

SENATE, No. 2317

STATE OF NEW JERSEY

INTRODUCED DECEMBER 11, 1997

By Senators LaROSSA, INVERSO, Matheussen, Cafiero and
Bark

1 AN ACT concerning medical savings accounts for automobile
2 insurance purposes, supplementing P.L.1972, c.70 (C.39:6A-1 et
3 seq.) and amending and supplementing Title 54A of the New Jersey
4 Statutes.

5

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

8

9 1. (New section) a. An insurer may offer a medical savings
10 account in connection with the medical expense benefits portion of the
11 personal injury protection coverage provided under section 4 of
12 P.L.1972, c.70 (C.39:6A-4), and may act as administrator for the
13 account. A medical expense savings account may be offered in
14 amounts of \$500, \$1,000, \$1,500, or \$2,000, and a deductible in a
15 commensurate amount shall apply to the medical expense benefits. No
16 other deductible or copayment provided for in section 4 of P.L.1972,
17 c.70 (C.39:6A-4) shall apply. Amounts deposited in a medical savings
18 account by the named insured pursuant to this section shall be
19 deductible from the insured's gross income as provided in section 3 of
20 P.L. _____, c. _____(C. _____)(now before the Legislature as this
21 bill).

22 b. Payment for medical expenses due and payable pursuant to the
23 provisions of section 4 of P.L.1972, c.70 (C.39:6A-4) shall be
24 disbursed from the medical savings account for the payment of claims
25 incurred by the named insured and the members of his family residing
26 in his household, up to the limit of the account before any claims are
27 payable under the medical expense benefits portion of the personal
28 injury protection coverage provided by the policy.

29 c. After the payment of claims by the account administrator, the
30 named insured may deposit additional funds into the account in order
31 to restore the account to its full value.

32 d. If a policy of private passenger automobile insurance is canceled
33 or nonrenewed by the named insured or the insurer, the insurer shall

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

Matter underlined thus is new matter.

1 remit any balance remaining in the account to the named insured within
2 30 days of the effective date of cancellation or nonrenewal.

3 2. N.J.S.54A:3-3 is amended to read as follows:

4 54A:3-3. Medical expenses. (a) Each taxpayer shall be allowed to
5 deduct from [his] the taxpayer's gross income medical expenses for
6 [himself] the taxpayer, [his] the taxpayer's spouse, and [his] the
7 taxpayer's dependents with respect to such expenses that were paid
8 during the taxable year and to the extent that such medical expenses
9 exceed 2% of the taxpayer's gross income. In the case of a
10 nonresident, gross income shall mean gross income which such
11 nonresident would have reported if [he] the taxpayer had been subject
12 to tax during the entire taxable year as a resident.

13 (b) Special Rule for Decedents.

14 (1) Treatment of expenses paid after death. Expenses for the
15 medical care of the taxpayer which are paid out of [his] the taxpayer's
16 estate during the one-year period beginning with the day after the day
17 of the death shall be treated as paid by the taxpayer at the time
18 incurred.

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

22 (c) [Exclusion] Disallowance of amounts allowed for [care of
23 certain dependents] other purposes. Any expenses allowed as a
24 deduction of expenses for household and dependent care services
25 necessary for gainful employment shall not be allowed as an expense
26 paid for medical care for purposes of this section. Amounts paid or
27 distributed out of a medical savings account established pursuant to
28 section 1 of P.L. , c. (C.)(now before the Legislature as this
29 bill) shall not be allowed as an expense paid for medical care for
30 purposes of this section.

31 (cf: N.J.S.54A:3-3)

32

33 3. (New section) A taxpayer may deduct from the taxpayer's gross
34 income an amount equal to the contributions to a medical savings
35 account established in connection with the medical expense benefits
36 portion of the personal injury protection coverage under a policy of
37 private passenger automobile insurance pursuant to section 1 of
38 P.L. , c. (C.)(now before the Legislature as this bill).

39

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

41 54A:5-1. New Jersey Gross Income Defined. New Jersey gross
42 income shall consist of the following categories of income:

43 a. Salaries, wages, tips, fees, commissions, bonuses, and other
44 remuneration received for services rendered whether in cash or in
45 property, and amounts paid or distributed, or deemed paid or
46 distributed, out of a medical savings account established pursuant to

1 section 1 of P.L. , c. (C.)(now before the Legislature as this
2 bill), that are not paid or distributed for medical expenses as defined
3 in section 2 of P.L.1972, c.70 (C.39:6A-2).

