

HOUSE BILL 670

Introduced by Boharski, et al.

3/10	Introduced
3/10	Referred to Taxation
3/10	First Reading
3/10	Fiscal Note Requested
3/12	Hearing
3/13	Fiscal Note Received
3/15	Fiscal Note Printed
3/19	Committee Report--Bill Passed as Amended
3/29	2nd Reading Passed as Amended
3/29	Revised Fiscal Note Requested
3/29	Revised Fiscal Note Received
3/29	Revised Fiscal Note Printed
3/30	3rd Reading Passed
	Transmitted to Senate
4/01	First Reading
4/01	Referred to Taxation
4/06	Hearing
4/13	Committee Report--Bill Concurred as Amended
4/14	2nd Reading Concur Motion Failed
4/14	2nd Reading Indefinitely Postponed

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House BILL NO. 670

INTRODUCED BY *Jim E. Bohorski, Jim Nelson, SRice*
Simon BENEDICT HARP, J. Boudet

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE ESTABLISHMENT OF INDIVIDUAL MEDICAL CARE SAVINGS ACCOUNTS; PROVIDING DEFINITIONS; PROVIDING FOR EXEMPTIONS FROM ADJUSTED GROSS INCOME; SPECIFYING CONDITIONS FOR ESTABLISHING ACCOUNTS; PROVIDING FOR DISQUALIFICATION OF ACCOUNTS; PROVIDING FOR USE OF MONEY IN ACCOUNTS FOR SPECIFIED PURPOSES; PROHIBITING THE MAKING OF FALSE CLAIMS OR RECEIPTS TO JUSTIFY WITHDRAWAL FROM A MEDICAL CARE SAVINGS ACCOUNT; PROVIDING PENALTIES; LIMITING THE DEDUCTIBILITY OF FEDERAL INCOME TAXES; PROVIDING FOR DEDUCTIONS FROM A CORPORATION'S GROSS INCOME OF AMOUNTS CONTRIBUTED TO AN EMPLOYEE'S INDIVIDUAL MEDICAL CARE SAVINGS ACCOUNT; EXCLUDING FROM COVERAGE UNDER WORKERS' COMPENSATION AMOUNTS EQUAL TO CONTRIBUTIONS MADE TO INDIVIDUAL MEDICAL CARE SAVINGS ACCOUNTS; EXCLUDING PAYMENTS TO INDIVIDUAL MEDICAL CARE SAVINGS ACCOUNTS FROM THE DEFINITION OF WAGES FOR THE PURPOSES OF WORKERS' COMPENSATION; AMENDING SECTIONS 15-30-111, 15-30-121, 15-31-114, AND 39-71-123, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

STATEMENT OF INTENT



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A statement of intent is required for this bill because [section 4] requires the department of revenue to adopt rules implementing [sections 1 through 3]. The legislature intends that the rules adopted by the department specify additional types of investments that may serve as "qualifying investments" under [this act]. The legislature does not intend by the use of such terms as "account" and "income" to limit qualifying investments to such low-yielding investments as passbook savings accounts. In the adoption of implementing rules, the department should allow the broadest practicable category of investments that will serve the purposes of [this act], including the funding of retirement.

The department shall also adopt rules providing for the collection of the penalty for withdrawals from accounts for nonhealth care purposes. The legislature intends that these rules provide for the collection of a penalty directly from the fiduciary. The rules must provide the taxpayer with due process of law.

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

NEW SECTION. Section 1. Short title. [Sections 1 through 5, 10, and 11] may be cited as the "Montana Individual Medical Care Savings Account Act".

NEW SECTION. Section 2. Definitions. As used in

[sections 1 through 5], the following definitions apply:

(1) "Cafeteria plan" means a cafeteria plan established pursuant to 26 U.S.C. 125.

(2) "Individual medical care savings account" or "account" means an account established in accordance with [section 3].

(3) "Knowingly" has the meaning defined in 45-2-101.

(4) "Medical care expense" means a payment for medical care as defined by 26 U.S.C. 213, excluding insurance premiums, that is not compensated for by insurance or by any other method.

(5) "Person" means an individual, business association, partnership, corporation, sole proprietorship, firm, office, or governmental entity.

(6) "Qualifying investment" means the principal and income from a savings account, mutual fund, shares of corporate stock, bonds, or other investment authorized by the department of revenue.

(7) "Taxpayer" has the meaning defined in 15-30-101.

