

54A:5-1

LEGISLATIVE HISTORY CHECKLIST
Compiled by the NJ State Law Library

(Medical savings account)

NJSA: 54A:5-1

LAWS OF: 1997 CHAPTER: 414

BILL NO: A671

SPONSOR(S): Bagger and Roma

DATE INTRODUCED: Pre-filed

COMMITTEE: ASSEMBLY: Insurance; Appropriations
SENATE: Health

AMENDED DURING PASSAGE: Yes
AC5/AC5 A671/A495 (2R)

DATE OF PASSAGE: ASSEMBLY: January 29, 1997
SENATE: December 18, 1997

DATE OF APPROVAL: January 19, 1998

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: ASSEMBLY: Yes 9-16-96 & 1-9-97
SENATE: Yes

FISCAL NOTE: Yes

VETO MESSAGE: No

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:
REPORTS: No

HEARINGS: No

KBP:pp

§3
C. 54A:3-4
§5
C. 54A:6-27
§6
Note To §§1-5

P.L. 1997, CHAPTER 414, *approved January 19, 1998*
Assembly Committee Substitute (*Second Reprint*) for
Assembly Committee Substitute for
Assembly, Nos. 671 and 495

1 AN ACT concerning medical savings accounts, amending P.L.1992,
2 c.161 ¹[and P.L.1992, c.162]¹ and amending and supplementing
3 Title 54A of the New Jersey Statutes.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. Section 6 of P.L.1992, c.161 (C.17B:27A-7) is amended to
9 read as follows:

10 6. The board shall establish the policy and contract forms and
11 benefit levels to be made available by all carriers for the ¹[policies]
12 health benefits plans¹ required to be issued pursuant to section 3 of
13 P.L.1992, c.161 (C.17B:27A-4) , and shall adopt such modifications
14 to one or more plans as the board determines are necessary to make
15 available a "high deductible health plan" or plans ¹[compatible with the
16 medical savings accounts established pursuant to section 220 of the
17 federal Internal Revenue Code of 1986, 26 U.S.C. §220] consistent
18 with section 301 of Title III of the "Health Insurance Portability and
19 Accountability Act of 1996," Pub.L.104-191, regarding tax-deductible
20 medical savings accounts¹, within 60 days after the enactment of P.L.
21 , c. (C.) (now pending before the Legislature as this bill). The
22 board shall provide the commissioner with an informational filing of
23 the policy and contract forms and benefit levels it establishes.

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SHH committee amendments adopted December 11, 1997.

² Senate SBA committee amendments adopted December 15, 1997.

1 a. ~~1~~ ~~the~~ The¹ individual health benefits plans established by the
2 board may include cost containment measures such as, but not limited
3 to: utilization review of health care services, including review of
4 medical necessity of hospital and physician services; case management
5 benefit alternatives; selective contracting with hospitals, physicians,
6 and other health care providers; and reasonable benefit differentials
7 applicable to participating and nonparticipating providers; and other
8 managed care provisions.

9 b. An individual health benefits plan offered pursuant to section 3
10 of P.L.1992, c.161 (C.17B:27A-4) shall contain a limitation of no
11 more than 12 months on coverage for preexisting conditions¹, ~~except~~
12 ~~that the limitation shall not apply~~ . An individual health benefits plan
13 offered pursuant to section 3 of P.L.1992, c.161 (C.17B:27A-4) shall
14 not contain a preexisting condition limitation of any period under the
15 following circumstances:

16 (1)¹ to an individual who has, under ¹~~a~~ prior group or individual
17 health benefits plan or Medicaid] creditable coverage¹, with no
18 intervening lapse in coverage of more than ¹~~30~~ 31¹ days, been
19 treated or diagnosed by a physician for a condition under that plan or
20 satisfied a 12-month preexisting condition limitation¹; or

21 (2) to a federally defined eligible individual who applies for an
22 individual health benefits plan within 63 days of termination of the
23 prior coverage¹.

24 c. In addition to the five standard individual health benefits plans
25 provided for in section 3 of P.L.1992, c.161 (C.17B:27A-4), the board
26 may develop up to five rider packages. Premium rates for the rider
27 packages shall be determined in accordance with section 8 of
28 P.L.1992, c.161 (C.17B:27A-9).

29 d. After the board's establishment of the individual health benefits
30 plans required pursuant to section 3 of P.L.1992, c.161
31 (C.17B:27A-4), and notwithstanding any law to the contrary, a carrier
32 shall file the policy or contract forms with the board and certify to the
33 board that the health benefits plans to be used by the carrier are in
34 substantial compliance with the provisions in the corresponding board
35 approved plans. The certification shall be signed by the chief
36 executive officer of the carrier. Upon receipt by the board of the
37 certification, the certified plans may be used until the board, after
38 notice and hearing, disapproves their continued use.

39 e. Effective immediately for an individual health benefits plan
40 issued on or after the effective date of P.L.1995, c.316
41 (C.17:48E-35.10 et al.) and effective on the first 12-month anniversary
42 date of an individual health benefits plan in effect on the effective date
43 of P.L.1995, c.316 (C.17:48E-35.10 et al.), the individual health
44 benefits plans required pursuant to section 3 of P.L.1992, c.161
45 (C.17B:27A-4), including any plan offered by a federally qualified
46 health maintenance organization, shall contain benefits for expenses

1 incurred in the following:

2 (1) Screening by blood lead measurement for lead poisoning for
3 children, including confirmatory blood lead testing as specified by the
4 Department of Health ¹and Senior Services¹ pursuant to section 7 of
5 P.L.1995 , c.316 (C.26:2-137.1); and medical evaluation and any
6 necessary medical follow-up and treatment for lead poisoned children.

7 (2) All childhood immunizations as recommended by the Advisory
8 Committee on Immunization Practices of the United States Public
9 Health Service and the Department of Health ¹and Senior Services¹
10 pursuant to section 7 of P.L.1995, c.316 (C.26:2-137.1). A carrier
11 shall notify its insureds, in writing, of any change in the health care
12 services provided with respect to childhood immunizations and any
13 related changes in premium. Such notification shall be in a form and
14 manner to be determined by the Commissioner of ¹Banking and¹
15 Insurance.

16 The benefits shall be provided to the same extent as for any other
17 medical condition under the health benefits plan, except that no
18 deductible shall be applied for benefits provided pursuant to this
19 section. This section shall apply to all individual health benefits plans
20 in which the carrier has reserved the right to change the premium.

21 (cf: P.L.1997, c.146, s.4)

22

23 ¹[2. Section 17 of P.L.1992, c.162 (C.17B:27A-33) is amended
24 to read as follows:

25 17. Subject to the approval of the commissioner, the board shall
26 formulate the five health benefits plans, and shall adopt such
27 modifications to one or more plans as the board determines are
28 necessary to make available a "high deductible health plan" or plans
29 compatible with the medical savings accounts established pursuant to
30 section 220 of the federal Internal Revenue Code of 1986, 26 U.S.C.
31 §220, within 60 days after the enactment of P.L. , c. (C.)(now
32 pending before the Legislature as this bill), to be made available by
33 small employer carriers in accordance with the provisions of this act,
34 and shall promulgate five standard forms pursuant thereto. The board
35 may establish benefits levels, deductibles and copayments, exclusions,
36 and limitations for such health benefits plans in accordance with the
37 law.

38 The board shall submit the forms so established to the
39 commissioner for his approval. The commissioner shall approve the
40 forms if he finds them to be consistent with the provisions of section
41 3 of P.L.1992, c.162 (C.17B:27A-19). Any form submitted to the
42 commissioner by the board shall be deemed approved if not expressly
43 disapproved in writing within 60 days of its receipt by the
44 commissioner. Such forms may contain, but shall not be limited to, the
45 following provisions:

46 a. Utilization review of health care services, including review of

- 1 medical necessity of hospital and physician services;
- 2 b. Managed care systems, including large case management;
- 3 c. Provision for selective contracting with hospitals, physicians,
- 4 and other health care providers;
- 5 d. Reasonable benefits differentials which are applicable to
- 6 participating and nonparticipating providers;
- 7 e. Notwithstanding the provisions of section 4 of P.L.1992, c.162
- 8 (C.17B:27A-20) to the contrary, the board may, from time to time,
- 9 adjust coinsurance and deductibles;
- 10 f. Such other provisions which may be quantifiably established to
- 11 be cost containment devices;
- 12 g. The department shall publish annually a list of the premiums
- 13 charged for each of the five small employer health benefits plans and
- 14 for any rider package by all carriers writing such plans. The
- 15 department shall also publish the toll free telephone number of each
- 16 such carrier.
- 17 (cf: P.L.1993, c.162, s.8)]¹

18
19 ¹[3.] 2.¹ N.J.S.54A:3-3 is amended to read as follows:

20 54A:3-3. Medical expenses. (a) Each taxpayer shall be allowed to

21 deduct from ~~his~~ the taxpayer's gross income medical expenses for

22 ~~himself~~ the taxpayer, ~~his~~ the taxpayer's spouse, and ~~his~~ the

23 taxpayer's dependents with respect to such expenses that were paid

24 during the taxable year and to the extent that such medical expenses

25 exceed 2% of the taxpayer's gross income. In the case of a

26 nonresident, gross income shall mean gross income which such

27 nonresident would have reported if ~~he~~ the taxpayer had been subject

28 to tax during the entire taxable year as a resident.

29 (b) Special Rule for Decedents.

30 (1) Treatment of expenses paid after death. Expenses for the

31 medical care of the taxpayer which are paid out of ~~his~~ the taxpayer's

32 estate during the one-year period beginning with the day after the day

33 of the death shall be treated as paid by the taxpayer at the time

34 incurred.

35 (2) Limitation. Paragraph (1) shall not apply if the amount paid is

36 not allowable as a deduction in computing medical expense deductions

37 for federal income tax purposes.

38 (c) ~~Exclusion~~ Disallowance of amounts allowed for ~~care of~~

39 ~~certain dependents~~ other purposes. Any expenses allowed as a

40 deduction of expenses for household and dependent care services

41 necessary for gainful employment shall not be allowed as an expense

42 paid for medical care for purposes of this section. Any amounts paid

43 or distributed out of a medical savings account that are excluded from

44 gross income pursuant to section ¹[6] 5¹ of P.L. , c. (C.) (now

45 pending before the Legislature as this bill) shall not be allowed as an

46 expense paid for medical care for purposes of this section.

1 (cf: 54A:3-3)

2

3 ¹[4.] 3.¹ (New section) ²a.² A taxpayer may deduct from the
4 taxpayer's gross income an amount equal to the contributions to a
5 medical savings account that the taxpayer is allowed for the taxable
6 year as a deduction for federal income tax purposes pursuant to
7 section 220 of the federal Internal Revenue Code of 1986, 26 U.S.C.
8 s.220.

9 ²b. The deduction provided by subsection a. of this section shall,
10 notwithstanding any amendment or supplement to federal law, be
11 allowed only to "eligible individuals" qualifying under the limitations
12 of subsection (i), and subject to the numerical limits of subsection (j),
13 of section 220 of the federal Internal Revenue Code of 1986, 26
14 U.S.C. s.220, as in effect on January 1, 1997.²

15

16 ¹[5.] 4.¹ N.J.S.54A:5-1 is amended to read as follows:

17 54A:5-1. New Jersey Gross Income Defined. New Jersey gross
18 income shall consist of the following categories of income:

19 a. Salaries, wages, tips, fees, commissions, bonuses, and other
20 remuneration received for services rendered whether in cash or in
21 property , and amounts paid or distributed, or deemed paid or
22 distributed, out of a medical savings account that are not excluded
23 from gross income pursuant to section ¹[6] 5¹ of P.L. , c. (C.
24 (now pending before the Legislature as this bill).