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

10 (1) taxes based on income;

11 (2) a civil, civil administrative, or criminal penalty or fine, including
12 a penalty or fine under an administrative consent order, assessed and
13 collected for a violation of a State or federal environmental law, an
14 administrative consent order, or an environmental ordinance or
15 resolution of a local governmental entity, and any interest earned on
16 the penalty or fine, and any economic benefits having accrued to the
17 violator as a result of a violation, which benefits are assessed and
18 recovered in a civil, civil administrative, or criminal action, or pursuant
19 to an administrative consent order. The provisions of this paragraph
20 shall not apply to a penalty or fine assessed or collected for a violation
21 of a State or federal environmental law, or local environmental
22 ordinance or resolution, if the penalty or fine was for a violation that
23 resulted from fire, riot, sabotage, flood, storm event, natural cause, or
24 other act of God beyond the reasonable control of the violator, or
25 caused by an act or omission of a person who was outside the
26 reasonable control of the violator; and

27 (3) treble damages paid to the Department of Environmental
28 Protection [and Energy] pursuant to subsection a. of section 7 of
29 P.L.1976, c.141 (C.58:10-23.11f) for costs incurred by the department
30 in removing, or arranging for the removal of, an unauthorized
31 discharge upon the failure of the discharger to comply with a directive
32 from the department to remove, or arrange for the removal of, a
33 discharge.

34 c. Net gains or income from disposition of property. Net gains or
35 net income, less net losses, derived from the sale, exchange or other
36 disposition of property, including real or personal, whether tangible or
37 intangible as determined in accordance with the method of accounting
38 allowed for federal income tax purposes. For the purpose of
39 determining gain or loss, the basis of property shall be the adjusted
40 basis used for federal income tax purposes, except as expressly
41 provided for under this act, but without a deduction for penalties,
42 fines, or economic benefits excepted pursuant to paragraph (2), or for
43 treble damages excepted pursuant to paragraph (3) of subsection b. of
44 this section.

45 A taxpayer's net gain or loss on the sale, exchange or other
46 disposition of a share of an S corporation shall be calculated by

1 increasing the adjusted basis of the share by an amount equal to the
2 shareholder's net losses and deductions in respect of the share allowed
3 and deducted from income for federal income tax purposes, not
4 including any personal net operating loss deductions, to the extent that
5 such net losses were not offset by the taxpayer's pro rata share of S
6 corporation income otherwise subject to taxation pursuant to
7 subsection p. of this section in respect of another S corporation,
8 subject to rules of priority and assignment determined by the director.

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

19 The term "net gains or income" shall not include gains or income
20 derived from obligations which are referred to in clause (1) or (2) of
21 N.J.S.54A:6-14 of this act or from securities which evidence
22 ownership in a qualified investment fund as defined in section 2 of
23 P.L.1987, c.310 (C.54A:6-14.1). The term "net gains or net income"
24 shall not include gains or income from transactions to the extent to
25 which nonrecognition is allowed for federal income tax purposes. The
26 term "sale, exchange or other disposition" shall not include the
27 exchange of stock or securities in a corporation a party to a
28 reorganization in pursuance of a plan of reorganization, solely for
29 stock or securities in such corporation or in another corporation a
30 party to the reorganization and the transfer of property to a
31 corporation by one or more persons solely in exchange for stock or
32 securities in such corporation if immediately after the exchange such
33 person or persons are in control of the corporation. For purposes of
34 this clause, stock or securities issued for services shall not be
35 considered as issued in return for property.

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

37 (i) A statutory merger or consolidation;

38 (ii) The acquisition by one corporation, in exchange solely for all
39 or part of its voting stock (or in exchange solely for all or a part of the
40 voting stock of a corporation which is in control of the acquiring
41 corporation) of stock of another corporation if, immediately after the
42 acquisition, the acquiring corporation has control of such other
43 corporation (whether or not such acquiring corporation had control
44 immediately before the acquisition);

45 (iii) The acquisition by one corporation, in exchange solely for all
46 or part of its voting stock (or in exchange solely for all or a part of the

1 voting stock of a corporation which is in control of the acquiring
2 corporation), of substantially all of the properties of another
3 corporation, but in determining whether the exchange is solely for
4 stock the assumption by the acquiring corporation of a liability of the
5 other, or the fact that property acquired is subject to a liability, shall
6 be disregarded;