NEW SECTION. Section 3. Individual medical care savings accounts -- tax exemption -- conditions. (1) A taxpayer who is a resident of this state may establish an individual medical care savings account. To qualify for the exclusion provided in subsection (2), the account must be established:

(a) with a fiduciary within the United States;

(b) with a contribution of principal from any source or combination of sources of no more than \$2,000 a tax year; and

(c) by purchase of or investment in a qualifying investment.

(2) Except as provided in this section, the amount of principal provided for in subsection (3) contributed annually by a taxpayer to an account and all interest or other income on that principal may be excluded from the adjusted gross income of the taxpayer and are exempt from taxation, in accordance with 15-30-111(2)(j), as long as the principal and interest are contained within the account.

(3) A taxpayer may exclude a percentage of a maximum annual contribution of \$2,000 to an account that corresponds to the adjusted gross income of the taxpayer, as follows:

Adjusted gross income of taxpayer	Percent of \$2,000 contribution that may be excluded
less than \$20,000	100%
\$20,000 to \$24,999	75%
\$25,000 to \$29,999	50%
\$30,000 to \$34,999	25%
\$35,000 and above	0%

(4) An exclusion in accordance with subsections (2) and

(3) is allowed only to the extent that an exclusion is not claimed for contributions of principal to a cafeteria plan.

(5) Any part of the principal contribution that exceeds \$2,000 to an account in any tax year does not qualify for an exclusion provided for in this section.

(6) A deduction pursuant to 15-30-121 is not allowed to an individual taxpayer for an amount contributed to an account.

(7) Any part of the principal or income, or both, of an account and amounts withdrawn from the account for the payment of a medical care expense may be excluded under subsection (2). Any part of the principal or income, or both, withdrawn from an account may not be excluded under subsection (2) and this subsection if the amount is withdrawn from the account and used for a purpose other than a medical care expense.

(8) Except as provided in this section, an amount that is withdrawn from an account and that may not be excluded under subsection (2) pursuant to subsection (7) is subject to a penalty of 10% per year on the excluded amount. The penalty must be collected in accordance with rules established by the department of revenue.

(9) An amount exceeding \$10,000 in an account may be withdrawn by the taxpayer to whom the account belongs and, if used for either or both of the following purposes, is not

subject to the penalty provided in subsection (8):

(a) payment for postsecondary education for the person to whom the account belongs or for someone in the immediate family of that person; and

(b) first-time purchase of a single-family home by the person to whom the account belongs.

(10) An amount withdrawn from an account that is not subject to a penalty under the provisions of subsection (9) is taxable as ordinary income of the taxpayer to whom the account belongs in the tax year that the amount is withdrawn from the account.

(11) An amount within an account may be withdrawn for any purpose by the taxpayer to whom the account belongs if the taxpayer is at least 59 1/2 years of age. The amount withdrawn pursuant to this subsection is taxable as ordinary income of the taxpayer in the year that it is withdrawn.

(12) A change in the fiduciary with whom the account is located does not subject the owner of the account to tax liability.

NEW SECTION. Section 4. Rulemaking. The department of revenue shall adopt rules implementing [sections 1 through 3].

NEW SECTION. Section 5. False claims prohibited -- penalty. (1) A person may not knowingly prepare or cause to be prepared a false claim, receipt, statement, or billing to

1 justify the withdrawal of money from an account.

2 (2) A person who violates subsection (1) by preparing
3 or causing the preparation of a false claim, receipt,
4 statement, or billing in an amount not exceeding \$300 is
5 guilty of theft and upon conviction shall be fined an amount
6 not to exceed \$500 or be imprisoned in the county jail for a
7 term not to exceed 6 months, or both. A person convicted of
8 a second offense shall be fined \$500 or be imprisoned in the
9 county jail for a term not to exceed 6 months, or both. A
10 person convicted of a third or subsequent offense shall be
11 fined \$1,000 and be imprisoned in the county jail for a term
12 of not less than 30 days or more than 6 months.

13 (3) A person who violates subsection (1) by preparing
14 or causing the preparation of a false claim, receipt,
15 statement, or billing in an amount exceeding \$300 is guilty
16 of theft and upon conviction shall be fined an amount not to
17 exceed \$50,000 or be imprisoned in the state prison for a
18 term not to exceed 10 years, or both.

19 (4) Amounts involved in thefts committed pursuant to a
20 common scheme or the same transaction, whether from the same
21 person or several persons, may be aggregated in determining
22 the value of the amount withdrawn from an account in
23 violation of this section.

