

HOUSE BILL NO. 216
INTRODUCED BY J. MCKENNEY
BY REQUEST OF THE ECONOMIC AFFAIRS INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR A SMALL BUSINESS AND INDIVIDUAL HEALTH INSURANCE COVERAGE PROGRAM ADMINISTERED BY THE STATE AUDITOR'S OFFICE FOR ELIGIBLE BUSINESSES AND INDIVIDUALS THROUGH A TAX CREDIT SYSTEM THAT REQUIRES PREAPPROVAL FOR THE CREDIT BASED ON AVAILABLE FUNDING; PROVIDING FOR REFUNDABLE TAX CREDITS WITH A TAX RETURN OR BY DIRECT PAYMENTS TO A HEALTH BENEFIT PLAN CARRIER; LIMITING THE AMOUNT OF CREDIT FOR CLASSES OF COVERED INDIVIDUALS AND REQUIRING, FOR SMALL BUSINESS COVERAGE, MINIMUM CONTRIBUTIONS BY THE EMPLOYER; PROVIDING FOR THE ADMINISTRATION OF THE SMALL BUSINESS AND INDIVIDUAL TAX CREDIT SYSTEMS; AMENDING SECTION 15-30-121, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Credit for small business insurance premium paid -- definitions.** As used in [sections 1 through 4], the following definitions apply:

- (1) "Department" means the department of revenue.
- (2) "Health benefit plan" has the meaning provided for in 33-36-103.
- (3) "Premium" means the amount of money an insurance company charges to provide coverage for a health benefit plan.

NEW SECTION. **Section 2. Credit for small business insurance premiums paid -- eligibility for small group coverage -- amount.** (1) An employer is eligible to claim a credit under [sections 1 through 4] if the employer:

- (a) did not have more than the number of employees established for eligibility by the state auditor's office at the time of registering for a credit under [section 4];
- (b) does not have any employee who received more than \$150,000 in compensation, including bonuses and commissions, from the company in the prior tax year;
- (c) provided a health benefit plan for the corporation's employees in accordance with 33-22-1811(3)(d);

(d) has been registered as a small business participant by the state auditor's office as provided in [section 4]; and

(e) incurred the premium costs during the calendar years 2004 through 2008.

(2) The state auditor's office shall establish, by rule, the maximum number of employees that may be employed to qualify as an employer under subsection (1). The number may not be less than four employees or more than nine employees. The number must be set to maximize the number of individuals and employees receiving coverage under [sections 1 through 10]. The state auditor's office may not change the maximum employee number more often than every 6 months. If the maximum number of allowable employees is changed, the change does not otherwise disqualify registered employers.

(3) Except as provided in subsection (4), an eligible employer may claim a credit as follows:

(a) (i) not more than \$100 per month for each employee or employee's spouse if the average age of the group is under 45 years of age;

(ii) not more than \$125 per month for each employee or employee's spouse if the average age of the group is 45 years of age or older; and

(b) not more than \$40 per month for each dependent, if the employer is paying for dependent coverage, not to exceed two dependents of an employee included in subsection (3)(a).

(4) An employer shall match the amount of the credit claimed so that the total amount of the credit claimed may not exceed 50% of the total premiums paid by the employer.

NEW SECTION. Section 3. Credit for small business insurance premiums paid -- form of relief -- filing. (1) An employer may:

(a) apply the credit against taxes due for the current tax year on a return filed pursuant to chapter 30 or this chapter; or

(b) request that the department make direct credit payments to the health benefit plan carrier.

(2) An employer may not, in the same tax year, apply the credit against taxes due for the current tax year as provided for in subsection (1)(a) and request the department to make direct credit payments as provided for in subsection (1)(b).

(3) The direct credit payments requested under subsection (1)(b) must be made by periodic payments by the department to the health benefit plan carrier for which the credit is claimed. The department shall provide by rule the time and method of making the payments. If the direct pay credit is payable to health benefit plans provided by more than one health benefit plan carrier, the employer shall inform the department of the appropriate

amounts and the carriers to which the amounts must be paid.

