or as described in section 220(f)(5) of the  
9 Internal Revenue Code of 1986, as amended, no contribution will be  
10 accepted:

11 (i) Unless it is in cash; or

12 (ii) To the extent such contribution, when added to previous  
13 contributions to the trust for the calendar year, exceeds the sum of:

14 (A) The dollar amount in effect under subdivision (2)(b) of section  
15 3 of this act; and

16 (B) The dollar amount in effect under subsection (3) of section 3 of  
17 this act;

18 (b) The trustee is a bank as defined in section 408(n) of the  
19 Internal Revenue Code of 1986, as amended, or an insurance company as  
20 defined in section 816 of the Internal Revenue Code of 1986, as amended;

21 (c) No part of the trust assets will be invested in life insurance  
22 contracts;

23 (d) The assets of the trust will not be commingled with other  
24 property except in a common trust fund or common investment fund; and

25 (e) The interest of an individual in the balance in his or her  
26 account is nonforfeitable;

27 (6) Permitted insurance means:

28 (a) Insurance if substantially all of the coverage provided under  
29 such insurance relates to:

30 (i) Liabilities incurred under workers' compensation laws;

31 (ii) Tort liabilities; or

1       (iii) Liabilities relating to ownership or use of property;  
2       (b) Insurance for a specified disease or illness; and  
3       (c) Insurance paying a fixed amount per day, or other period, of  
4 hospitalization;

5       (7)(a) Qualified health insurance plan means a health plan that  
6 provides major medical coverage;

7       (b) Qualified health insurance plan does not include a health plan  
8 if substantially all of its coverage is coverage described in subdivision  
9 (3)(b) of this section; and

10       (8)(a) Qualified medical expenses means, with respect to an account  
11 beneficiary, amounts paid by such beneficiary for medical care as defined  
12 in section 213(d) of the Internal Revenue Code of 1986, as amended, for  
13 such individual, the spouse of such individual, and any dependent as  
14 defined in section 152 of the Internal Revenue Code of 1986, as amended,  
15 determined without regard to subdivisions (b)(1), (b)(2), and (d)(1)(B)  
16 thereof, of such individual, but only to the extent such amounts are not  
17 compensated for by insurance or otherwise;

18       (b) Qualified medical expenses includes:

19       (i) Premiums paid under a qualified health insurance plan; and

20       (ii) An amount paid for medicine or a drug only if such medicine or  
21 drug is (A) a prescribed drug, determined without regard to whether such  
22 drug is available without a prescription, or (B) insulin.

23       Sec. 3. (1) In the case of an individual who is an eligible  
24 individual for any month during the taxable year, there shall be allowed  
25 as an income tax deduction for the taxable year an amount equal to the  
26 aggregate amount paid in cash during such taxable year by or on behalf of  
27 such individual to a health savings account of such individual.

28       (2) The amount allowable as a deduction under subsection (1) of this  
29 section to an individual for the taxable year shall not exceed the sum of  
30 the monthly limitations for months during such taxable year that the  
31 individual is an eligible individual. The monthly limitation for any

1 month is one-twelfth of:

2 (a) In the case of an eligible individual who has self-only coverage  
3 under a qualified health insurance plan as of the first day of such  
4 month, two thousand two hundred fifty dollars; and

5 (b) In the case of an eligible individual who has family coverage  
6 under a qualified health insurance plan as of the first day of such  
7 month, four thousand five hundred dollars.

8 (3) In the case of an individual who has attained age fifty-five  
9 before the close of the taxable year, the applicable limitation under  
10 subsection (2) of this section shall be increased by the additional  
11 contribution amount. For purposes of this section, the additional  
12 contribution amount is:

13 (a) For taxable years beginning in 2018, five hundred dollars;

14 (b) For taxable years beginning in 2019, six hundred dollars;

15 (c) For taxable years beginning in 2020, seven hundred dollars;

16 (d) For taxable years beginning in 2021, eight hundred dollars;

17 (e) For taxable years beginning in 2022, nine hundred dollars; and

18 (f) For taxable years beginning in 2023 and thereafter, one thousand  
19 dollars.

20 (4) The limitation which would apply under this section to an  
21 individual for any taxable year shall be reduced, but not below zero, by  
22 the sum of:

23 (a) The aggregate amount paid for such taxable year to an Archer MSA  
24 of such individual, except that this subdivision shall not apply with  
25 respect to any individual to whom subsection (5) of this section applies;

26 (b) The aggregate amount contributed to health savings accounts of  
27 such individual which is excludable from the taxpayer's gross income for  
28 such taxable year under section 106(d) of the Internal Revenue Code of  
29 1986, as amended, and such amount shall not be allowed as a deduction  
30 under subsection (1) of this section; and

31 (c) The aggregate amount contributed to health savings accounts of

1 such individual for such taxable year under section 408(d)(9) of the  
2 Internal Revenue Code of 1986, as amended, and such amount shall not be  
3 allowed as a deduction under subsection (1) of this section.

4 (5) In the case of individuals who are married to each other, if  
5 either spouse has family coverage:

6 (a) Both spouses shall be treated as having only such family  
7 coverage, and if such spouses each have family coverage under different  
8 plans, as having the family coverage with the lowest annual deductible;  
9 and

10 (b) The limitation under subsection (2) of this section, after the  
11 application of subdivision (5)(a) of this section and without regard to  
12 any additional contribution amount under subsection (3) of this section:

13 (i) Shall be reduced by the aggregate amount paid to Archer MSAs of  
14 such spouses for the taxable year; and

15 (ii) After such reduction, shall be divided equally between them  
16 unless they agree on a different division.