24 **Section 6.** Section 15-30-111, MCA, is amended to read:

25 "15-30-111. Adjusted gross income. (1) Adjusted gross

1 income ~~shall--be~~ is the taxpayer's federal income tax
2 adjusted gross income as defined in section 62 of the
3 Internal Revenue Code of 1954 or as that section may be
4 labeled or amended and in addition ~~shall~~ must include the
5 following:

6 (a) interest received on obligations of another state
7 or territory or county, municipality, district, or other
8 political subdivision thereof;

9 (b) refunds received of federal income tax, to the
10 extent the deduction of such the tax resulted in a reduction
11 of Montana income tax liability;

12 (c) that portion of a shareholder's income under
13 subchapter S. of Chapter 1 of the Internal Revenue Code of
14 1954, that has been reduced by any federal taxes paid by the
15 subchapter S. corporation on the income; and

16 (d) depreciation or amortization taken on a title plant
17 as defined in 33-25-105(15).

18 (2) Notwithstanding the provisions of the federal
19 Internal Revenue Code of 1954, as labeled or amended,
20 adjusted gross income does not include the following which
21 are exempt from taxation under this chapter:

22 (a) all interest income from obligations of the United
23 States government, the state of Montana, county,
24 municipality, district, or other political subdivision
25 thereof;

(b) interest income earned by a taxpayer age 65 or older in a taxable year up to and including \$800 for a taxpayer filing a separate return and \$1,600 for each joint return;

(c) (i) except as provided in subsection (2)(c)(ii), the first \$3,600 of all pension and annuity income received as defined in 15-30-101;

(ii) for pension and annuity income described under subsection (2)(c)(i), as follows:

(A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total amount of the exclusion provided in (2)(c)(i) by \$2 for every \$1 of federal adjusted gross income in excess of \$30,000 as shown on the taxpayer's return;

(B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in subsection (2)(c)(i) must be reduced by \$2 for every \$1 of federal adjusted gross income in excess of \$30,000 as shown on their joint return;

(d) all Montana income tax refunds or tax refund credits;

(e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

(f) all tips covered by section 3402(k) of the Internal

Revenue Code of 1954, as amended and applicable on January 1, 1983, received by persons for services rendered by them to patrons of premises licensed to provide food, beverage, or lodging;

(g) all benefits received under the workers' compensation laws;

(h) all health insurance premiums paid by an employer for an employee if attributed as income to the employee under federal law; and

(i) all money received because of a settlement agreement or judgment in a lawsuit brought against a manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange"; and

(j) principal and income in an individual medical care savings account established in accordance with [section 3].

(3) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(1) shall include in his adjusted gross income the earnings and profits of the DISC in the same manner as provided by federal law (section 995, Internal Revenue Code) for all periods for which the DISC election is effective.

(4) A taxpayer who, in determining federal adjusted gross income, has reduced his business deductions by an amount for wages and salaries for which a federal tax credit was elected under section 44B of the Internal Revenue Code

1 of 1954 or as that section may be labeled or amended is
 2 allowed to deduct the amount of the wages and salaries paid
 3 regardless of the credit taken. The deduction must be made
 4 in the year the wages and salaries were used to compute the
 5 credit. In the case of a partnership or small business
 6 corporation, the deduction must be made to determine the
 7 amount of income or loss of the partnership or small
 8 business corporation.

9 (5) Married taxpayers filing a joint federal return who
 10 must include part of their social security benefits or part
 11 of their tier 1 railroad retirement benefits in federal
 12 adjusted gross income may split the federal base used in
 13 calculation of federal taxable social security benefits or
 14 federal taxable tier 1 railroad retirement benefits when
 15 they file separate Montana income tax returns. The federal
 16 base must be split equally on the Montana return.

17 (6) A taxpayer receiving retirement disability benefits
 18 who has not attained age 65 by the end of the taxable year
 19 and who has retired as permanently and totally disabled may
 20 exclude from adjusted gross income up to \$100 per week
 21 received as wages or payments in lieu of wages for a period
 22 during which the employee is absent from work due to the
 23 disability. If the adjusted gross income before this
 24 exclusion and before application of the two-earner married
 25 couple deduction exceeds \$15,000, the excess reduces the

1 exclusion by an equal amount. This limitation affects the
 2 amount of exclusion, but not the taxpayer's eligibility for
 3 the exclusion. If eligible, married individuals shall apply
 4 the exclusion separately, but the limitation for income
 5 exceeding \$15,000 is determined with respect to the spouses
 6 on their combined adjusted gross income. For the purpose of
 7 this subsection, permanently and totally disabled means
 8 unable to engage in any substantial gainful activity by
 9 reason of any medically determined physical or mental
 10 impairment lasting or expected to last at least 12 months.
 11 (Subsection (2)(f) terminates on occurrence of
 12 contingency--sec. 3, Ch. 634, L. 1983.)"