(4) If an employer applies the credit as provided in subsection (1)(a) and the amount of the credit exceeds the employer's liability under 15-31-121, the amount of the excess must be refunded to the employer.

(5) The credit may be claimed even if the employer has no liability under 15-31-121. If an employer applies for the credit as provided in subsection (1)(a) and the amount of the credit exceeds the employer's liability under chapter 30 or this chapter, the amount in excess must be refunded to the employer.

(6) If the credit allowed under this section is claimed by a small business corporation, as defined in 15-30-1101, or a partnership, the credit must be attributed to shareholders or partners, using the same proportion to report the corporation's or partnership's income or loss for Montana income tax purposes.

(7) A credit is not allowed under any other provision of this chapter with respect to any amount for which a credit is allowed under [sections 1 through 4].

(8) The department may grant a reasonable extension for filing a claim whenever, in its judgment, good cause exists. The department shall keep a record of each extension and the reason for granting the extension.

(9) (a) If a corporation that would have a claim under [sections 1 through 4] ceases doing business before filing the claim, the representative of the corporation who files a return under this chapter may file the claim.

(b) If a corporation that would have a claim under [sections 1 through 4] merges with or is acquired by another corporation and the merger or acquisition makes the previously eligible corporation ineligible for the credit in the future, the newly formed corporation may file for the credit for any claim period during which the former, eligible corporation remained eligible.

(c) If a corporation that would have a claim under [sections 1 through 4] files for bankruptcy protection, the receiver may file for the credit for any claim period during which the corporation was eligible.

NEW SECTION. Section 4. Credit for small business insurance premiums paid -- registration. (1)

(a) Each employer that proposes to claim a credit under [sections 1 through 4] must be registered each year with the state auditor's office. The registration must include the number of individuals covered under the small business plan for which they are seeking a credit. If, after the initial registration, the number of individuals increases, the employer must apply to register the additional individuals, but the employer is not eligible to register a number of employees, or their spouses or dependents, over the number that has been established as the maximum number of employees an employer may have to qualify for registration.

(b) The state auditor's office shall register prospective employers in the order in which applications are

received. The maximum number of prospective employers is reached when the anticipated amount of claims for credits under [sections 1 through 10] has reached \$45 million. The state auditor's office may establish a waiting list for applicants that are otherwise qualified for registration but cannot be registered because of a lack of money. The state auditor shall mail to each employer registered under this section a notice of registration containing a unique registration number. The state auditor's office shall notify all persons who applied for registration and who were not accepted that they were not registered and the reason that they were not registered.

(2) A prospective claimant shall apply for registration on a form provided by the state auditor. The prospective claimant shall provide:

- (a) the number of employees and whether the employer qualifies under [section 2];
- (b) information that is necessary to estimate the amount of the credit payable to the applicant, such as ages and relationships of employees;
- (c) whether the prospective claimant intends to pursue the claim through the income tax process or by direct credit payments; and
- (d) any additional information determined by the state auditor's office to be necessary to support a claim.

NEW SECTION. Section 5. Credit for insurance premiums paid -- small business employers. There is a credit determined under [sections 1 through 4] for qualifying employers that are individual income taxpayers against the taxes imposed in 15-30-103 for qualifying premiums paid by the employer for coverage of qualified employees and the employees' spouses and dependents under a health benefit plan.

NEW SECTION. Section 6. Credit for individual insurance premiums -- definitions. As used in [sections 6 through 10], the following definitions apply:

- (1) "Department" means the department of revenue.
- (2) "Gross household income" has the meaning provided for in 15-30-171.
- (3) "Health benefit plan" has the meaning provided for in 33-36-103 and includes coverage under a plan certified under 33-22-1521.
- (4) "Household" has the meaning provided for in 15-30-171.
- (5) "Income" has the meaning provided for in 15-30-171.
- (6) "Premium" means the amount of money an insurance company charges to provide coverage for a health benefit plan.