25 b. Net profits from business. The net income from the operation
26 of a business, profession or other activity after provision for all costs
27 and expenses incurred in the conduct thereof, determined either on a
28 cash or accrual basis in accordance with the method of accounting
29 allowed for federal income tax purposes but without deduction of the
30 amount of:

31 (1) taxes based on income;

32 (2) a civil, civil administrative, or criminal penalty or fine,
33 including a penalty or fine under an administrative consent order,
34 assessed and collected for a violation of a State or federal
35 environmental law, an administrative consent order, or an
36 environmental ordinance or resolution of a local governmental entity,
37 and any interest earned on the penalty or fine, and any economic
38 benefits having accrued to the violator as a result of a violation, which
39 benefits are assessed and recovered in a civil, civil administrative, or
40 criminal action, or pursuant to an administrative consent order. The
41 provisions of this paragraph shall not apply to a penalty or fine
42 assessed or collected for a violation of a State or federal
43 environmental law, or local environmental ordinance or resolution, if
44 the penalty or fine was for a violation that resulted from fire, riot,
45 sabotage, flood, storm event, natural cause, or other act of God
46 beyond the reasonable control of the violator, or caused by an act or

1 omission of a person who was outside the reasonable control of the
2 violator; and

3 (3) treble damages paid to the Department of Environmental
4 Protection and Energy pursuant to subsection a. of section 7 of
5 P.L.1976, c.141 (C.58:10-23.11f) for costs incurred by the department
6 in removing, or arranging for the removal of, an unauthorized
7 discharge upon the failure of the discharger to comply with a directive
8 from the department to remove, or arrange for the removal of, a
9 discharge.

10 c. Net gains or income from disposition of property. Net gains or
11 net income, less net losses, derived from the sale, exchange or other
12 disposition of property, including real or personal, whether tangible or
13 intangible as determined in accordance with the method of accounting
14 allowed for federal income tax purposes. For the purpose of
15 determining gain or loss, the basis of property shall be the adjusted
16 basis used for federal income tax purposes, except as expressly
17 provided for under this act, but without a deduction for penalties,
18 fines, or economic benefits excepted pursuant to paragraph (2), or for
19 treble damages excepted pursuant to paragraph (3) of subsection b. of
20 this section.

21 A taxpayer's net gain or loss on the sale, exchange or other
22 disposition of a share of an S corporation shall be calculated by
23 increasing the adjusted basis of the share by an amount equal to the
24 shareholder's net losses and deductions in respect of the share allowed
25 and deducted from income for federal income tax purposes, not
26 including any personal net operating loss deductions, to the extent that
27 such net losses were not offset by the taxpayer's pro rata share of S
28 corporation income otherwise subject to taxation pursuant to
29 subsection p. of this section in respect of another S corporation,
30 subject to rules of priority and assignment determined by the director.

31 For the tax year 1976, any taxpayer with a tax liability under this
32 subsection, or under the "Tax on Capital Gains and Other Unearned
33 Income Act," P.L.1975, c.172 (C.54:8B-1 et seq.), shall not be subject
34 to payment of an amount greater than the amount he would have paid
35 if either return had covered all capital transactions during the full tax
36 year 1976; provided, however, that the rate which shall apply to any
37 capital gain shall be that in effect on the date of the transaction. To the
38 extent that any loss is used to offset any gain under P.L.1975, c.172,
39 it shall not be used to offset any gain under the "New Jersey Gross
40 Income Tax Act," N.J.S.54A:1-1 et seq. et seq.

41 The term "net gains or income" shall not include gains or income
42 derived from obligations which are referred to in clause (1) or (2) of
43 N.J.S.54A:6-14 of this act or from securities which evidence
44 ownership in a qualified investment fund as defined in section 2 of
45 P.L.1987, c.310 (C.54A:6-14.1). The term "net gains or net income"
46 shall not include gains or income from transactions to the extent to

1 which nonrecognition is allowed for federal income tax purposes. The
2 term "sale, exchange or other disposition" shall not include the
3 exchange of stock or securities in a corporation a party to a
4 reorganization in pursuance of a plan of reorganization, solely for
5 stock or securities in such corporation or in another corporation a
6 party to the reorganization and the transfer of property to a
7 corporation by one or more persons solely in exchange for stock or
8 securities in such corporation if immediately after the exchange such
9 person or persons are in control of the corporation. For purposes of
10 this clause, stock or securities issued for services shall not be
11 considered as issued in return for property.

12 For purposes of this clause, the term "reorganization" means:

13 (i) A statutory merger or consolidation;

14 (ii) The acquisition by one corporation, in exchange solely for all
15 or part of its voting stock (or in exchange solely for all or a part of the
16 voting stock of a corporation which is in control of the acquiring
17 corporation) of stock of another corporation if, immediately after the
18 acquisition, the acquiring corporation has control of such other
19 corporation (whether or not such acquiring corporation had control
20 immediately before the acquisition);

21 (iii) The acquisition by one corporation, in exchange solely for all
22 or part of its voting stock (or in exchange solely for all or a part of the
23 voting stock of a corporation which is in control of the acquiring
24 corporation), of substantially all of the properties of another
25 corporation, but in determining whether the exchange is solely for
26 stock the assumption by the acquiring corporation of a liability of the
27 other, or the fact that property acquired is subject to a liability, shall
28 be disregarded;

29 (iv) A transfer by a corporation of all or a part of its assets to
30 another corporation if immediately after the transfer the transferor, or
31 one or more of its shareholders (including persons who were
32 shareholders immediately before the transfer), or any combination
33 thereof, is in control of the corporation to which the assets are
34 transferred;

35 (v) A recapitalization;

36 (vi) A mere change in identity, form, or place of organization
37 however effected; or

38 (vii) The acquisition by one corporation, in exchange for stock of
39 a corporation (referred to in this subclause as "controlling
40 corporation") which is in control of the acquiring corporation, of
41 substantially all of the properties of another corporation which in the
42 transaction is merged into the acquiring corporation shall not
43 disqualify a transaction under subclause (i) if such transaction would
44 have qualified under subclause (i) if the merger had been into the
45 controlling corporation, and no stock of the acquiring corporation is
46 used in the transaction;

1 (viii) A transaction otherwise qualifying under subclause (i) shall
2 not be disqualified by reason of the fact that stock of a corporation
3 (referred to in this subclause as the "controlling corporation") which
4 before the merger was in control of the merged corporation is used in
5 the transaction, if after the transaction, the corporation surviving the
6 merger holds substantially all of its properties and of the properties of
7 the merged corporation (other than stock of the controlling
8 corporation distributed in the transaction); and in the transaction,
9 former shareholders of the surviving corporation exchanged, for an
10 amount of voting stock of the controlling corporation, an amount of
11 stock in the surviving corporation which constitutes control of such
12 corporation.

13 For purposes of this clause, the term "control" means the
14 ownership of stock possessing at least 80% of the total combined
15 voting power of all classes of stock entitled to vote and at least 80%
16 of the total number of shares of all other classes of stock of the
17 corporation.

18 For purposes of this clause, the term "a party to a reorganization"
19 includes a corporation resulting from a reorganization, and both
20 corporations, in the case of a reorganization resulting from the
21 acquisition by one corporation of stock or properties of another. In
22 the case of a reorganization qualifying under subclause (i) by reason
23 of subclause (vii) the term "a party to a reorganization" includes the
24 controlling corporation referred to in such subclause (vii).

25 Notwithstanding any provisions hereof, upon every such exchange
26 or conversion, the taxpayer's basis for the stock or securities received
27 shall be the same as the taxpayer's actual or attributed basis for the
28 stock, securities or property surrendered in exchange therefor.

29 d. Net gains or net income derived from or in the form of rents,
30 royalties, patents, and copyrights.

31 e. Interest, except interest referred to in clause (1) or (2) of
32 N.J.S.54A:6-14, or distributions paid by a qualified investment fund
33 as defined in section 2 of P.L.1987, c.310 (C.54A:6-14.1), to the
34 extent provided in that section .

35 f. Dividends. "Dividends" means any distribution in cash or
36 property made by a corporation, association or business trust that is
37 not an S corporation, (1) out of accumulated earnings and profits, or
38 (2) out of earnings and profits of the year in which such dividend is
39 paid and any distribution in cash or property made by an S
40 corporation, as specifically determined pursuant to section 16 of
41 P.L.1993, c.173 (C.54A:5-14).

42 The term "dividends" shall not include distributions paid by a
43 qualified investment fund as defined in section 2 of P.L.1987, c.310
44 (C.54A:6-14.1), to the extent provided in that section.

45 g. Gambling winnings.

46 h. Net gains or income derived through estates or trusts.

1 i. Income in respect of a decedent.

2 j. Amounts distributed or withdrawn from an employee trust
3 attributable to contributions to the trust which were excluded from
4 gross income under the provisions of chapter 6 of Title 54A of the
5 New Jersey Statutes and pensions and annuities except to the extent
6 of exclusions in N.J.S.54A:6-10 hereunder, notwithstanding the
7 provisions of N.J.S.18A:66-51, P.L.1973, c.140, s.41 (C.43:6A-41),
8 P.L.1954, c.84, s.53 (C.43:15A-53), P.L.1944, c.255, s.17
9 (C.43:16A-17), P.L.1965, c.89, s.45 (C.53:5A-45), R.S.43:10-14,
10 P.L.1943, c.160, s.22 (C.43:10-18.22), P.L.1948, c.310, s.22
11 (C.43:10-18.71), P.L.1954, c.218, s.32 (C.43:13-22.34), P.L.1964,
12 c.275, s.11 (C.43:13-22.60), R.S.43:10-57, P.L.1938, c.330, s.13
13 (C.43:10-105), R.S.43:13-44, and P.L.1943, c.189, s.5
14 (C.43:13-37.5).

15 k. Distributive share of partnership income.

16 l. Amounts received as prizes and awards, except as provided in
17 N.J.S.54A:6-8 and N.J.S.54A:6-11 hereunder.

18 m. Rental value of a residence furnished by an employer or a rental
19 allowance paid by an employer to provide a home.

20 n. Alimony and separate maintenance payments to the extent that
21 such payments are required to be made under a decree of divorce or
22 separate maintenance but not including payments for support of minor
23 children.

24 o. Income, gain or profit derived from acts or omissions defined
25 as crimes or offenses under the laws of this State or any other
26 jurisdiction.

27 p. Net pro rata share of S corporation income.

28 (cf: P.L.1993, c.173, s.9)

29

30 ¹[6.] 5.¹ (New section) a. Gross income shall not include
31 contributions to a taxpayer's medical savings account that are excluded
32 from the taxpayer's federal gross income pursuant to section 220 of
33 the federal Internal Revenue Code of 1986, 26 U.S.C. s.220.

34 b. Gross income shall not include amounts paid or distributed, or
35 deemed paid or distributed, out of a taxpayer's medical savings
36 account that are excluded from the taxpayer's federal gross income
37 pursuant to section 220 of the federal Internal Revenue Code of 1986,
38 26 U.S.C. s.220.