13 **Section 7.** Section 15-30-121, MCA, is amended to read:

14 **"15-30-121. Deductions allowed in computing net income.**
 15 In computing net income, there are allowed as deductions:

16 (1) the items referred to in sections 161, including
 17 the contributions referred to in 33-15-201(5)(b), and 211 of
 18 the Internal Revenue Code of 1954, or as sections 161 and
 19 211 shall be labeled or amended, subject to the following
 20 exceptions which are not deductible:

21 (a) items provided for in 15-30-123;

22 (b) state income tax paid;

23 (2) federal income tax paid within the taxable year
 24 according to the ratio that the taxpayer's Montana adjusted
 25 gross income bears to the taxpayer's federal adjusted gross

1 income, provided that the deduction may not be greater than
 2 100% of the federal tax;

3 (3) expenses of household and dependent care services
 4 as outlined in subsections (3)(a) through (3)(c) and subject
 5 to the limitations and rules as set out in subsections
 6 (3)(d) through (3)(f) as follows:

7 (a) expenses for household and dependent care services
 8 necessary for gainful employment incurred for:

9 (i) a dependent under 15 years of age for whom an
 10 exemption can be claimed;

11 (ii) a dependent as allowable under 15-30-112(5), except
 12 that the limitations for age and gross income do not apply,
 13 who is unable to care-for-himself provide self-care because
 14 of physical or mental illness; and

15 (iii) a spouse who is unable to care-for-himself provide
 16 self-care because of physical or mental illness;

17 (b) employment-related expenses incurred for the
 18 following services, but only if such the expenses are
 19 incurred to enable the taxpayer to be gainfully employed:

20 (i) household services which are attributable to the
 21 care of the qualifying individual; and

22 (ii) care of an individual who qualifies under
 23 subsection (3)(a);

24 (c) expenses incurred in maintaining a household if
 25 over half of the cost of maintaining the household is

1 furnished by an individual or, if the individual is married
 2 during the applicable period, is furnished by the individual
 3 and his the individual's spouse;

4 (d) the amounts deductible in subsection (3)(a) through
 5 (3)(c) are subject to the following limitations:

6 (i) a deduction is allowed under subsection (3)(a) for
 7 employment-related expenses incurred during the year only to
 8 the extent such the expenses do not exceed \$4,800;

9 (ii) expenses for services in the household are
 10 deductible under subsection (3)(a) for employment-related
 11 expenses only if they are incurred for services in the
 12 taxpayer's household, except that employment-related
 13 expenses incurred for services outside the taxpayer's
 14 household are deductible, but only if incurred for the care
 15 of a qualifying individual described in subsection (3)(a)(i)
 16 and only to the extent such the expenses incurred during the
 17 year do not exceed:

18 (A) \$2,400 in the case of one qualifying individual;

19 (B) \$3,600 in the case of two qualifying individuals;
 20 and

21 (C) \$4,800 in the case of three or more qualifying
 22 individuals;

23 (e) if the combined adjusted gross income of the
 24 taxpayers exceeds \$18,000 for the taxable year during which
 25 the expenses are incurred, the amount of the

employment-related expenses incurred must be reduced by one-half of the excess of the combined adjusted gross income over \$18,000;

(f) for purposes of this subsection (3):

(i) married couples shall file a joint return or file separately on the same form;

(ii) if the taxpayer is married during any period of the taxable year, employment-related expenses incurred are deductible only if:

(A) 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

(B) the spouse is a qualifying individual described in subsection (3)(a)(iii);

(iii) an individual legally separated from his a spouse under a decree of divorce or of separate maintenance may not be considered as married;

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

(v) payment made to a child of the taxpayer who is under 19 years of age at the close of the taxable 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;

(4) 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 that were in effect for the taxable year ended December 31, 1978;

(5) that portion of expenses for organic fertilizer allowed as a deduction under 15-32-303 which was not otherwise deducted in computing taxable income;

(6) contributions to the child abuse and neglect prevention program provided for in 41-3-701, subject to the conditions set forth in 15-30-156;

(7) premium payments for long-term care insurance with benefits that meet or exceed the minimum standards as established by the state insurance commissioner; and

(8) contributions to the Montana drug abuse resistance education program provided for in 44-2-702, subject to the conditions set forth in 15-30-159. (Subsection (8) terminates on occurrence of contingency--sec. 12, Ch. 808, L. 1991.)"