NEW SECTION. Section 7. Credit for individual insurance premiums -- eligibility. (1) There is a credit determined under [sections 6 through 10], against the tax imposed in 15-30-103, for qualifying premiums paid for coverage to qualified individuals under a health benefit plan.

(2) In order to qualify for coverage for a credit under this section, each covered individual must:

(a) live in a household in which the gross household income is less than 175% of the federal poverty guidelines, as updated periodically in the Federal Register by the U.S. department of health and human services, under the authority of 42 U.S.C. 9902(2), for the most recent reporting period;

(b) be covered by a health benefit plan during the time which the credit is claimed;

(c) have been registered as a participant by the state auditor's office as provided in [section 10]; and

(d) have incurred the premium costs during the calendar years 2004 through 2008.

NEW SECTION. Section 8. Credit for individual insurance premiums paid -- form of relief -- filing.

(1) A claimant may claim a credit for premium payments for:

(a) policies obtained by the individual for coverage of the individual, the individual's spouse, and the individual's dependents; and

(b) policies obtained by a small group employer under the provisions of [sections 1 through 4] for coverage of the covered employee's spouse and dependents and paid entirely by the individual claimant.

(2) The claimant may:

(a) apply the credit against taxes due for the current tax year on a return filed pursuant to this chapter;

or

(b) request that the department make monthly direct credit payments to the health benefit plan carrier.

(3) A claimant may not, in the same tax year, apply the credit against taxes due for the current tax year as provided for in subsection (2)(a) and request the department to make direct credit payments as provided for in subsection (2)(b).

(4) The total amount of a refund requested under subsection (2)(b) must be made under periodic payments by the department to the health benefit plan carrier for which the credit is claimed. The department shall provide by rule the time and method of making the payments. If a direct credit payment is payable to health benefit plans provided by more than one health benefit plan carrier, the claimant shall inform the department of the appropriate amounts and the carriers to which the amounts must be paid.

(5) The credit may be claimed even if the claimant has no liability under 15-30-103. If a claimant applies for the credit as provided in subsection (2)(a) and the amount of the credit exceeds the claimant's liability under

15-30-103, the amount of the excess must be refunded to the claimant.

(6) A deduction or credit is not allowed under any other provision of this chapter with respect to any amount for which a credit is allowed under [sections 6 through 10].

(7) The department may grant a reasonable extension for filing a claim whenever, in its judgment, good cause exists. The department shall keep a record of each extension and the reason for granting the extension.

(8) If an individual who would have a claim under [sections 5 through 10] dies before filing the claim, the personal representative of the estate of the decedent may file the claim.

NEW SECTION. Section 9. Credit for individual insurance premiums paid -- computation of amount. (1) Except as provided in subsections (2) and (3), the amount of the tax credit that may be claimed under [sections 6 through 10], for an eligible individual described in [section 7(2)], may not exceed:

(a) (i) \$75 per month for each insured individual under 19 years of age and who is not a dependent under the policy;

(ii) \$125 per month for each insured individual who is 19 years of age or older and is under 45 years of age;

(iii) \$200 per month for each insured individual who is 45 years of age or older; plus

(b) \$40 per month for each dependent of the primary insured individual, not to exceed two dependents regardless of the number of dependents actually covered, who is also covered by or added to the claimant's coverage during the claim period when the claimant claims this additional credit amount.

(2) The total amount of the credit claimed may not exceed 75% of the total premiums paid for the health benefit plan for the eligible individual and, if any, for the claimant's spouse and dependents.

(3) An individual who claims a credit under the federal Trade Act of 2002, Public Law 107-210, is not eligible for a credit under [sections 6 through 10].

NEW SECTION. Section 10. Credit for insurance premiums paid -- registration. (1) (a) Each individual for whom a credit is to be claimed under [sections 6 through 10] must be registered each year with the state auditor's office. The state auditor's office shall register prospective claimants in the order in which applications are received. The maximum number of prospective claimants is reached when the anticipated amount of claims for credits under [sections 1 through 10] has reached \$45 million.