39 ²c. The exclusions provided by subsections a. and b. of this section
40 shall, notwithstanding any amendment or supplement to federal law,
41 be allowed only to "eligible individuals" qualifying under the
42 limitations of subsection (i), and subject to the numerical limits of
43 subsection (j), of section 220 of the federal Internal Revenue Code
44 of 1986, 26 U.S.C. s.220, as in effect on January 1, 1997.²

45

46 ¹[7.] 6.¹ This act shall take effect immediately and sections ¹[3]

1 2¹ through ¹~~6~~ 5¹ shall apply to taxable years beginning on or after
2 January 1 ¹~~1997~~ 1998¹.

3

4

5

6

7 Establishes certain standards and provides certain tax advantages for
8 medical savings accounts.

ASSEMBLY, No. 671

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblymen BAGGER and ROMA

1 AN ACT concerning medical savings accounts, amending
2 N.J.S.54A:5-1 and N.J.S.54A:9-6 and supplementing Title 54A of
3 the New Jersey Statutes.

4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7

8 1. (New section) As used in this act:

9 "Account holder" means the individual on whose behalf a medical
10 savings account is opened.

11 "Director" means the Director of the Division of Taxation.

12 "Eligible expense" means any qualified medical expense of an
13 account holder or the account holder's qualified dependents and
14 includes the expense of purchasing a health benefits plan and paying
15 any deductible or copayment on that plan for the first year of the plan
16 for a qualified dependent who has lost eligibility to receive health
17 benefits from the account holder's employer. "Eligible expense"
18 includes disbursements from a medical savings account pursuant to a
19 filing for protection by an account holder under Title 11 of the United
20 States Code, 11 U.S.C. §101 et seq. and shall not be included in the
21 account holder's gross income for the year of disbursement in
22 determining taxes due under the "New Jersey Gross Income Tax Act,"
23 N.J.S.54A:1-1 et seq. "Eligible expense" does not include the payment
24 of a medical expense that has been or will be, otherwise paid,
25 including, but not limited to, medical expenses paid or reimbursed
26 under a policy of motor vehicle insurance, worker's compensation
27 insurance or plans, or an employer-funded health benefits plan.

28 "Health benefits plan" means a hospital and medical expense
29 insurance policy, hospital, medical or health service corporation
30 contract, or health maintenance organization subscriber contract,
31 which policy or contract is delivered or issued for delivery in this
32 State.

EXPLANATION - Matter enclosed in bold-faced brackets [this] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined this is new matter.

1 "Insurer" means any person authorized by the laws of this State to
2 transact the business of accident and health insurance in New Jersey.

3 "Medical savings account" or "account" means a custodial account
4 or trust created in this State to pay for the eligible expenses of an
5 account holder or the account holder's qualified dependents.

6 "Qualified dependent" means the spouse of an account holder or the
7 child of an account holder when the child is: (1) under 19 years of
8 age at the close of the taxable year, or under 23 years of age at the
9 close of the taxable year and a full-time student at an accredited
10 college or university; (2) not self-sufficient due to mental or physical
11 incapacitation; or (3) legally entitled to the provisions of proper or
12 necessary subsistence, education, medical care, or other care necessary
13 for the dependent's guidance, or well-being and is not otherwise
14 emancipated, self-supporting, married or a member of the armed forces
15 of the United States.

16

17 2. (New section) a. An employer may open a medical savings
18 account on behalf of any employee to pay the employee's eligible
19 expenses and the eligible expenses of the employee's qualified
20 dependents.

21 b. (1) An initial deposit of \$1,000 shall be required to open a
22 medical savings account.

23 (2) An employer may deposit additional monies into the account up
24 to a maximum of \$3,000 in any taxable year.

25 (3) An employee who is the account holder of a medical savings
26 account may deposit money into the account up to an amount equaling
27 the difference between the employer's deposits to the account during
28 the taxable year and the employer's maximum allowable deposit.

29 c. Each employer that opens a medical savings account for an
30 employee shall inform the employee, in writing, at the time the medical
31 savings account is opened, of the federal and State tax status of
32 deposits made to the account.

33 d. The owners of interest in a medical savings account are the
34 account holder and the account holder's qualified dependents. Such
35 interest is nonforfeitable.

36 e. An account holder may withdraw funds from the account
37 holder's medical savings account at any time. Withdrawals for
38 expenses other than eligible expenses shall be subject to penalties
39 pursuant to subsection m. of N.J.S.54A:9-6.

40 f. Funds withdrawn from a medical savings account shall not be
41 used to pay eligible expenses that have been, or will be, otherwise
42 paid, including, but not limited to, medical expenses paid or
43 reimbursed under a policy of motor vehicle insurance, by workers'
44 compensation insurance or plans, or by an employer-funded health
45 benefits plan.

46 g. If an employer makes deposits to an employee's medical savings

1 account on a periodic installment basis, the employer may advance to
2 the employee, interest free, an amount needed to cover the employee's
3 eligible expenses when such expenses exceed the amount then
4 available in the employee's medical savings account, if the employee
5 agrees to repay the advance from future installments or upon the
6 termination of the employee's employment.

7 h. The assets of the medical savings account shall not be
8 commingled with other property except in a common trust fund or
9 common investment fund.

10

11 3. (New section) a. An employer shall designate an administrator
12 for the medical savings account at the time the account is opened.

13 b. A medical savings account shall be administered by one of the
14 following:

15 (1) a federally or State chartered bank, savings and loan
16 association, savings bank or credit union;

17 (2) a trust company authorized to act as a fiduciary;

18 (3) an insurer;

19 (4) a third-party administrator;

20 (5) a certified public accountant;

21 (6) an employer that administers an employee benefit plan subject
22 to regulation under the federal "Employee Retirement Income Security
23 Act of 1974," 29 U.S.C. §1001 et seq., or that maintains medical
24 savings accounts for its employees; or

25 (7) such other person that demonstrates to the satisfaction of the
26 director that the manner in which the account will be managed will be
27 consistent with the requirements of this section.

28 c. Each administrator shall send to the account holder, at least
29 annually, a statement setting forth the balance remaining in the account
30 holder's medical savings account and detailing the activity in the
31 account since the last statement was issued.

32 d. When an account holder documents the payment of an eligible
33 expense to the administrator of the account holder's medical savings
34 account, the administrator shall reimburse the account holder from the
35 account for that expense if sufficient funds are available. The
36 reimbursement shall be made within 30 days of the administrator's
37 receipt of the documentation. The administrator shall keep a record
38 of the amounts disbursed from the medical savings account for
39 documented eligible expenses and of the dates on which the expenses
40 were incurred. This record shall be made available to any accident and
41 health insurer or other third-party payer providing a health benefits
42 plan to the account holder, for use in determining whether the account
43 holder has met the deductible or other obligation required for the
44 receipt of benefits from the insurer or third-party payer.

45

46 4. (New section) a. If an account holder later ceases to be

1 employed by the employer who has opened the medical savings
2 account, the account holder may, within 60 days of the final date of
3 employment with that employer, request in writing that the
4 administrator of the account continue to administer the account. If the
5 administrator agrees to continue to administer the medical savings
6 account, the account shall continue.

7 b. If the account holder becomes employed by a new employer that
8 opens a new medical savings account on his behalf, the account holder
9 may transfer any funds remaining in a prior account to the medical
10 savings account opened by his new employer. Such a transfer is not
11 a withdrawal.

12 c. If the administrator does not agree to retain the medical savings
13 account, or if the account holder requests that the medical savings
14 account be closed, the administrator shall close the medical savings
15 account and mail a check for the account balance as of that date to the
16 account holder. Such a withdrawal is not an eligible expense.

17

18 5. (New section) There shall be allowed as a deduction: a.
19 amounts deposited in a medical savings account established pursuant
20 to section 2 of this act; and b. all interest, dividends or gain earned by
21 a medical savings account.

22

23 6. N.J.S.54A:5-1 is amended to read as follows:

24 54A:5-1. New Jersey Gross Income Defined. New Jersey gross
25 income shall consist of the following categories of income:

26 a. Salaries, wages, tips, fees, commissions, bonuses, and other
27 remuneration received for services rendered whether in cash or in
28 property including all withdrawals from a medical savings account
29 that are not for eligible expenses as defined in section 1 of P.L. . . . c.
30 (C. . .)(pending in the Legislature as this bill).

31 b. Net profits from business. The net income from the operation
32 of a business, profession or other activity after provision for all costs
33 and expenses incurred in the conduct thereof, determined either on a
34 cash or accrual basis in accordance with the method of accounting
35 allowed for federal income tax purposes but without deduction of the
36 amount of:

37 (1) taxes based on income;

38 (2) a civil, civil administrative, or criminal penalty or fine, including
39 a penalty or fine under an administrative consent order, assessed and
40 collected for a violation of a State or federal environmental law, an
41 administrative consent order, or an environmental ordinance or
42 resolution of a local governmental entity, and any interest earned on
43 the penalty or fine, and any economic benefits having accrued to the
44 violator as a result of a violation, which benefits are assessed and
45 recovered in a civil, civil administrative, or criminal action, or pursuant
46 to an administrative consent order. The provisions of this paragraph

1 shall not apply to a penalty or fine assessed or collected for a violation
2 of a State or federal environmental law, or local environmental
3 ordinance or resolution, if the penalty or fine was for a violation that
4 resulted from fire, riot, sabotage, flood, storm event, natural cause, or
5 other act of God beyond the reasonable control of the violator, or
6 caused by an act or omission of a person who was outside the
7 reasonable control of the violator; and

8 (3) treble damages paid to the Department of Environmental
9 Protection and Energy pursuant to subsection a. of section 7 of
10 P.L.1976, c.141 (C.58:10-23.11f) for costs incurred by the department
11 in removing, or arranging for the removal of, an unauthorized
12 discharge upon the failure of the discharger to comply with a directive
13 from the department to remove, or arrange for the removal of, a
14 discharge.

15 c. Net gains or income from disposition of property. Net gains or
16 net income, less net losses, derived from the sale, exchange or other
17 disposition of property, including real or personal, whether tangible or
18 intangible as determined in accordance with the method of accounting
19 allowed for federal income tax purposes. For the purpose of
20 determining gain or loss, the basis of property shall be the adjusted
21 basis used for federal income tax purposes, except as expressly
22 provided for under this act, but without a deduction for penalties,
23 fines, or economic benefits excepted pursuant to paragraph (2), or for
24 treble damages excepted pursuant to paragraph (3) of subsection b. of
25 this section.

26 A taxpayer's net gain or loss on the sale, exchange or other
27 disposition of a share of an S corporation shall be calculated by
28 increasing the adjusted basis of the share by an amount equal to the
29 shareholder's net losses and deductions in respect of the share allowed
30 and deducted from income for federal income tax purposes, not
31 including any personal net operating loss deductions, to the extent that
32 such net losses were not offset by the taxpayer's pro rata share of S
33 corporation income otherwise subject to taxation pursuant to
34 subsection p. of this section in respect of another S corporation,
35 subject to rules of privity and assignment determined by the director.

36 For the tax year 1976, any taxpayer with a tax liability under this
37 subsection, or under the "Tax on Capital Gains and Other Unearned
38 Income Act," P.L.1975, c.172 (C.54:8B-1 et seq.), shall not be subject
39 to payment of an amount greater than the amount he would have paid
40 if either return had covered all capital transactions during the full tax
41 year 1976; provided, however, that the rate which shall apply to any
42 capital gain shall be that in effect on the date of the transaction. To the
43 extent that any loss is used to offset any gain under P.L. 1975, c.172,
44 it shall not be used to offset any gain under the "New Jersey Gross
45 Income Tax Act," N.J.S.54A:1-1 et seq. et seq.