Section 8. Section 15-31-114, MCA, is amended to read:

"15-31-114. Deductions allowed in computing income. In computing the net income, the following deductions ~~shall~~ must be allowed from the gross income received by such the corporation within the year from all sources:

(1) All the ordinary and necessary expenses paid or incurred during the taxable year in the maintenance and

1 operation of its business and properties, including
 2 reasonable allowance for salaries for personal services
 3 actually rendered, subject to the limitation hereinafter
 4 contained in this section, rentals or other payments
 5 required to be made as a condition to the continued use or
 6 possession of property to which the corporation has not
 7 taken or is not taking title or in which it has no equity.
 8 No A deduction ~~shall-be~~ is not allowed for salaries paid
 9 upon which the recipient ~~thereof~~ has not paid Montana state
 10 income tax; ~~provided~~, however, ~~that--where~~ when domestic
 11 corporations are taxed on income derived from ~~without~~
 12 outside the state, salaries of officers paid in connection
 13 with securing such the income ~~shall-be~~ are deductible.

14 (2) (a) All losses actually sustained and charged off
 15 within the year and not compensated by insurance or
 16 otherwise, including a reasonable allowance for the wear and
 17 tear and obsolescence of property used in the trade or
 18 business, such the allowance to be determined according to
 19 the provisions of section 167 of the Internal Revenue Code
 20 in effect with respect to the taxable year. All elections
 21 for depreciation ~~shall~~ must be the same as the elections
 22 made for federal income tax purposes. No A deduction ~~shall~~
 23 be is not allowed for any amount paid out for any buildings,
 24 permanent improvements, or betterments made to increase the
 25 value of any property or estate, and ~~no a~~ deduction ~~shall~~

1 may not be made for any amount of expense of restoring
 2 property or making good the exhaustion ~~thereof of~~ property
 3 for which an allowance is or has been made. No A
 4 depreciation or amortization deduction ~~shall--be~~ is not
 5 allowed on a title plant as defined in 33-25-105(15).

6 (b) There ~~shall-be~~ is allowed as a deduction for the
 7 taxable period a net operating loss deduction determined
 8 according to the provisions of 15-31-119.

9 (3) In the case of mines, other natural deposits, oil
 10 and gas wells, and timber, a reasonable allowance for
 11 depletion and for depreciation of improvements; ~~such the~~
 12 reasonable allowance to be determined according to the
 13 provisions of the Internal Revenue Code in effect for the
 14 taxable year. All elections made under the Internal Revenue
 15 Code with respect to capitalizing or expensing exploration
 16 and development costs and intangible drilling expenses for
 17 corporation license tax purposes ~~shall~~ must be the same as
 18 the elections made for federal income tax purposes.

19 (4) The amount of interest paid within the year on its
 20 indebtedness incurred in the operation of the business from
 21 which its income is derived; but ~~no interest shall-be~~ is not
 22 allowed as a deduction if paid on an indebtedness created
 23 for the purchase, maintenance, or improvement of property or
 24 for the conduct of business unless the income from such the
 25 property or business would be taxable under this part.

(5) (a) Taxes paid within the year, except the following:

(i) Taxes imposed by this part.

(ii) Taxes assessed against local benefits of a kind tending to increase the value of the property assessed.

(iii) Taxes on or according to or measured by net income or profits imposed by authority of the government of the United States.

(iv) Taxes imposed by any other state or country upon or measured by net income or profits.

(b) Taxes deductible under this part ~~shall--be~~ are construed to include taxes imposed by any county, school district, or municipality of this state.

(6) That portion of an energy-related investment allowed as a deduction under 15-32-103.

(7) (a) Except as provided in subsection (b), charitable contributions and gifts that qualify for deduction under section 170 of the Internal Revenue Code, as amended.

(b) The public service commission ~~shall~~ may not allow in the rate base of a regulated corporation the inclusion of contributions made under this subsection.

(8) In lieu of the deduction allowed under subsection (7), the taxpayer may deduct the fair market value, not to exceed 30% of the taxpayer's net income, of a computer or

other sophisticated technological equipment or apparatus intended for use with the computer donated to an elementary, secondary, or accredited postsecondary school located in Montana if:

(a) the contribution is made no later than 5 years after the manufacture of the donated property is substantially completed;

(b) the property is not transferred by the donee in exchange for money, other property, or services; and

(c) the taxpayer receives a written statement from the donee in which the donee agrees to accept the property and representing that the use and disposition of the property will be in accordance with the provisions of ~~(b)--of--this~~ subsection (8) (b).

