

SENATE BILL NO. 216

INTRODUCED BY F. THOMAS, R. EHLI

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A BILL FOR AN ACT ENTITLED: "AN ACT EXEMPTING STATE MEDICAL CARE SAVINGS ACCOUNTS AND FEDERAL HEALTH SAVINGS ACCOUNTS AND MEDICAL SAVINGS ACCOUNTS FROM BANKRUPTCY, CREDITOR, AND OTHER PROCESSES TO PAY DEBTS; AND AMENDING SECTIONS 15-61-202, 25-13-608, AND 31-2-106, MCA."

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

NEW SECTION. **Section 1. Medical care, health, or medical savings account -- bankruptcy -- exemption from attachment or garnishment.** (1) An individual's medical care savings account under Title 15, chapter 61, a health savings account under 26 U.S.C. 223, or a medical savings account under 26 U.S.C. 220:

- (a) is exempt from creditor processes;
- (b) is not liable to attachment, garnishment, or similar legal processes; and
- (c) may not be seized, taken, appropriated, or applied by a legal or equitable process or by operation of law to pay a debt of liability of the individual or of a beneficiary on the account as provided in 72-6-223. This includes but is not limited to exemption from judgments under Title 25, chapter 13, and bankruptcy proceedings as provided under 31-2-106.

(2) This section applies to an individual's rights to hold or receive the assets of, income from, or funds paid into or out of a medical care savings account, health savings account, or medical savings account.

(3) THIS SECTION DOES NOT APPLY TO THE EXTENT THAT THE BANKRUPTCY, CREDITOR, AND OTHER PROCESSES IN SUBSECTION (1) RELATE TO RECOVERY OF ELIGIBLE MEDICAL EXPENSES INCURRED BY AN INDIVIDUAL FROM THE INDIVIDUAL'S MEDICAL CARE SAVINGS ACCOUNT, HEALTH SAVINGS ACCOUNT, OR MEDICAL SAVINGS ACCOUNT.

**Section 2.** Section 15-61-202, MCA, is amended to read:

**"15-61-202. Tax exemption -- conditions.** (1) Except as provided in this section, the amount of principal provided for in subsection (2) contributed annually by an employee or account holder to an account and all interest or other income on that principal may be excluded from the adjusted gross income of the employee or account holder and are exempt from taxation, in accordance with 15-30-2110(2)(j), as long as the principal and

1 interest or other income is contained within the account or withdrawn only for payment of eligible medical  
2 expenses or for the long-term care of the employee or account holder or a dependent of the employee or account  
3 holder. Any part of the principal or income, or both, withdrawn from an account may not be excluded under  
4 subsection (2) and this subsection if the amount is withdrawn from the account and used for a purpose other than  
5 an eligible medical expense or the long-term care of the employee or account holder or a dependent of the  
6 employee or account holder.

7 (2) An employee or account holder may exclude as an annual contribution in 1 year not more than  
8 \$3,000. There is no limitation on the amount of funds and interest or other income on those funds that may be  
9 retained tax-free within an account.

10 (3) A deduction pursuant to 15-30-2131 is not allowed to an employee or account holder for an amount  
11 contributed to an account. An employee or account holder may not deduct pursuant to 15-30-2131 or exclude  
12 pursuant to 15-30-2110 an amount representing a loss in the value of an investment contained in an account.

13 (4) An employee or account holder may in 1 year deposit into an account more than the amount excluded  
14 pursuant to subsection (2) if the exemption claimed by the employee or account holder in the year does not  
15 exceed \$3,000. An employee or account holder who deposits more than \$3,000 into an account in a year may  
16 exclude from the employee's or account holder's adjusted gross income in accordance with 15-30-2110(2)(j) in  
17 a subsequent year any part of \$3,000 per year not previously excluded.

18 (5) The transfer of money in an account owned by one employee or account holder to the account of  
19 another employee or account holder within the immediate family of the first employee or account holder does not  
20 subject either employee or account holder to tax liability under this section. Amounts contained within the account  
21 of the receiving employee or account holder are subject to the requirements and limitations provided in this  
22 section.

23 (6) The employee or account holder who establishes the account is the owner of the account. An  
24 employee or account holder may withdraw money in an account and deposit the money in another account with  
25 a different or with the same account administrator without incurring tax liability.

26 ~~(7) The amount of a disbursement of any assets of a medical care savings account pursuant to a filing~~  
27 ~~for protection under the United States Bankruptcy Code, 11 U.S.C. 101 through 1330, by an employee or account~~  
28 ~~holder does not subject the employee or account holder to tax liability.~~

29 ~~(8)(7)~~ Within 30 days of being furnished proof of the death of the employee or account holder, the  
30 account administrator shall distribute the principal and accumulated interest or other income in the account to the

1 estate of the employee or account holder or to a designated pay-on-death beneficiary as provided in 72-6-223."