7 (iv) A transfer by a corporation of all or a part of its assets to
8 another corporation if immediately after the transfer the transferor, or
9 one or more of its shareholders (including persons who were
10 shareholders immediately before the transfer), or any combination
11 thereof, is in control of the corporation to which the assets are
12 transferred;

13 (v) A recapitalization;

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

16 (vii) The acquisition by one corporation, in exchange for stock of
17 a corporation (referred to in this subclause as "controlling
18 corporation") which is in control of the acquiring corporation, of
19 substantially all of the properties of another corporation which in the
20 transaction is merged into the acquiring corporation shall not
21 disqualify a transaction under subclause (i) if such transaction would
22 have qualified under subclause (i) if the merger had been into the
23 controlling corporation, and no stock of the acquiring corporation is
24 used in the transaction;

25 (viii) A transaction otherwise qualifying under subclause (i) shall
26 not be disqualified by reason of the fact that stock of a corporation
27 (referred to in this subclause as the "controlling corporation") which
28 before the merger was in control of the merged corporation is used in
29 the transaction, if after the transaction, the corporation surviving the
30 merger holds substantially all of its properties and of the properties of
31 the merged corporation (other than stock of the controlling
32 corporation distributed in the transaction); and in the transaction,
33 former shareholders of the surviving corporation exchanged, for an
34 amount of voting stock of the controlling corporation, an amount of
35 stock in the surviving corporation which constitutes control of such
36 corporation.

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

41 For purposes of this clause, the term "a party to a reorganization"
42 includes a corporation resulting from a reorganization, and both
43 corporations, in the case of a reorganization resulting from the
44 acquisition by one corporation of stock or properties of another. In
45 the case of a reorganization qualifying under subclause (i) by reason
46 of subclause (vii) the term "a party to a reorganization" includes the

1 controlling corporation referred to in such subclause (vii).

2 Notwithstanding any provisions hereof, upon every such exchange
3 or conversion, the taxpayer's basis for the stock or securities received
4 shall be the same as the taxpayer's actual or attributed basis for the
5 stock, securities or property surrendered in exchange therefor.

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

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

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

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

22 g. Gambling winnings.

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

24 i. Income in respect of a decedent.

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

38 k. Distributive share of partnership income.

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

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

43 n. Alimony and separate maintenance payments to the extent that
44 such payments are required to be made under a decree of divorce or
45 separate maintenance but not including payments for support of minor
46 children.

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

4 p. Net pro rata share of S corporation income.
5 (cf: P.L.1993, c.173, s.9)

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7 5. This act shall take effect immediately and sections 2 through 5
8 shall apply to taxable years beginning on or after January 1, 1998.

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10
11 STATEMENT

12
13 This bill authorizes private passenger automobile insurers to offer
14 their insureds the option of establishing a medical savings account in
15 connection with the medical expense benefits portion of the personal
16 injury protection coverage required under section 4 of P.L.1972, c.70
17 (C:39:6A-4), and to act as administrator for the account. A medical
18 savings account may be offered in amounts of \$500, \$1,000, \$1,500,
19 or \$2,000, and a deductible in a commensurate amount shall apply to
20 the medical expense benefits. No other deductible or copayment as
21 provided by law would apply.

22 Payment for medical expenses due and payable pursuant to the
23 provisions of section 4 of P.L.1972, c.70 (C.39:6A-4) shall be
24 disbursed from the medical savings account for the payment of claims
25 incurred by the named insured and the members of his family residing
26 in his household, up to the limit of the account before any claims are
27 payable under the medical expense benefits portion of the personal
28 injury protection coverage provided by the policy. After the payment
29 of claims by the account administrator, the named insured may deposit
30 additional funds into the account in order to restore the account to its
31 full value. If a policy of private passenger automobile insurance is
32 canceled or nonrenewed by the named insured or the insurer, the
33 insurer shall remit any balance remaining in the account to the named
34 insured within 30 days of the effective date of cancellation or
35 nonrenewal.

36 Amounts deposited in a medical savings account by the named
37 insured are deductible from the insured's New Jersey gross income.
38 Amounts paid out of the medical savings account for other than
39 medical expenses are taxable, however.

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42 _____
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44 Authorizes establishment of medical savings accounts for automobile
45 insurance PIP medical expense benefits.