(9) Contributions of principal of no more than \$2,000 a tax year made to an employee's individual medical care savings account established in accordance with [section 3], but only to the extent that payments to a cafeteria plan established pursuant to 26 U.S.C. 125 are not likewise deducted."

Section 9. Section 39-71-123, MCA, is amended to read:

"39-71-123. **Wages defined.** (1) "Wages" means the gross remuneration paid in money, or in a substitute for money, for services rendered by an employee. Wages include but are not limited to:

(a) commissions, bonuses, and remuneration at the regular hourly rate for overtime work, holidays, vacations, and sickness periods;

(b) board, lodging, rent, or housing if it constitutes a part of the employee's remuneration and is based on its actual value; and

(c) payments made to an employee on any basis other than time worked, including but not limited to piecework, an incentive plan, or profit-sharing arrangement.

(2) Wages do not include:

(a) employee expense reimbursements or allowances for meals, lodging, travel, subsistence, and other expenses, as set forth in department rules;

(b) special rewards for individual invention or discovery;

(c) tips and other gratuities received by the employee in excess of those documented to the employer for tax purposes;

(d) contributions made by the employer to a group insurance or pension plan; or

(e) contributions made by the employer of no more than \$2,000 a year for an employee to an individual medical care savings account established in accordance with [section 3];
or

~~(e)~~(f) vacation or sick leave benefits accrued but not

paid.

(3) For compensation benefit purposes, the average actual earnings for the four pay periods immediately preceding the injury are the employee's wages, except if:

(a) the term of employment for the same employer is less than four pay periods, in which case the employee's wages are the hourly rate times the number of hours in a week for which the employee was hired to work; or

(b) for good cause shown by the claimant, the use of the four pay periods does not accurately reflect the claimant's employment history with the employer, in which case the insurer may use additional pay periods.

(4) (a) For the purpose of calculating compensation benefits for an employee working concurrent employments, the average actual wages must be calculated as provided in subsection (3).

(b) The compensation benefits for a covered volunteer must be based on the average actual wages in his regular employment, except self-employment as a sole proprietor or partner who elected not to be covered, from which he the volunteer is disabled by the injury incurred.

(c) The compensation benefits for an employee working at two or more concurrent remunerated employments must be based on the aggregate of average actual wages of all employments, except self-employment as a sole proprietor or

1 partner who elected not to be covered, from which the
2 employee is disabled by the injury incurred.

3 (5) The compensation benefits and the payroll, for
4 premium purposes, for a volunteer firefighter covered
5 pursuant to 39-71-118(4) must be based upon a wage of not
6 less than \$900 a month and not more than 1 1/2 times the
7 average weekly wage as defined in this chapter."

8 NEW SECTION. Section 10. Contributions to individual
9 medical care savings accounts -- exemption from schedules --
10 submission of medical bills to insurer. (1) An insurer is
11 not liable for the amount to be contributed by the employer
12 to an individual medical care savings account established in
13 accordance with [section 3], up to \$2,000 a year for medical
14 expenses incurred by an injured employee as a result of a
15 compensable injury or occupational disease, if the employer
16 is contributing the same amount into an individual medical
17 care savings account for every employee.

18 (2) The medical expenses incurred by the employee are
19 not subject to the fee schedules or rates for hospital
20 services established by the department pursuant to
21 39-71-704.

22 (3) An injured employee who has established an account
23 shall submit copies of the medical bills paid by the
24 employee to the insurer when medical expenses as a result of
25 a compensable injury or occupational disease exceed the

1 amount contributed to the employee's individual medical care
2 savings account for the year.

3 NEW SECTION. Section 11. Individual medical care
4 savings accounts -- exemption from workers' compensation
5 premium. (1) Insurers may not assess a premium for the
6 amount to be contributed to an individual medical care
7 savings account established in accordance with [section 3]
8 on contributions, up to \$2,000 a year, made by the employer
9 for an employee if the employer is contributing the same
10 amount into an individual medical care savings account for
11 every employee.

12 (2) The employer of an employee who has established an
13 individual medical care savings account shall notify the
14 insurer, with the employer's report of an accident or an
15 occupational disease, that an account has been established
16 by the employee and shall notify the insurer of the amount
17 contributed to the account for that year.