(b) The state auditor's office may establish a waiting list for applicants that are otherwise qualified for registration but cannot be registered because of a lack of money. If additional individuals may be registered, the

state auditor's office shall give priority to individuals who are otherwise eligible and are on the waiting list and are enrolled under the comprehensive health association and plan under Title 33, chapter 22, part 15.

(c) The state auditor shall mail to each person registered under this section a notice of registration containing a unique registration number. All persons in a household may be registered with the same registration form. The state auditor's office shall notify all persons who applied for registration and who were not accepted that they were not registered and the reason that they were not registered.

(2) A prospective claimant shall apply for registration on a form provided by the state auditor. A prospective claimant shall provide:

(a) verifiable documentation of the applicant's income;

(b) information that is necessary to estimate the amount of the credit payable to the applicant, such as age, name, relationship to the primary covered individual, and employer of the primary insured, if coverage is through individual payment of a group policy obtained through small business coverage under [sections 1 through 4];

(c) whether the prospective claimant intends to pursue the claim through the income tax process or by direct credit payment; and

(d) any additional information determined by the state auditor's office to be necessary to support a claim.

Section 11. Section 15-30-121, MCA, is amended to read:

"15-30-121. Deductions allowed in computing net income. (1) In computing net income, there are allowed as deductions:

(a) the items referred to in sections 161, including the contributions referred to in 33-15-201(5)(b), and 211 of the Internal Revenue Code of 1954 (26 U.S.C. 161 and 211), or as sections 161 and 211 are labeled or amended, subject to the following exceptions, which are not deductible:

(i) items provided for in 15-30-123;

(ii) state income tax paid;

(iii) premium payments for medical care as provided in subsection (1)(g)(i);

(iv) long-term care insurance premium payments as provided in subsection (1)(g)(ii);

(b) federal income tax paid within the tax year;

(c) expenses of household and dependent care services as outlined in subsections (1)(c)(i) through (1)(c)(iii) and (2) and subject to the limitations and rules as set out in subsections (1)(c)(iv) through (1)(c)(vi), as follows:

- (i) expenses for household and dependent care services necessary for gainful employment incurred for:
 - (A) a dependent under 15 years of age for whom an exemption can be claimed;
 - (B) a dependent as allowable under 15-30-112(5), except that the limitations for age and gross income do not apply, who is unable to provide self-care because of physical or mental illness; and
 - (C) a spouse who is unable to provide self-care because of physical or mental illness;
- (ii) employment-related expenses incurred for the following services, but only if the expenses are incurred to enable the taxpayer to be gainfully employed:
 - (A) household services that are attributable to the care of the qualifying individual; and
 - (B) care of an individual who qualifies under subsection (1)(c)(i);
 - (iii) expenses incurred in maintaining a household if over half of the cost of maintaining the household is furnished by an individual or, if the individual is married during the applicable period, is furnished by the individual and the individual's spouse;
 - (iv) the amounts deductible in subsections (1)(c)(i) through (1)(c)(iii), subject to the following limitations:
 - (A) a deduction is allowed under subsection (1)(c)(i) for employment-related expenses incurred during the year only to the extent that the expenses do not exceed \$4,800;
 - (B) expenses for services in the household are deductible under subsection (1)(c)(i) for employment-related expenses only if they are incurred for services in the taxpayer's household, except that employment-related expenses incurred for services outside the taxpayer's household are deductible, but only if incurred for the care of a qualifying individual described in subsection (1)(c)(i)(A) and only to the extent that the expenses incurred during the year do not exceed:
 - (I) \$2,400 in the case of one qualifying individual;
 - (II) \$3,600 in the case of two qualifying individuals; and
 - (III) \$4,800 in the case of three or more qualifying individuals;
 - (v) if the combined adjusted gross income of the taxpayers exceeds \$18,000 for the tax year during which the expenses are incurred, the amount of the employment-related expenses incurred, to be reduced by one-half of the excess of the combined adjusted gross income over \$18,000;
 - (vi) for purposes of this subsection (1)(c):
 - (A) married couples shall file a joint return or file separately on the same form;
 - (B) if the taxpayer is married during any period of the tax year, employment-related expenses incurred are deductible only if:
 - (I) both spouses are gainfully employed, in which case the expenses are deductible only to the extent