46 The term "net gains or income" shall not include gains or income

1 derived from obligations which are referred to in clause (1) or (2) of
2 N.J.S.54A:6-14 of this act or from securities which evidence
3 ownership in a qualified investment fund as defined in section 2 of
4 P.L.1987, c.310 (C.54A:6-14.1). The term "net gains or net income"
5 shall not include gains or income from transactions to the extent to
6 which nonrecognition is allowed for federal income tax purposes. The
7 term "sale, exchange or other disposition" shall not include the
8 exchange of stock or securities in a corporation a party to a
9 reorganization in pursuance of a plan of reorganization, solely for
10 stock or securities in such corporation or in another corporation a
11 party to the reorganization and the transfer of property to a
12 corporation by one or more persons solely in exchange for stock or
13 securities in such corporation if immediately after the exchange such
14 person or persons are in control of the corporation. For purposes of
15 this clause, stock or securities issued for services shall not be
16 considered as issued in return for property.

17 For purposes of this clause, the term "reorganization" means:

18 (i) A statutory merger or consolidation;

19 (ii) The acquisition by one corporation, in exchange solely for all
20 or part of its voting stock (or in exchange solely for all or a part of the
21 voting stock of a corporation which is in control of the acquiring
22 corporation) of stock of another corporation if, immediately after the
23 acquisition, the acquiring corporation has control of such other
24 corporation (whether or not such acquiring corporation had control
25 immediately before the acquisition);

26 (iii) The acquisition by one corporation, in exchange solely for all
27 or part of its voting stock (or in exchange solely for all or a part of the
28 voting stock of a corporation which is in control of the acquiring
29 corporation), of substantially all of the properties of another
30 corporation, but in determining whether the exchange is solely for
31 stock the assumption by the acquiring corporation of a liability of the
32 other, or the fact that property acquired is subject to a liability, shall
33 be disregarded;

34 (iv) A transfer by a corporation of all or a part of its assets to
35 another corporation if immediately after the transfer the transferor, or
36 one or more of its shareholders (including persons who were
37 shareholders immediately before the transfer), or any combination
38 thereof, is in control of the corporation to which the assets are
39 transferred;

40 (v) A recapitalization;

41 (vi) A mere change in identity, form, or place of organization
42 however effected; or

43 (vii) The acquisition by one corporation, in exchange for stock of
44 a corporation (referred to in this subclause as "controlling
45 corporation") which is in control of the acquiring corporation, of
46 substantially all of the properties of another corporation which in the

1 transaction is merged into the acquiring corporation shall not
2 disqualify a transaction under subclause (i) if such transaction would
3 have qualified under subclause (i) if the merger had been into the
4 controlling corporation, and no stock of the acquiring corporation is
5 used in the transaction;

6 (viii) A transaction otherwise qualifying under subclause (i) shall
7 not be disqualified by reason of the fact that stock of a corporation
8 (referred to in this subclause as the "controlling corporation") which
9 before the merger was in control of the merged corporation is used in
10 the transaction, if after the transaction, the corporation surviving the
11 merger holds substantially all of its properties and of the properties of
12 the merged corporation (other than stock of the controlling
13 corporation distributed in the transaction); and in the transaction,
14 former shareholders of the surviving corporation exchanged, for an
15 amount of voting stock of the controlling corporation, an amount of
16 stock in the surviving corporation which constitutes control of such
17 corporation.

18 For purposes of this clause, the term "control" means the ownership
19 of stock possessing at least 80% of the total combined voting power
20 of all classes of stock entitled to vote and at least 80% of the total
21 number of shares of all other classes of stock of the corporation.

22 For purposes of this clause, the term "a party to a reorganization"
23 includes a corporation resulting from a reorganization, and both
24 corporations, in the case of a reorganization resulting from the
25 acquisition by one corporation of stock or properties of another. In
26 the case of a reorganization qualifying under subclause (i) by reason
27 of subclause (vii) the term "a party to a reorganization" includes the
28 controlling corporation referred to in such subclause (vii).

29 Notwithstanding any provisions hereof, upon every such exchange
30 or conversion, the taxpayer's basis for the stock or securities received
31 shall be the same as the taxpayer's actual or attributed basis for the
32 stock, securities or property surrendered in exchange therefor.

33 d. Net gains or net income derived from or in the form of rents,
34 royalties, patents, and copyrights.

35 e. Interest, except interest referred to in clause (1) or (2) of
36 N.J.S.54A:6-14, or distributions paid by a qualified investment fund
37 as defined in section 2 of P.L.1987, c.310 (C.54A:6-14.1), to the
38 extent provided in that section .

39 f. Dividends. "Dividends" means any distribution in cash or
40 property made by a corporation, association or business trust that is
41 not an S corporation, (1) out of accumulated earnings and profits, or
42 (2) out of earnings and profits of the year in which such dividend is
43 paid and any distribution in cash or property made by an S
44 corporation, as specifically determined pursuant to section 16 of
45 P.L.1993, c.173 (C.54A:5-14).

46 The term "dividends" shall not include distributions paid by a

- 1 qualified investment fund as defined in section 2 of P.L.1987, c.310
2 (C.54A:6-14.1), to the extent provided in that section.
- 3 g. Gambling winnings.
- 4 h. Net gains or income derived through estates or trusts.
- 5 i. Income in respect of a decedent.
- 6 j. Amounts distributed or withdrawn from an employee trust
7 attributable to contributions to the trust which were excluded from
8 gross income under the provisions of chapter 6 of Title 54A of the
9 New Jersey Statutes and pensions and annuities except to the extent
10 of exclusions in N.J.S.54A:6-10 hereunder, notwithstanding the
11 provisions of N.J.S.18A:66-51, P.L.1973, c.140, s.41 (C.43:6A-41),
12 P.L.1954, c.84, s.53 (C.43:15A-53), P.L.1944, c.255, s.17
13 (C.43:16A-17), P.L.1965, c.89, s.45 (C.53:5A-45), R.S.43:10-14,
14 P.L.1943, c.160, s.22 (C.43:10-18.22), P.L.1948, c.310, s.22
15 (C.43:10-18.71), P.L.1954, c.218, s.32 (C.43:13-22.34), P.L.1964,
16 c.275, s.11 (C.43:13-22.60), R.S.43:10-57, P.L.1938, c.330, s.13
17 (C.43:10-105), R.S.43:13-44, and P.L.1943, c.189, s.5
18 (C.43:13-37.5).
- 19 k. Distributive share of partnership income.
- 20 l. Amounts received as prizes and awards, except as provided in
21 N.J.S.54A:6-8 and N.J.S.54A:6-11 hereunder.
- 22 m. Rental value of a residence furnished by an employer or a rental
23 allowance paid by an employer to provide a home.
- 24 n. Alimony and separate maintenance payments to the extent that
25 such payments are required to be made under a decree of divorce or
26 separate maintenance but not including payments for support of minor
27 children.
- 28 o. Income, gain or profit derived from acts or omissions defined as
29 crimes or offenses under the laws of this State or any other
30 jurisdiction.
- 31 p. Net pro rata share of S corporation income.
32 (cf. P.L.1993, c.173, s.9)
- 33
- 34 7. N.J.S.54A:9-6 is amended to read as follows:
- 35 54A:9-6. Additions to tax and civil penalties. (a) Failure to file tax
36 return. In case of failure to file a tax return under this act on or before
37 the prescribed date (determined with regard to any extension of time
38 for filing), unless it is shown that such failure is due to reasonable
39 cause and not due to willful neglect, there shall be added to the
40 amount required to be shown as tax on such return such amount as is
41 required under the State Tax Uniform Procedure Law, R.S.54:48-1 et
42 seq. For this purpose, the amount of tax required to be shown on the
43 return shall be reduced by the amount of any part of the tax which is
44 paid on or before the date prescribed for payment of the tax and by the
45 amount of any credit against the tax which may be claimed upon the
46 return.

1 (b) Deficiency due to negligence. If any part of a deficiency is due
2 to negligence or intentional disregard of this act or rules or regulations
3 hereunder (but without intent to defraud), there shall be added to the
4 tax an amount equal to 10% of the deficiency.

5 (c) Failure to file declaration or underpayment of estimated tax. If
6 any taxpayer fails to file a declaration of estimated tax or fails to pay
7 all or any part of an installment of estimated tax, he shall be deemed
8 to have made an underpayment of estimated tax. There shall be added
9 to the tax for the taxable year an amount at the rate as is required
10 under the State Tax Uniform Procedure Law, R.S.54:48-1 et seq.,
11 upon the amount of the underpayment for the period of the
12 underpayment but not beyond the 15th day of the fourth month
13 following the close of the taxable year. The amount of underpayment
14 shall be the excess of the amount of the installment which would be
15 required to be paid if the estimated tax were equal to 80% of the tax
16 (two-thirds of the tax for farmers referred to in subsection (e) of
17 section 54A:8-4) shown on the return for the taxable year (or if no
18 return was filed, of the tax for such year) over the amount, if any, of
19 the installment paid on or before the last day prescribed for such
20 payment. No underpayment shall be deemed to exist with respect to
21 a declaration or installment otherwise due on or after the taxpayer's
22 death.

23 (d) Exception to addition for underpayment of estimated tax. The
24 addition to tax under subsection (c) with respect to any underpayment
25 of any installment shall not be imposed if the total amount of all
26 payments of estimated tax made on or before the last date prescribed
27 for the payment of such installment equals or exceeds whichever of the
28 following is the lesser--

29 (1) The amount which would have been required to be paid on or
30 before such date if the estimated tax were whichever of the following
31 is the least--

32 (A) The tax shown on the return of the individual for the preceding
33 taxable year, if a return showing a liability for tax was filed by the
34 individual for the preceding taxable year and such preceding year was
35 a taxable year of 12 months, or

36 (B) An amount equal to the tax computed, at the rates applicable
37 to the taxable year, on the basis of the taxpayer's status with respect
38 to his personal exemptions for the taxable year, but otherwise on the
39 basis of the facts shown on his return for, and the law applicable to,
40 the preceding taxable year, or

41 (C) An amount equal to 80% of the tax for the taxable year
42 (two-thirds of the tax for farmers referred to in subsection (e) of
43 section 54A:8-4) computed by placing on an annualized basis the
44 income for the months in the taxable year ending before the month in
45 which the installment is required to be paid. For purposes of this
46 subparagraph, the income shall be placed on an annualized basis by--

1 (i) Multiplying by 12 (or, in the case of a taxable year of less than
2 12 months, the number of months in the taxable year) the income for
3 the months in the taxable year ending before the month in which the
4 installment is required to be paid,

5 (ii) Dividing the resulting amount by the number of months in the
6 taxable year ending before the month in which such installment date
7 falls, and

8 (iii) Deducting from such amount the deductions for personal
9 exemptions allowable for the taxable year (such personal exemptions
10 being determined as of the last date prescribed for payment of the
11 installment); or

12 (2) An amount equal to 90% of the tax computed, at the rates
13 applicable to the taxable year, on the basis of the actual income for the
14 months in the taxable year ending before the month in which the
15 installment is required to be paid.