17 (6) No deduction shall be allowed under this section to any  
18 individual with respect to whom a deduction under section 151 of the  
19 Internal Revenue Code of 1986, as amended, is allowable to another  
20 taxpayer for a taxable year beginning in the calendar year in which such  
21 individual's taxable year begins.

22 (7) The limitation under this section for any month with respect to  
23 an individual shall be zero for the first month such individual is  
24 entitled to benefits under Title XVIII of the federal Social Security  
25 Act, 42 U.S.C. 1395 et seq., and for each month thereafter.

26 (8)(a) For purposes of computing the limitation under subsection (2)  
27 of this section for any taxable year, an individual who is an eligible  
28 individual during the last month of such taxable year shall be treated:

29 (i) As having been an eligible individual during each of the months  
30 in such taxable year; and

31 (ii) As having been enrolled, during each of the months such

1 individual is treated as an eligible individual solely by reason of  
2 subdivision (8)(a)(i) of this section, in the same qualified health  
3 insurance plan in which the individual was enrolled for the last month of  
4 such taxable year.

5 (b) If, at any time during the testing period, the individual is not  
6 an eligible individual, then:

7 (i) Gross income of the individual for the taxable year in which  
8 occurs the first month in the testing period for which such individual is  
9 not an eligible individual is increased by the aggregate amount of all  
10 contributions to the health savings account of the individual which could  
11 not have been made but for subdivision (8)(a) of this section; and

12 (ii) The income tax imposed for any taxable year on the individual  
13 shall be increased by ten percent of the amount of such increase.

14 (c) Subdivision (8)(b) of this section shall not apply if the  
15 individual ceased to be an eligible individual by reason of the death of  
16 the individual or the individual becoming disabled.

17 (d) For purposes of this subsection, testing period means the period  
18 beginning with the last month of the taxable year referred to in  
19 subdivision (8)(a) of this section and ending on the last day of the  
20 twelfth month following such month.

21 Sec. 4. (1) A health savings account is exempt from income taxes  
22 imposed under the Nebraska Revenue Act of 1967 unless such account has  
23 ceased to be a health savings account.

24 (2) Any amount paid or distributed out of a health savings account  
25 which is used exclusively to pay qualified medical expenses of any  
26 account beneficiary shall not be includible in gross income.

27 (3) Any amount paid or distributed out of a health savings account  
28 which is not used exclusively to pay the qualified medical expenses of  
29 the account beneficiary shall be included in the gross income of such  
30 beneficiary.

31 (4) The income tax imposed under the Nebraska Revenue Act of 1967 on

1 the account beneficiary for any taxable year in which there is a payment  
2 or distribution from a health savings account of such beneficiary which  
3 is includible in gross income under subsection (3) of this section shall  
4 be increased by twenty percent of the amount which is so includible,  
5 except that such increase shall not apply:

6 (a) If the payment or distribution is made after the account  
7 beneficiary becomes disabled or dies; or

8 (b) To any payment or distribution after the date on which the  
9 account beneficiary attains the age specified in section 1811 of the  
10 federal Social Security Act, 42 U.S.C. 1395c.

11 (5) Subsection (3) of this section shall not apply to any rollover  
12 contribution. For purposes of this subsection, rollover contribution  
13 means an amount paid or distributed from a health savings account to the  
14 account beneficiary to the extent the amount received is paid into a  
15 health savings account for the benefit of such beneficiary not later than  
16 the sixtieth day after the day on which the beneficiary receives the  
17 payment or distribution.

18 Sec. 5. The transfer of an individual's interest in a health  
19 savings account to an individual's spouse or former spouse under a  
20 divorce decree shall not be considered a taxable transfer made by such  
21 individual, and such interest shall, after such transfer, be treated as a  
22 health savings account with respect to which such spouse is the account  
23 beneficiary.

24 Sec. 6. (1) If the account beneficiary's surviving spouse acquires  
25 such beneficiary's interest in a health savings account by reason of  
26 being the designated beneficiary of such account at the death of the  
27 account beneficiary, such health savings account shall be treated as if  
28 the spouse were the account beneficiary.

29 (2) If, by reason of the death of the account beneficiary, any  
30 person acquires the account beneficiary's interest in a health savings  
31 account in a case to which subsection (1) of this section does not apply:



1       (a) Such account shall cease to be a health savings account as of  
2 the date of death; and

3       (b) An amount equal to the fair market value of the assets in such  
4 account on such date shall be includible, if such person is not the  
5 estate of such beneficiary, in such person's gross income for the taxable  
6 year which includes such date or, if such person is the estate of such  
7 beneficiary, in such beneficiary's gross income for the last taxable year  
8 of such beneficiary.

9       (3) The amount includible in gross income under subsection (2) of  
10 this section for any person other than the estate shall be reduced by the  
11 amount of qualified medical expenses which were incurred by the decedent  
12 before the date of the decedent's death and paid by such person within  
13 one year after such date.

14       Sec. 7. (1) Each dollar amount in subsection (2) of section 3 of  
15 this act shall be increased by an amount equal to such dollar amount  
16 multiplied by the cost-of-living adjustment determined under section 1(f)  
17 (3) of the Internal Revenue Code of 1986, as amended, for the calendar  
18 year in which such taxable year begins, determined by substituting  
19 calendar year 2017 for calendar year 1992.

20       (2) If any increase under subsection (1) of this section is not a  
21 multiple of fifty dollars, such increase shall be rounded to the nearest  
22 multiple of fifty dollars.

23       Sec. 8. This act becomes operative on January 1, 2018.