18 (3) Failure to notify the insurer of the account
19 subjects the employer to assessment of the premium on the
20 amount to be contributed by the employer to an individual
21 medical care savings account for the year.

22 NEW SECTION. Section 12. Codification instruction. (1)
23 [Sections 1 through 5] are intended to be codified as an
24 integral part of Title 15, and the provisions of Title 15
25 apply to [sections 1 through 5].

1 (2) [Section 10] is intended to be codified as an
2 integral part of Title 39, chapter 71, part 22, and the
3 provisions of Title 39, chapter 71, part 22, apply to
4 [section 10].

5 (3) [Section 11] is intended to be codified as an
6 integral part of Title 39, chapter 71, parts 21 through 23,
7 and the provisions of Title 39, chapter 71, parts 21 through
8 23, apply to [section 11].

9 NEW SECTION. **Section 13. Severability.** If a part of
10 [this act] is invalid, all valid parts that are severable
11 from the invalid part remain in effect. If a part of [this
12 act] is invalid in one or more of its applications, the part
13 remains in effect in all valid applications that are
14 severable from the invalid applications.

15 NEW SECTION. **Section 14. Effective date.** [This act] is
16 effective on passage and approval.

17 NEW SECTION. **Section 15. Retroactive applicability.**
18 [This act] applies retroactively, within the meaning of
19 1-2-109, to tax years beginning after December 31, 1992.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0670, as introduced.DESCRIPTION OF PROPOSED LEGISLATION:

An act authorizing the establishment of individual medical care savings accounts; providing definitions; providing for exemptions from adjusted gross income; specifying conditions for establishing accounts; providing for disqualification of accounts; providing for use of money in accounts for specified purposes; prohibiting the making of false claims or receipts to justify withdrawal from a medical care savings account; providing penalties; limiting the deductibility of federal income taxes; providing for deductions from a corporation's gross income of amounts contributed to an employee's individual medical care savings account; excluding from coverage under worker's compensation amounts equal to contributions made to individual medical care savings accounts; excluding payments to individual medical care savings accounts from the definition of wages for the purposes of worker's compensation; and providing an immediate effective date and a retroactive applicability date.

ASSUMPTIONS:Department of Revenue

1. Individual income tax revenues are \$328,943,000 in FY94, and \$339,696,000 in FY95 (HJR3).
2. Households where the filertype is "single", and income is under \$5,000 will not use the account.
3. Households where the filertype is "head of household", and income is under \$10,000 will not use the account.
4. Households where the filertype is "married couples" and income is under \$15,000 will not use the account.
5. Retiree households where at least one retiree is over age 65 will not use the account.
6. The maximum amount that can be deposited by any single taxpayer into an account is \$2,000 with this amount phased out according to the following schedule:

<u>Household AGI</u>	<u>Max Exclusion</u>
under \$20,000	\$ 2,000
\$20K - \$25K	\$ 1,500
\$25K - \$30K	\$ 1,000
\$30K - \$35K	\$ 500
\$35K plus	\$ 0

7. Employers contributing to an account on behalf of an employee under this proposal would have contributed to a cafeteria plan in an equal amount in the absence of this proposal.
8. The utilization rate of eligible taxpayers is 20 percent.
9. Based on DOR income tax simulations, and the utilization rate assumption, income tax liabilities will be reduced \$1.620 million annually, beginning with tax year 1993.
10. Requiring taxpayers to prorate the itemized deduction for federal income taxes by the ratio of Montana adjusted gross income to federal adjusted gross income increases income tax liabilities \$2.120 million annually (DOR).

(continued)

Dave Lewis 3-12-93
 DAVID LEWIS, BUDGET DIRECTOR DATE
 Office of Budget and Program Planning

Wm E Boharski 3/15/93
 WILLIAM BOHARSKI, PRIMARY SPONSOR DATE

Fiscal Note for HB0670, as introducedHB670

ASSUMPTIONS: (Continued)

State Fund

1. Program specifications, system testing and implementation for the claims systems will be handled by the State Fund MIS staff.
2. Systems analysis, program specifications and any other programming modifications necessary for the Policy Services changes will be contracted.
3. Systems review and analysis is estimated at 80 hours @ \$80.00/hour; programming for implementation are estimated at 528 hours @ \$60.00/hour; and computer access is estimated at 528 hours @ \$14.00/hour.
4. Reporting the amount contributed to an employee's account is on a fiscal year, **not** a calendar year basis. If the reporting is to be on a calendar year basis there will be a considerable additional fiscal impact.
5. The notice of intent to contribute and the amount of the contribution must be declared before the beginning of the fiscal year.
6. Bills paid by the employee from their medical savings account would be submitted to the State Fund for verification prior to State Fund payment for expenses in excess of account contributions.
7. Amounts contributed by employers by class, as well as amounts paid by employees from the medical savings accounts, would be captured for actuarial purposes.
8. This program may conceal actuarial differences which will not be detected without an actuarial study; however, for the purposes of this fiscal note any loss in premiums collected, due to the reduction in wages by excluding a contribution to an individual medical care savings account, should be offset by a reduction in medical benefits.
9. All policyholders will be advised of the new definition of wages and the requirement to advise the State Fund of program participation.