16 (e) Deficiency due to fraud. If any part of a deficiency is due to
17 fraud, there shall be added to the tax an amount equal to 50% of the
18 deficiency. This amount shall be in lieu of any other addition to tax
19 imposed by subsection (a) or (b).

20 (f) Nonwillful failure to pay withholding tax. If any employer,
21 without intent to evade or defeat any tax imposed by this act or the
22 payment thereof, shall fail to make a return and pay a tax withheld by
23 him at the time required by or under the provisions of section 54A:7-4,
24 such employer shall be liable for such tax and shall pay the same
25 together with interest thereon and the addition to tax provided in
26 subsection (a), and such interest and addition to tax shall not be
27 charged to or collected from the employee by the employer. The
28 director shall have the same rights and powers for the collection of
29 such tax, interest and addition to tax against such employer as are now
30 prescribed by this act for the collection of tax against an individual
31 taxpayer.

32 (g) Willful failure to collect and pay over tax. Any person required
33 to collect, truthfully account for, and pay over the tax imposed by this
34 act who willfully fails to collect such tax or truthfully account for and
35 pay over such tax or willfully attempts in any manner to evade or
36 defeat the tax or the payment thereof, shall, in addition to other
37 penalties provided by law, be liable to a penalty equal to the total
38 amount of the tax evaded, or not collected, or not accounted for and
39 paid over. No addition to tax under subsection (b) or (c) shall be
40 imposed for any offense to which this subsection applies.

41 (h) Failure to file certain information returns. In case of each
42 failure to file a statement of a payment to another person, required
43 under authority of subsection (c) of section 54A:8-6 (relating to
44 information at source, including the duplicate statement of tax
45 withheld on wages) on the date prescribed therefor (determined with
46 regard to any extension of time for filing), unless it is shown that such

1 failure is due to reasonable cause and not to willful neglect, there shall,
2 upon notice and demand by the director and in the same manner as tax,
3 be paid by the person so failing to file the statement, a penalty of \$2.00
4 for each statement not so filed, but the total amount imposed on the
5 delinquent person for all such failures during any calendar year shall
6 not exceed \$2,000.00.

7 (i) Additional penalty. Any person who with fraudulent intent shall
8 fail to pay, or to deduct or withhold and pay, any tax, or to make,
9 render, sign or certify any return or declaration of estimated tax or to
10 supply any information within the time required by or under this act,
11 shall be liable to penalty of not more than \$5,000.00, in addition to any
12 other amounts required under this act, to be imposed, assessed and
13 collected by the director. The director shall have the power, in his
14 discretion, to waive, reduce or compromise any penalty under this
15 subsection.

16 (j) Additions treated as tax. The additions to tax and penalties
17 provided by this section shall be paid upon notice and demand and
18 shall be assessed, collected and paid in the same manner as taxes and
19 any reference in this act to income tax or tax imposed by this act, shall
20 be deemed also to refer to the additions to tax and penalties provided
21 by this section. For purposes of section 54A:9-2, this subsection shall
22 not apply to:

23 (1) Any addition to tax under subsection (a) except as to that
24 portion attributable to a deficiency;

25 (2) Any addition to tax under subsection (e); and

26 (3) Any additional penalty under subsection (i).

27 (k) Determination of deficiency. For purposes of subsections (b)
28 and (c), the amount shown as the tax by the taxpayer upon his return
29 shall be taken into account in determining the amount of the deficiency
30 only if such return was filed on or before the last day prescribed for
31 the filing of such return, determined with regard to any extension of
32 time for such filing.

33 (l) Person defined. For purposes of subsections (f), (g), (h) and (i),
34 the term person or employer includes an individual, corporation or
35 partnership or an officer or employee of any corporation (including a
36 dissolved corporation) or a member or employee of any partnership,
37 who as such officer, employee, or member is under a duty to perform
38 the act in respect of which the violation occurs.

39 m. There shall be added to the tax due for a taxable year a penalty
40 for the early withdrawal of amounts from a medical savings account
41 for purposes that are not eligible expenses as defined in section 1 of
42 P.L. _____ c. _____ (C. _____) (pending in the Legislature as this bill). The
43 penalty shall be equal to 10% of the amount of withdrawals from the
44 account that exceeds the amount of withdrawals for eligible expenses
45 for the taxable year but that does not exceed the amount deposited in
46 the account and is allowed as a deduction pursuant to subsection a. of

1 section 5 of P.L. . . c. (C.) in the taxable year. No penalty shall
2 be assessed for a withdrawal pursuant to subsection c. of section 4 of
3 that act.

4 (c.f. P.L.1987, c.76, s.59)

5

6 8. This act shall take effect immediately and sections 5 through 7
7 shall apply to deductions for taxable years beginning on or after
8 January 1 next following enactment.

9

10

11

STATEMENT

12

13 This bill establishes certain standards for medical savings accounts
14 opened by employers and permits employees who are account holders
15 of medical savings accounts to deduct from gross income the amount
16 deposited in such an account and any interest, dividends or gain earned
17 thereon under certain circumstances.

18 Under the provisions of the bill, a minimum deposit of \$1,000 is
19 required to establish a medical savings account, and no more than
20 \$3,000 may be deposited in any tax year.

21 An employer opening a medical savings account is required to
22 designate an administrator for the account, when it is opened.
23 Administrators that may be designated include:

24 (1) federally or State chartered banks, savings and loan
25 associations, savings banks or credit unions;

26 (2) trust companies authorized to act as a fiduciaries;

27 (3) insurers authorized by the State to transact the business of
28 accident and health insurance in New Jersey;

29 (4) a third-party administrator;

30 (5) a certified public accountant;

31 (6) an employer that administers an employee benefit plan subject
32 to regulation under the federal "Employee Retirement Income Security
33 Act of 1974," 29 U.S.C. §1001 et seq., or that maintains medical
34 savings accounts for its employees; or

35 (7) such other person that demonstrates to the satisfaction of the
36 director that the manner in which the account will be managed will be
37 consistent with the requirements of this section.

38 The bill requires an employer to notify employees at the time a
39 medical savings account is opened of the federal and State tax status
40 of deposits made to the account.

41 The bill provides that funds withdrawn from a medical savings
42 account that are used to pay eligible expenses are not subject to State
43 income tax, however, funds withdrawn from the account to pay
44 expenses, other than eligible expenses, would generally not be
45 deductible from gross income and therefore would be subject to
46 income tax and may, additionally, be subject to a penalty.

1 Under the provisions of the bill, an employee leaving the employ of
2 an employer who has opened a medical savings account for the
3 employee would have the option to: (1) retain the account, upon the
4 approval of the account administrator; (2) transfer the account to
5 another employer, if the new employer opens a medical savings
6 account on his behalf; or (3) close the account and have the funds
7 forwarded to him. If the account is closed, the funds would be
8 included in the employee's gross income, but would not be subject to
9 any penalty.

10

11

12

13

14 Establishes certain standards for medical savings accounts and allows
15 for a deduction from gross income for income deposited in or received
16 as interest, dividends or gain on such accounts under certain
17 circumstances.

ASSEMBLY, No. 495

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblywoman VANDERVALK

1 AN ACT concerning medical savings account plans.

2

3 **BE IT ENACTED** *by the Senate and General Assembly of the State*
4 *of New Jersey:*

5

6 1. As used in this act:

7 "Account administrator" means

8 (1) a federally or State chartered bank, savings and loan
9 association, savings bank or credit union;

10 (2) a trust company authorized to act as a fiduciary;

11 (3) an insurer;

12 (4) a third-party administrator;

13 (5) a certified public accountant;

14 (6) an employer that administers an employee benefit plan subject
15 to regulation under the federal "Employee Retirement Income Security
16 Act of 1974," 29 U.S.C. §1001 et seq., or that maintains medical
17 savings accounts for its employees; or

18 (7) such other person that demonstrates to the satisfaction of the
19 Commissioner of Insurance that the medical savings account will be
20 properly managed.

21 "Deductible" means the total deductible for an employee and all of
22 the employee's qualified dependents for a calendar year.

23 "Medical savings account" or "account" means a custodial account
24 or trust created in this State pursuant to a medical savings account
25 plan to pay for the eligible medical expenses of an account holder or
26 the account holder's qualified dependents or both.

27 "Qualified dependent" means the spouse of an account holder or the
28 child of an account holder when the child is:

29 (1) under 19 years of age or under 23 years of age and a full-time
30 student at an accredited college or university;

31 (2) not self-sufficient due to mental or physical incapacitation; or

32 (3) legally entitled to the provisions of proper or necessary
33 subsistence, education, medical care or other care necessary for the
34 child's guidance, or well-being and is not otherwise emancipated,
35 self-supporting, married or a member of the armed forces of the

1 United States.

2 "Qualified higher deductible health plan" means a health coverage
3 policy, certificate, or contract that provides for the payment of
4 covered benefits that exceed the deductible, and is purchased by an
5 employer for the benefit of an employee for whom the employer makes
6 deposits into a medical savings account plan.

7

8 2. Notwithstanding the provisions of any law to the contrary, no
9 medical savings account plan shall be established in this State by an
10 employer unless it includes all of the following:

11 a. the payment on behalf of an employee into a medical savings
12 account by the employee's employer of all or part of the premium
13 differential realized by the employer based on the purchase of a higher
14 deductible health coverage plan for the benefit of the employee;

15 b. the purchase of a qualified higher deductible health coverage
16 plan by the employer for the benefit of an employee; and

17 c. an account administrator to administer the medical savings
18 account.

19

20 3. This act shall take effect immediately and shall apply to medical
21 savings account plans established on or after the effective date of this
22 act.

23

24

25 STATEMENT

26

27 This bill requires medical savings account plans provided by
28 employers in New Jersey to include all of the following: the payment
29 on behalf of an employee into a medical savings account by the
30 employee's employer of all or part of the premium differential realized
31 by the employer based on the purchase of a higher deductible health
32 benefits plan for the benefit of the employee; the purchase of qualified
33 higher deductible health coverage plan for the benefit of an employee;
34 and an account administrator to administer the medical savings
35 account.

36

37

38

39

40 Establishes certain requirements for medical savings account plans.

[Passed Both Houses]

[Second Reprint]

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 671 and 495

STATE OF NEW JERSEY

ADOPTED JANUARY 9, 1997

Sponsored by Assemblymen BAGGER, ROMA, Assemblywoman
VANDERVALK, Assemblymen Bateman, Russo, Garrett,
Felice, Assemblywomen Murphy, Heck, Assemblyman Gregg,
DeCroce, Corodemus and Assemblywoman Allen

1 AN ACT concerning medical savings accounts, amending P.L.1992,
2 c.161 ¹**[and P.L.1992, c.162]**¹ and amending and supplementing
3 Title 54A of the New Jersey Statutes.

4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7

8 1. Section 6 of P.L.1992, c.161 (C.17B:27A-7) is amended to
9 read as follows:

10 6. The board shall establish the policy and contract forms and
11 benefit levels to be made available by all carriers for the ¹**[policies]**
12 health benefits plans¹ required to be issued pursuant to section 3 of
13 P.L.1992, c.161 (C.17B:27A-4) , and shall adopt such modifications
14 to one or more plans as the board determines are necessary to make
15 available a "high deductible health plan" or plans ¹**[compatible with**
16 the medical savings accounts established pursuant to section 220 of
17 the federal Internal Revenue Code of 1986, 26 U.S.C. §220]
18 consistent with section 301 of Title III of the "Health Insurance
19 Portability and Accountability Act of 1996," Pub.L.104-191, regarding

EXPLANATION - Matter enclosed in bold-faced brackets **[thus]** in the above bill is not
enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SHH committee amendments adopted December 11, 1997.