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3 **Section 3.** Section 25-13-608, MCA, is amended to read:

4 **"25-13-608. Property exempt without limitation -- exceptions.** (1) A judgment debtor is entitled to  
5 exemption from execution of the following:

6 (a) professionally prescribed health aids for the judgment debtor or a dependent of the judgment debtor;

7 (b) benefits the judgment debtor has received or is entitled to receive under federal social security or  
8 local public assistance legislation, except as provided in subsection (2);

9 (c) veterans' benefits, except as provided in subsection (2);

10 (d) disability or illness benefits, except as provided in subsection (2);

11 (e) except as provided in subsection (2), individual retirement accounts, as defined in 26 U.S.C. 408(a),  
12 to the extent of deductible contributions made before the suit resulting in judgment was filed and the earnings on  
13 those contributions, and Roth individual retirement accounts, as defined in 26 U.S.C. 408A, to the extent of  
14 qualified contributions made before the suit resulting in judgment was filed and the earnings on those  
15 contributions;

16 (f) benefits paid or payable for medical, surgical, or hospital care to the extent they are used or will be  
17 used to pay for the care;

18 (g) maintenance and child support;

19 (h) a burial plot for the judgment debtor and the debtor's family;

20 (i) benefits or payments paid or payable from a retirement system or plan within Title 19, chapters 3, 5  
21 through 9, and 13, as provided by 19-2-1004;

22 (j) benefits or payments paid or payable from a retirement system or plan within Title 19, chapter 20, as  
23 provided by 19-20-706; ~~and~~

24 (k) the judgment debtor's interest in any unmatured life insurance contracts owned by the judgment  
25 debtor; and

26 (l) as provided in [section 1], a medical care savings account under Title 15, chapter 61, a health savings  
27 account under 26 U.S.C. 223, or a medical savings account under 26 U.S.C. 220 TO THE EXTENT OF  
28 CONTRIBUTIONS MADE BEFORE THE SUIT RESULTING IN JUDGMENT WAS FILED AND THE EARNINGS ON THOSE  
29 CONTRIBUTIONS.

30 (2) Veterans' and social security legislation benefits based upon remuneration for employment, disability

1 benefits, and assets of individual retirement accounts are not exempt from execution if the debt for which  
2 execution is levied is for:

3 (a) child support; or

4 (b) maintenance to be paid to a spouse or former spouse."

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6 **Section 4.** Section 31-2-106, MCA, is amended to read:

7 **"31-2-106. Exempt property -- bankruptcy proceeding.** An individual may not exempt from the  
8 property of the estate in any bankruptcy proceeding the property specified in 11 U.S.C. 522(d). An individual may  
9 exempt from the property of the estate in any bankruptcy proceeding:

10 (1) that property exempt from execution of judgment as provided in 19-2-1004, 19-18-612, 19-19-504,  
11 19-20-706, 19-21-212, Title 25, chapter 13, part 6, 33-7-522, 33-15-512 through 33-15-514, 39-51-3105,  
12 39-71-743, 39-73-110, 53-2-607, 53-9-129, Title 70, chapter 32, and 80-2-245;

13 (2) Medical care, health, and medical savings accounts as provided in [section 1];

14 ~~(2)(3)~~ the individual's right to receive unemployment compensation and unemployment benefits; and

15 ~~(3)(4)~~ the individual's right to receive benefits from or interest in a private or governmental retirement,  
16 pension, stock bonus, profit-sharing, annuity, or similar plan or contract on account of illness, disability, death,  
17 age, or length of service, excluding that portion of contributions made by the individual within 1 year before the  
18 filing of the petition in bankruptcy that exceeds 15% of the individual's gross income for that 1-year period, unless:

19 (a) the plan or contract was established by or under the auspices of an insider that employed the  
20 individual at the time the individual's rights under the plan or contract arose;

21 (b) the benefit is paid on account of age or length of service; and

22 (c) the plan or contract does not qualify under section 401(a), 403(a), 403(b), 408, or 409 of the Internal  
23 Revenue Code, 26 U.S.C. 401(a), 403(a), 403(b), 408, or 409."

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25 NEW SECTION. **Section 5. Codification instruction.** [Section 1] is intended to be codified as an  
26 integral part of Title 25, chapter 13, part 6, and the provisions of Title 25, chapter 13, part 6, apply to [section 1].

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