that they are a direct result of the employment; or

(II) the spouse is a qualifying individual described in subsection (1)(c)(i)(C);

(C) an individual legally separated from the individual's spouse under a decree of divorce or of separate maintenance may not be considered as married;

(D) the deduction for employment-related expenses must be divided equally between the spouses when filing separately on the same form;

(E) payment made to a child of the taxpayer who is under 19 years of age at the close of the tax year and payments made to an individual with respect to whom a deduction is allowable under 15-30-112(5) are not deductible as employment-related expenses;

(d) in the case of an individual, political contributions determined in accordance with the provisions of section 218(a) and (b) of the Internal Revenue Code (now repealed) that were in effect for the tax year ended December 31, 1978;

(e) that portion of expenses for organic fertilizer and inorganic fertilizer produced as a byproduct allowed as a deduction under 15-32-303 that was not otherwise deducted in computing taxable income;

(f) contributions to the child abuse and neglect prevention program provided for in 52-7-101, subject to the conditions set forth in 15-30-156;

(g) the entire amount of premium payments made by the taxpayer, except premiums deducted in determining Montana adjusted gross income; or for which a credit was claimed under sections 5 through 10 or 15-30-128, for:

(i) insurance for medical care, as defined in 26 U.S.C. 213(d), for coverage of the taxpayer, the taxpayer's dependents, and the parents and grandparents of the taxpayer; and

(ii) long-term care insurance policies or certificates that provide coverage primarily for any qualified long-term care services, as defined in 26 U.S.C. 7702B(c), for:

(A) the benefit of the taxpayer for tax years beginning after December 31, 1994; or

(B) the benefit of the taxpayer, the taxpayer's dependents, and the parents and grandparents of the taxpayer for tax years beginning after December 31, 1996;

(h) light vehicle registration fees, as provided for in 61-3-560 through 61-3-562, paid during the tax year; and

(i) per capita livestock fees imposed pursuant to 15-24-921, 15-24-922, 81-6-104, 81-6-204, 81-6-209, 81-7-118, or 81-7-201.

(2) (a) Subject to the conditions of subsection (1)(c), a taxpayer who operates a family day-care home

or a group day-care home, as these terms are defined in 52-2-703, and who cares for the taxpayer's own child and at least one unrelated child in the ordinary course of business may deduct employment-related expenses considered to have been paid for the care of the child.

(b) The amount of employment-related expenses considered to have been paid by the taxpayer is equal to the amount that the taxpayer charges for the care of a child of the same age for the same number of hours of care. The employment-related expenses apply regardless of whether any expenses actually have been paid. Employment-related expenses may not exceed the amounts specified in subsection (1)(c)(iv)(B).

(c) Only a day-care operator who is licensed and registered as required in 52-2-721 is allowed the deduction under this subsection (2)."

NEW SECTION. **Section 12. Codification instruction.** (1) [Sections 1 through 4] are intended to be codified as an integral part of Title 15, chapter 31, and the provisions of Title 15, chapter 31, apply to [sections 1 through 4].

(2) [Sections 5 through 10] are intended to be codified as an integral part of Title 15, chapter 30, and the provisions of Title 15, chapter 30, apply to [sections 5 through 10].

NEW SECTION. **Section 13. Effective date.** [This act] is effective July 1, 2003.

NEW SECTION. **Section 14. Applicability.** [Sections 1 through 11] apply to tax years beginning after December 31, 2003.

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