² Senate SBA committee amendments adopted December 15, 1997.

1 tax-deductible medical savings accounts¹, within 60 days after the
2 enactment of P.L. , c. (C.)(now pending before the Legislature
3 as this bill). The board shall provide the commissioner with an
4 informational filing of the policy and contract forms and benefit levels
5 it establishes.

6 a. ¹~~the~~ The¹ individual health benefits plans established by the
7 board may include cost containment measures such as, but not limited
8 to: utilization review of health care services, including review of
9 medical necessity of hospital and physician services; case management
10 benefit alternatives; selective contracting with hospitals, physicians,
11 and other health care providers; and reasonable benefit differentials
12 applicable to participating and nonparticipating providers; and other
13 managed care provisions.

14 b. An individual health benefits plan offered pursuant to section 3
15 of P.L.1992, c.161 (C.17B:27A-4) shall contain a limitation of no
16 more than 12 months on coverage for preexisting conditions¹ ~~], except~~
17 ~~that the limitation shall not apply]~~ . An individual health benefits plan
18 offered pursuant to section 3 of P.L.1992, c.161 (C.17B:27A-4) shall
19 not contain a preexisting condition limitation of any period under the
20 following circumstances:

21 (1)¹ to an individual who has, under ¹~~a~~ prior group or individual
22 health benefits plan or Medicaid] creditable coverage¹, with no
23 intervening lapse in coverage of more than ¹~~30~~ 31¹ days, been
24 treated or diagnosed by a physician for a condition under that plan or
25 satisfied a 12-month preexisting condition limitation¹; ~~or~~

26 (2) to a federally defined eligible individual who applies for an
27 individual health benefits plan within 63 days of termination of the
28 prior coverage¹.

29 c. In addition to the five standard individual health benefits plans
30 provided for in section 3 of P.L.1992, c.161 (C.17B:27A-4), the board
31 may develop up to five rider packages. Premium rates for the rider
32 packages shall be determined in accordance with section 8 of
33 P.L.1992, c.161 (C.17B:27A-9).

34 d. After the board's establishment of the individual health benefits
35 plans required pursuant to section 3 of P.L.1992, c.161
36 (C.17B:27A-4), and notwithstanding any law to the contrary, a carrier
37 shall file the policy or contract forms with the board and certify to the
38 board that the health benefits plans to be used by the carrier are in
39 substantial compliance with the provisions in the corresponding board
40 approved plans. The certification shall be signed by the chief
41 executive officer of the carrier. Upon receipt by the board of the
42 certification, the certified plans may be used until the board, after
43 notice and hearing, disapproves their continued use.

44 e. Effective immediately for an individual health benefits plan
45 issued on or after the effective date of P.L.1995, c.316
46 (C.17:48E-35.10 et al.) and effective on the first 12-month anniversary

1 date of an individual health benefits plan in effect on the effective date
2 of P.L.1995, c.316 (C.17:48E-35.10 et al.), the individual health
3 benefits plans required pursuant to section 3 of P.L.1992, c.161
4 (C.17B:27A-4), including any plan offered by a federally qualified
5 health maintenance organization, shall contain benefits for expenses
6 incurred in the following:

7 (1) Screening by blood lead measurement for lead poisoning for
8 children, including confirmatory blood lead testing as specified by the
9 Department of Health ¹and Senior Services¹ pursuant to section 7 of
10 P.L.1995, c.316 (C.26:2-137.1); and medical evaluation and any
11 necessary medical follow-up and treatment for lead poisoned children.

12 (2) All childhood immunizations as recommended by the Advisory
13 Committee on Immunization Practices of the United States Public
14 Health Service and the Department of Health ¹and Senior Services¹
15 pursuant to section 7 of P.L.1995, c.316 (C.26:2-137.1). A carrier
16 shall notify its insureds, in writing, of any change in the health care
17 services provided with respect to childhood immunizations and any
18 related changes in premium. Such notification shall be in a form and
19 manner to be determined by the Commissioner of ¹Banking and¹
20 Insurance.

21 The benefits shall be provided to the same extent as for any other
22 medical condition under the health benefits plan, except that no
23 deductible shall be applied for benefits provided pursuant to this
24 section. This section shall apply to all individual health benefits plans
25 in which the carrier has reserved the right to change the premium.

26 (cf: P.L.1997, c.146, s.4)

27

28 ¹[2. Section 17 of P.L.1992, c.162 (C.17B:27A-33) is amended
29 to read as follows:

30 17. Subject to the approval of the commissioner, the board shall
31 formulate the five health benefits plans, and shall adopt such
32 modifications to one or more plans as the board determines are
33 necessary to make available a "high deductible health plan" or plans
34 compatible with the medical savings accounts established pursuant to
35 section 220 of the federal Internal Revenue Code of 1986, 26 U.S.C.
36 §220, within 60 days after the enactment of P.L. , c. (C.) (now
37 pending before the Legislature as this bill), to be made available by
38 small employer carriers in accordance with the provisions of this act,
39 and shall promulgate five standard forms pursuant thereto. The board
40 may establish benefits levels, deductibles and copayments, exclusions,
41 and limitations for such health benefits plans in accordance with the
42 law.

43 The board shall submit the forms so established to the
44 commissioner for his approval. The commissioner shall approve the
45 forms if he finds them to be consistent with the provisions of section
46 3 of P.L.1992, c.162 (C.17B:27A-19). Any form submitted to the

1 commissioner by the board shall be deemed approved if not expressly
2 disapproved in writing within 60 days of its receipt by the
3 commissioner. Such forms may contain, but shall not be limited to, the
4 following provisions:

5 a. Utilization review of health care services, including review of
6 medical necessity of hospital and physician services;

7 b. Managed care systems, including large case management;

8 c. Provision for selective contracting with hospitals, physicians,
9 and other health care providers;

10 d. Reasonable benefits differentials which are applicable to
11 participating and nonparticipating providers;

12 e. Notwithstanding the provisions of section 4 of P.L.1992, c.162
13 (C.17B:27A-20) to the contrary, the board may, from time to time,
14 adjust coinsurance and deductibles;

15 f. Such other provisions which may be quantifiably established to
16 be cost containment devices;

17 g. The department shall publish annually a list of the premiums
18 charged for each of the five small employer health benefits plans and
19 for any rider package by all carriers writing such plans. The
20 department shall also publish the toll free telephone number of each
21 such carrier.

22 (cf: P.L.1993, c.162, s.8)]¹

23

24 ¹[3.] 2.¹ N.J.S.54A:3-3 is amended to read as follows:

25 54A:3-3. Medical expenses. (a) Each taxpayer shall be allowed to
26 deduct from **[his]** the taxpayer's gross income medical expenses for
27 **[himself]** the taxpayer, **[his]** the taxpayer's spouse, and **[his]** the
28 taxpayer's dependents with respect to such expenses that were paid
29 during the taxable year and to the extent that such medical expenses
30 exceed 2% of the taxpayer's gross income. In the case of a
31 nonresident, gross income shall mean gross income which such
32 nonresident would have reported if **[he]** the taxpayer had been subject
33 to tax during the entire taxable year as a resident.

34 (b) Special Rule for Decedents.

35 (1) Treatment of expenses paid after death. Expenses for the
36 medical care of the taxpayer which are paid out of **[his]** the
37 taxpayer's estate during the one-year period beginning with the day
38 after the day of the death shall be treated as paid by the taxpayer at
39 the time incurred.

40 (2) Limitation. Paragraph (1) shall not apply if the amount paid is
41 not allowable as a deduction in computing medical expense deductions
42 for federal income tax purposes.

43 (c) **[Exclusion]** Disallowance of amounts allowed for **[care of**
44 **certain dependents]** other purposes. Any expenses allowed as a
45 deduction of expenses for household and dependent care services
46 necessary for gainful employment shall not be allowed as an expense

1 paid for medical care for purposes of this section. Any amounts paid
2 or distributed out of a medical savings account that are excluded from
3 gross income pursuant to section ¹[6] ⁵ of P.L. , c. (C.) (now
4 pending before the Legislature as this bill) shall not be allowed as an
5 expense paid for medical care for purposes of this section.

6 (cf: 54A:3-3)

7
8 ¹[4.] 3.¹ (New section) ²a.² A taxpayer may deduct from the
9 taxpayer's gross income an amount equal to the contributions to a
10 medical savings account that the taxpayer is allowed for the taxable
11 year as a deduction for federal income tax purposes pursuant to
12 section 220 of the federal Internal Revenue Code of 1986, 26 U.S.C.
13 s.220.

14 ²b. The deduction provided by subsection a. of this section shall,
15 notwithstanding any amendment or supplement to federal law, be
16 allowed only to "eligible individuals" qualifying under the limitations
17 of subsection (i), and subject to the numerical limits of subsection (j),
18 of section 220 of the federal Internal Revenue Code of 1986, 26
19 U.S.C. s.220, as in effect on January 1, 1997.²

20
21 ¹[5.] 4.¹ N.J.S.54A:5-1 is amended to read as follows:

22 54A:5-1. New Jersey Gross Income Defined. New Jersey gross
23 income shall consist of the following categories of income:

24 a. Salaries, wages, tips, fees, commissions, bonuses, and other
25 remuneration received for services rendered whether in cash or in
26 property , and amounts paid or distributed, or deemed paid or
27 distributed, out of a medical savings account that are not excluded
28 from gross income pursuant to section ¹[6] ⁵ of P.L. , c. (C.)
29 (now pending before the Legislature as this bill).

30 b. Net profits from business. The net income from the operation
31 of a business, profession or other activity after provision for all costs
32 and expenses incurred in the conduct thereof, determined either on a
33 cash or accrual basis in accordance with the method of accounting
34 allowed for federal income tax purposes but without deduction of the
35 amount of:

36 (1) taxes based on income;

37 (2) a civil, civil administrative, or criminal penalty or fine,
38 including a penalty or fine under an administrative consent order,
39 assessed and collected for a violation of a State or federal
40 environmental law, an administrative consent order, or an
41 environmental ordinance or resolution of a local governmental entity,
42 and any interest earned on the penalty or fine, and any economic
43 benefits having accrued to the violator as a result of a violation, which
44 benefits are assessed and recovered in a civil, civil administrative, or
45 criminal action, or pursuant to an administrative consent order. The
46 provisions of this paragraph shall not apply to a penalty or fine

1 assessed or collected for a violation of a State or federal
2 environmental law, or local environmental ordinance or resolution, if
3 the penalty or fine was for a violation that resulted from fire, riot,
4 sabotage, flood, storm event, natural cause, or other act of God
5 beyond the reasonable control of the violator, or caused by an act or
6 omission of a person who was outside the reasonable control of the
7 violator; and

8 (3) treble damages paid to the Department of Environmental
9 Protection and Energy pursuant to subsection a. of section 7 of
10 P.L.1976, c.141 (C.58:10-23.11f) for costs incurred by the department
11 in removing, or arranging for the removal of, an unauthorized
12 discharge upon the failure of the discharger to comply with a directive
13 from the department to remove, or arrange for the removal of, a
14 discharge.

15 c. Net gains or income from disposition of property. Net gains or
16 net income, less net losses, derived from the sale, exchange or other
17 disposition of property, including real or personal, whether tangible or
18 intangible as determined in accordance with the method of accounting
19 allowed for federal income tax purposes. For the purpose of
20 determining gain or loss, the basis of property shall be the adjusted
21 basis used for federal income tax purposes, except as expressly
22 provided for under this act, but without a deduction for penalties,
23 fines, or economic benefits excepted pursuant to paragraph (2), or for
24 treble damages excepted pursuant to paragraph (3) of subsection b. of
25 this section.

26 A taxpayer's net gain or loss on the sale, exchange or other
27 disposition of a share of an S corporation shall be calculated by
28 increasing the adjusted basis of the share by an amount equal to the
29 shareholder's net losses and deductions in respect of the share allowed
30 and deducted from income for federal income tax purposes, not
31 including any personal net operating loss deductions, to the extent that
32 such net losses were not offset by the taxpayer's pro rata share of S
33 corporation income otherwise subject to taxation pursuant to
34 subsection p. of this section in respect of another S corporation,
35 subject to rules of priority and assignment determined by the director.

36 For the tax year 1976, any taxpayer with a tax liability under this
37 subsection, or under the "Tax on Capital Gains and Other Unearned
38 Income Act," P.L.1975, c.172 (C.54:8B-1 et seq.), shall not be subject
39 to payment of an amount greater than the amount he would have paid
40 if either return had covered all capital transactions during the full tax
41 year 1976; provided, however, that the rate which shall apply to any
42 capital gain shall be that in effect on the date of the transaction. To the
43 extent that any loss is used to offset any gain under P.L.1975, c.172,
44 it shall not be used to offset any gain under the "New Jersey Gross
45 Income Tax Act," N.J.S.54A:1-1 et seq. et seq.

46 The term "net gains or income" shall not include gains or income

1 derived from obligations which are referred to in clause (1) or (2) of
2 N.J.S.54A:6-14 of this act or from securities which evidence
3 ownership in a qualified investment fund as defined in section 2 of
4 P.L.1987, c.310 (C.54A:6-14.1). The term "net gains or net income"
5 shall not include gains or income from transactions to the extent to
6 which nonrecognition is allowed for federal income tax purposes. The
7 term "sale, exchange or other disposition" shall not include the
8 exchange of stock or securities in a corporation a party to a
9 reorganization in pursuance of a plan of reorganization, solely for
10 stock or securities in such corporation or in another corporation a
11 party to the reorganization and the transfer of property to a
12 corporation by one or more persons solely in exchange for stock or
13 securities in such corporation if immediately after the exchange such
14 person or persons are in control of the corporation. For purposes of
15 this clause, stock or securities issued for services shall not be
16 considered as issued in return for property.

17 For purposes of this clause, the term "reorganization" means:

18 (i) A statutory merger or consolidation;

19 (ii) The acquisition by one corporation, in exchange solely for all
20 or part of its voting stock (or in exchange solely for all or a part of the
21 voting stock of a corporation which is in control of the acquiring
22 corporation) of stock of another corporation if, immediately after the
23 acquisition, the acquiring corporation has control of such other
24 corporation (whether or not such acquiring corporation had control
25 immediately before the acquisition);

26 (iii) The acquisition by one corporation, in exchange solely for all
27 or part of its voting stock (or in exchange solely for all or a part of the
28 voting stock of a corporation which is in control of the acquiring
29 corporation), of substantially all of the properties of another
30 corporation, but in determining whether the exchange is solely for
31 stock the assumption by the acquiring corporation of a liability of the
32 other, or the fact that property acquired is subject to a liability, shall
33 be disregarded;

34 (iv) A transfer by a corporation of all or a part of its assets to
35 another corporation if immediately after the transfer the transferor, or
36 one or more of its shareholders (including persons who were
37 shareholders immediately before the transfer), or any combination
38 thereof, is in control of the corporation to which the assets are
39 transferred;

40 (v) A recapitalization;

41 (vi) A mere change in identity, form, or place of organization
42 however effected; or

43 (vii) The acquisition by one corporation, in exchange for stock of
44 a corporation (referred to in this subclause as "controlling
45 corporation") which is in control of the acquiring corporation, of
46 substantially all of the properties of another corporation which in the

1 transaction is merged into the acquiring corporation shall not
2 disqualify a transaction under subclause (i) if such transaction would
3 have qualified under subclause (i) if the merger had been into the
4 controlling corporation, and no stock of the acquiring corporation is
5 used in the transaction;

6 (viii) A transaction otherwise qualifying under subclause (i) shall
7 not be disqualified by reason of the fact that stock of a corporation
8 (referred to in this subclause as the "controlling corporation") which
9 before the merger was in control of the merged corporation is used in
10 the transaction, if after the transaction, the corporation surviving the
11 merger holds substantially all of its properties and of the properties of
12 the merged corporation (other than stock of the controlling
13 corporation distributed in the transaction); and in the transaction,
14 former shareholders of the surviving corporation exchanged, for an
15 amount of voting stock of the controlling corporation, an amount of
16 stock in the surviving corporation which constitutes control of such
17 corporation.

18 For purposes of this clause, the term "control" means the
19 ownership of stock possessing at least 80% of the total combined
20 voting power of all classes of stock entitled to vote and at least 80%
21 of the total number of shares of all other classes of stock of the
22 corporation.

23 For purposes of this clause, the term "a party to a reorganization"
24 includes a corporation resulting from a reorganization, and both
25 corporations, in the case of a reorganization resulting from the
26 acquisition by one corporation of stock or properties of another. In
27 the case of a reorganization qualifying under subclause (i) by reason
28 of subclause (vii) the term "a party to a reorganization" includes the
29 controlling corporation referred to in such subclause (vii).

30 Notwithstanding any provisions hereof, upon every such exchange
31 or conversion, the taxpayer's basis for the stock or securities received
32 shall be the same as the taxpayer's actual or attributed basis for the
33 stock, securities or property surrendered in exchange therefor.

34 d. Net gains or net income derived from or in the form of rents,
35 royalties, patents, and copyrights.

36 e. Interest, except interest referred to in clause (1) or (2) of
37 N.J.S.54A:6-14, or distributions paid by a qualified investment fund
38 as defined in section 2 of P.L.1987, c.310 (C.54A:6-14.1), to the
39 extent provided in that section .

40 f. Dividends. "Dividends" means any distribution in cash or
41 property made by a corporation, association or business trust that is
42 not an S corporation, (1) out of accumulated earnings and profits, or
43 (2) out of earnings and profits of the year in which such dividend is
44 paid and any distribution in cash or property made by an S
45 corporation, as specifically determined pursuant to section 16 of
46 P.L.1993, c.173 (C.54A:5-14).

1 The term "dividends" shall not include distributions paid by a
2 qualified investment fund as defined in section 2 of P.L.1987, c.310
3 (C.54A:6-14.1), to the extent provided in that section.

4 g. Gambling winnings.

5 h. Net gains or income derived through estates or trusts.

6 i. Income in respect of a decedent.

7 j. Amounts distributed or withdrawn from an employee trust
8 attributable to contributions to the trust which were excluded from
9 gross income under the provisions of chapter 6 of Title 54A of the
10 New Jersey Statutes and pensions and annuities except to the extent
11 of exclusions in N.J.S.54A:6-10 hereunder, notwithstanding the
12 provisions of N.J.S.18A:66-51, P.L.1973, c.140, s.41 (C.43:6A-41),
13 P.L.1954, c.84, s.53 (C.43:15A-53), P.L.1944, c.255, s.17
14 (C.43:16A-17), P.L.1965, c.89, s.45 (C.53:5A-45), R.S.43:10-14,
15 P.L.1943, c.160, s.22 (C.43:10-18.22), P.L.1948, c.310, s.22
16 (C.43:10-18.71), P.L.1954, c.218, s.32 (C.43:13-22.34), P.L.1964,
17 c.275, s.11 (C.43:13-22.60), R.S.43:10-57, P.L.1938, c.330, s.13
18 (C.43:10-105), R.S.43:13-44, and P.L.1943, c.189, s.5
19 (C.43:13-37.5).

20 k. Distributive share of partnership income.

21 l. Amounts received as prizes and awards, except as provided in
22 N.J.S.54A:6-8 and N.J.S.54A:6-11 hereunder.

23 m. Rental value of a residence furnished by an employer or a rental
24 allowance paid by an employer to provide a home.

25 n. Alimony and separate maintenance payments to the extent that
26 such payments are required to be made under a decree of divorce or
27 separate maintenance but not including payments for support of minor
28 children.

29 o. Income, gain or profit derived from acts or omissions defined
30 as crimes or offenses under the laws of this State or any other
31 jurisdiction.

32 p. Net pro rata share of S corporation income.

33 (cf: P.L.1993, c.173, s.9)

34
35 ¹**[6.] 5.¹** (New section) a. Gross income shall not include
36 contributions to a taxpayer's medical savings account that are excluded
37 from the taxpayer's federal gross income pursuant to section 220 of
38 the federal Internal Revenue Code of 1986, 26 U.S.C. s.220.

39 b. Gross income shall not include amounts paid or distributed, or
40 deemed paid or distributed, out of a taxpayer's medical savings
41 account that are excluded from the taxpayer's federal gross income
42 pursuant to section 220 of the federal Internal Revenue Code of 1986,
43 26 U.S.C. s.220.

44 ²**c. The exclusions provided by subsections a. and b. of this section**
45 **shall, notwithstanding any amendment or supplement to federal law,**
46 **be allowed only to "eligible individuals" qualifying under the**

1 limitations of subsection (i), and subject to the numerical limits of
2 subsection (j), of section 220 of the federal Internal Revenue Code
3 of 1986, 26 U.S.C. s.220, as in effect on January 1, 1997.²

4

5 ¹~~7.~~ 6.¹ This act shall take effect immediately and sections ¹~~3~~
6 2¹ through ¹~~6~~ 5¹ shall apply to taxable years beginning on or after
7 January 1 ¹~~1997~~ 1998¹.

8

9

10

11

12 Establishes certain standards and provides certain tax advantages for
13 medical savings accounts.

ASSEMBLY INSURANCE COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 671 and 495

STATE OF NEW JERSEY

DATED: SEPTEMBER 16, 1996

The Assembly Insurance Committee reports favorably the Assembly Committee Substitute for Assembly, Nos. 671 and 495.

This committee substitute establishes certain standards and provides certain tax advantages for medical savings accounts established in New Jersey.

The bill requires medical savings account plans to include all of the following: (1) the payment into a medical savings account, which shall, except in the case of a rollover contribution, equal or exceed 65% of the annual deductible of a qualified higher deductible health plan in the case of self-only coverage and 75% of the annual deductible of a qualified higher deductible health plan in the case of an individual who has family coverage; (2) the purchase of a qualified higher deductible health plan; and (3) the appointment of a trustee to administer the medical savings account.

The bill defines a "higher deductible health plan" as a health plan: with an annual deductible of at least \$1,500 and not more than \$2,250, in the case of self-only coverage; an annual deductible of at least \$3,000 and not more than \$4,500 in the case of family coverage; and a limit of \$3,000 for self-only coverage and \$5,000 for family coverage and further provides that any increases to those amounts that apply under the federal Health Insurance Portability and Accountability Act of 1996, will also apply under this bill.

The bill authorizes the New Jersey Individual Health Coverage Program Board and the New Jersey Small Employer Health Benefits Program Board to establish a medical savings account plan as one of the standard plans in each of the respective programs.

Finally, the bill provides that in order to qualify for a deduction from gross income tax in New Jersey for a medical savings account, a person has to qualify as an "eligible individual" under the federal Health Insurance Portability and Accountability Act of 1996. Funds withdrawn from the account to pay expenses, other than eligible expenses, would generally not be deductible from gross income and therefore would be subject to income tax and may additionally be subject to a penalty.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR

ASSEMBLY COMMITTEE SUBSTITUTE FOR

ASSEMBLY, Nos. 671 and 495

STATE OF NEW JERSEY

DATED: JANUARY 9, 1997

The Assembly Appropriations Committee reports favorably Assembly Bill Nos. 671 and 495 by committee substitute.

This Assembly Committee Substitute for Assembly Bill Nos. 671/495 (ACS) establishes gross income tax advantages for employer or employee contributions to "medical savings accounts," defined identically to medical savings accounts pursuant to the federal "Health Insurance Portability and Affordability Act of 1996," Pub.L.104-191. The substitute also requires the New Jersey Individual Health Coverage Program Board and the New Jersey Small Employer Health Benefits Program Board to adopt modifications to one or more plans as the boards determine are necessary to make available "high deductible health plans" compatible with the federally qualified medical savings accounts.

Recently enacted 26 U.S.C. §220 allows those employees of small employers and the self-employed who are covered by a "high deductible" health plan to establish medical savings accounts. Some of the contributions to these savings accounts can be excluded or deducted from the federal taxable income of the employee. Funds withdrawn to pay eligible medical expenses remain excluded from taxation; funds withdrawn for other purposes are subject to federal taxation and penalties.

The federal program is a pilot program, limited so that the total number of employees in the United States who will be allowed the federal tax advantages of medical savings accounts may not exceed 750,000. This substitute provides parallel New Jersey gross income tax exclusions and deduction for employees participating in the federal pilot program. The substitute exempts contributions to federally qualified medical savings accounts from New Jersey gross income taxation if the contributions are exempt from federal taxation; exempts withdrawals from accounts from State taxation if the withdrawals are subject to federal taxation; and subjects withdrawals to State taxation if the withdrawals are subject to federal taxation.

This substitute makes technical changes from the prior substitute:

to delete the definition sections, putting the responsibility of tax administration on the federal regulators; to make the requirement to the Individual Health Coverage Board and the Small Employer Health Benefits Board more flexible, allowing more minor adjustments to the existing health plans; to add a clarifying amendment to prevent the possibility of double tax benefits; and to delete the penalty provision, because adequate penalties are provided under federal statute.

FISCAL IMPACT:

No specific information is available on how many New Jersey gross income taxpayers will be among the 750,000 federal income taxpayers, but if New Jersey residents qualify in the same proportion as all other federal taxpayers, it would be expected that about 24,500 New Jersey residents would qualify for federal benefits and therefore for New Jersey income tax benefits.

However, this does not lead to any definite conclusions about the State revenue impact of the bill. Some taxpayers already have tax-excluded health plans, and the conversion to use of medical savings accounts by their employers could reduce business expenditures without any reduction in gross income tax revenue. At the extreme, if every one of 24,500 taxpayers changed health plans to defer \$3,750, then the revenue impact might be a gross income tax loss of as much as \$3 million for that year; however data suggest only some of the taxpayers using medical savings accounts will actually reduce their taxable income, and those who do reduce taxable income will select salary reductions in the range of \$1,000 to \$2,000 annually. Therefore, the expected revenue impact is a small reduction in gross income tax revenues, of unknown magnitude but probably substantially less than the \$3 million maximum.

SENATE HEALTH COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 671 and 495

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 11, 1997

The Senate Health Committee reports favorably and with committee amendments the Assembly Committee Substitute for Assembly Committee Substitute for Assembly Bill Nos.671 and 495.

As amended by committee, this substitute establishes State gross income tax advantages for employer or employee contributions to "medical savings accounts," defined identically to medical savings accounts pursuant to the federal "Health Insurance Portability and Accountability Act of 1996," Pub.L.104-191. The substitute also requires the New Jersey Individual Health Coverage Program Board to adopt modifications to one or more plans as the boards determine are necessary to make available "high deductible health plans" consistent with the federally qualified medical savings accounts. (P.L.1997, c.146, enacted in June 1997, includes a similar requirement for the New Jersey Small Employer Health Benefits Program Board.)

Federal law allows employees of small employers and the self-employed who are covered by a "high deductible" health plan to establish a medical savings account. Some of the contributions to these savings accounts can be excluded or deducted from the federal taxable income of the employee. Funds withdrawn to pay eligible medical expenses remain excluded from taxation; funds withdrawn for other purposes are subject to federal taxation and penalties.

The federal program is a pilot program, limited so that the total number of employees in the United States who will be allowed the federal tax advantages of medical savings accounts may not exceed 750,000. This substitute provides parallel New Jersey gross income tax exclusions and deduction for employees participating in the federal pilot program. The substitute exempts contributions to federally qualified medical savings accounts from New Jersey gross income taxation if the contributions are exempt from federal taxation; exempts

withdrawals from accounts from State taxation if the withdrawals are exempt from federal taxation; and subjects withdrawals to State taxation if the withdrawals are subject to federal taxation.

The committee adopted technical amendments to the substitute to conform section 1, that amends the individual insurance law (N.J.S.A.17B:27A-7), to recently enacted legislation, P.L.1997, c.146, which conformed the State's insurance laws to the requirements of the federal "Health Insurance Portability and Accountability Act of 1996." Amendments also delete section 2 of the bill, which amended P.L.1992, c.162 concerning small employer plans, as that law was already amended in P.L.1997, c.146 to provide for medical savings accounts. Amendments also update the date the tax provisions shall be applicable, from taxable years beginning January 1, 1997 to taxable years beginning January 1, 1998.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY COMMITTEE SUBSTITUTE FOR ASSEMBLY COMMITTEE SUBSTITUTE FOR **ASSEMBLY, Nos. 671 and 495**

with Senate committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 15, 1997

The Senate Budget and Appropriations Committee reports favorably Assembly Bill Nos. 671 and 495 ACS ACS (1R) with amendments.

Assembly Bill Nos. 671 and 495 ACS ACS (1R), as amended, establishes New Jersey gross income tax advantages for employer or employee contributions to "medical savings accounts," defined identically to medical savings accounts in the federal "Health Insurance Portability and Affordability Act of 1996," Pub.L.104-191 (26 U.S.C. s.220 et al.). The bill also requires the New Jersey Individual Health Coverage Program Board to adopt modifications to one or more plans as the board determines are necessary to make available "high deductible health plans" compatible with the federally qualified medical savings accounts. (P.L.1997, c.146 enacted in June, 1997 includes a similar requirement for the New Jersey Small Employer Health Benefits Program Board.).

Recently enacted federal law allows those employees of small employers and the self-employed who are covered by a "high deductible" health plan to establish medical savings accounts. Some of the contributions to these savings accounts can be excluded or deducted from the federal taxable income of the employee. Funds withdrawn to pay eligible medical expenses remain excluded from taxation; funds withdrawn for other purposes are subject to federal taxation and penalties.

The federal program is a pilot program, limited so that the total number of employees in the United States who will be allowed the federal tax advantages of medical savings accounts may not exceed 750,000. This bill provides parallel New Jersey gross income tax exclusions and deduction for employees participating in the federal

pilot program. The bill exempts contributions to federally qualified medical savings accounts from New Jersey gross income taxation if the contributions are exempt from federal taxation; exempts withdrawals from accounts from State taxation if the withdrawals are exempt from federal taxation; and subjects withdrawals to State taxation if the withdrawals are subject to federal taxation.

COMMITTEE AMENDMENTS

The committee amended the bill to limit participation in the State advantages to those qualified to participate in the original pilot federal program.

FISCAL IMPACT

No specific information is available on how many New Jersey gross income taxpayers will be among the 750,000 federal income taxpayers, but if New Jersey residents qualify in the same proportion as all other federal taxpayers, it would be expected that about 24,500 New Jersey residents would qualify for federal benefits and therefore for New Jersey income tax benefits.

However, this does not lead to any definite conclusions about the State revenue impact of the bill. Some taxpayers already have tax-excluded health plans, and the conversion to use of medical savings accounts by their employers could reduce business expenditures without any reduction in gross income tax revenue. At the extreme, if every one of 24,500 taxpayers changed health plans to defer \$3,750, then the revenue impact might be a gross income tax loss of as much as \$3 million for that year; however data suggest only some of the taxpayers using medical savings accounts will actually reduce their taxable income, and those who do reduce taxable income will select salary reductions in the range of \$1,000 to \$2,000 annually. Therefore, the expected revenue impact is a small reduction in gross income tax revenues, of unknown magnitude but is expected to be substantially less than the \$3 million maximum.

LEGISLATIVE FISCAL ESTIMATE TO
ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 671 and 495

STATE OF NEW JERSEY

DATED: JANUARY 23, 1997

Assembly Committee Substitute for Assembly Bill Nos. 671 and 495 of 1996 establishes gross income tax advantages for employer or employee contributions to "medical savings accounts," defined identically as medical savings accounts pursuant to the federal "Health Insurance Portability and Affordability Act of 1996," Pub.L.104-191. The bill also authorizes the New Jersey Individual Health Coverage Program Board and the New Jersey Small Employer Health Benefits Program Board to establish a plan involving a medical savings account as one of the standard plans in each of the respective programs.

Recently enacted 26 U.S.C. §220 allows those employees of small employers and the self employed who are covered by a "high deductible" health plan to establish medical savings accounts. Some of the contributions to these savings accounts can be excluded or deducted from the federal taxable income of the employee, up to \$1,462.50 for employees with single coverage and up to \$3,750 for those with family coverage in 1997. Funds withdrawn to pay eligible medical expenses remain excluded from taxation; funds withdrawn for other purposes are subject to taxation and to penalties.

The federal program is a pilot program, limited so that the total number of employees allowed the tax advantages of medical savings accounts may not exceed 750,000. The bill provides exclusions and deductions for gross income tax purposes identical to the federal legislation. Only employees that enjoy the federal tax advantages may enjoy the New Jersey gross income tax exclusions and deductions. However, the bill also provides for the establishment of medical savings accounts that do not have the tax advantages. These non-tax advantaged plans have cost control benefits independent of their tax advantages.

No information was provided by the Office of Management and Budget on the fiscal impact of this bill, and no data are available to the Office of Legislative Services that would allow an estimate of the gross income tax revenue losses that might result from the allowance of the exclusions and deductions provided by the bill. While it is assumed that small employers, their employees and the self-employed will act rapidly to take advantage of the federal legislation, there is no way of determining how many of the 750,000 United States income tax payers who will be allowed the federal tax incentives will be New Jersey gross income tax payers who will be allowed the gross income tax exclusions or deductions.

However, a tentative estimate of the potential revenue loss can be made. As there seems to be no reason that New Jersey residents are in any better or worse position to take advantage of the federal incentives than the residents of any other state, assume that Jersey residents will qualify for the 750,000 federal exempt accounts in the same proportion as all other federal taxpayers. It would be expected that about 24,500 New Jersey residents would qualify for federal benefits and therefore for gross income tax benefits. If each of these taxpayers exempted the maximum amount of \$3,750 in tax year 1997, then the revenue impact from enactment of the bill effective for that calendar year might be a gross income tax loss of as much as \$3 million, which would be distributed between State fiscal years 1997 and 1998.

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.