FISCAL IMPACT:

Department of Revenue

Expenditures:

<u>Income Tax</u>	<u>FY '94</u>			<u>FY '95</u>		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
FTE	123.45	124.45	1.00	123.45	124.45	1.00
Personal Services	\$ 3,296,520	\$ 3,317,628	\$21,108	\$ 3,305,267	\$ 3,329,562	\$ 24,295
Operating Expenses	1,424,031	1,437,960	13,929	1,390,128	1,395,576	5,448
Equipment	72,561	77,866	5,305	52,971	52,971	0
Total	\$ 4,793,112	\$ 4,833,454	\$40,342	\$ 4,748,366	\$ 4,778,109	\$ 29,743
General Fund	\$ 4,298,112	\$ 4,338,454	\$40,342	\$ 4,238,366	\$ 4,268,109	\$ 29,743
State Special	495,000	495,000	0	510,000	510,000	0
Total	\$ 4,793,122	\$ 4,833,454	\$40,342	\$ 4,748,366	\$ 4,778,109	\$ 29,743

Revenues:

	<u>FY '94</u>			<u>FY '95</u>		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
Individual Income Tax (01)	328,943,000	329,143,000	500,000	339,696,000	340,196,000	500,000

HB670

(continued)

FISCAL IMPACT: (Continued)State FundExpenditures:

	<u>FY '94</u>			<u>FY '95</u>		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
FTE	224.5	224.5	0	227.5	227.5	0
Personal Service	6,498,681	6,498,681	0	6,584,924	6,584,924	0
Operating Expenses	3,615,187	3,671,182	55,995	3,922,172	3,929,145	6,973
Equipment	310,066	310,066	0	236,597	236,597	0
Benefits and Claims	166,027,953	166,027,953	0	182,948,465	182,948,465	0
Transfers	2,839,300	2,839,300	0	2,716,695	2,716,695	0
Debt Service	<u>134,256</u>	<u>134,256</u>	<u>0</u>	<u>221,580</u>	<u>221,580</u>	<u>0</u>
TOTAL	179,425,443	179,481,398	55,995	196,630,433	196,637,406	6,973

Funding: Proprietary Fund (06)

Revenues:

It cannot be determined at what level premium income will decrease or if that decrease will be offset by a similar reduction in benefits.

HB670

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0670, third reading.

DESCRIPTION OF PROPOSED LEGISLATION:

An act authorizing the establishment of individual medical care savings accounts; providing definitions; providing for exemptions from adjusted gross income; specifying conditions for establishing accounts; providing for disqualification of accounts; providing for use of money in accounts for specified purposes; prohibiting the making of false claims or receipts to justify withdrawal from a medical care savings account; providing penalties; limiting the deductibility of federal income taxes; providing for deductions from a corporation's gross income of amounts contributed to an employee's individual medical care savings account; excluding from coverage under worker's compensation amounts equal to contributions made to individual medical care savings accounts; excluding payments to individual medical care savings accounts from the definition of wages for the purposes of worker's compensation; and providing an immediate effective date and a retroactive applicability date.

ASSUMPTIONS:

Department of Revenue

Neither HB671 nor SB235 is passed and approved

1. Individual income tax revenues are \$328,943,000 in FY94, and \$339,696,000 in FY95 (HJR3).
2. Households where the filertype is "single", and income is under \$5,000 will not use the account.
3. Households where the filertype is "head of household", and income is under \$10,000 will not use the account.
4. Households where the filertype is "married couples" and income is under \$15,000 will not use the account.
5. Retiree households where at least one retiree is over age 65 will not use the account.
6. The maximum amount that can be deposited by any single taxpayer into an account is \$2,000 with this amount phased out according to the proposal.
7. Employers contributing to an account on behalf of an employee under this proposal would have contributed to a cafeteria plan in an equal amount in the absence of this proposal.
8. The utilization rate of eligible taxpayers is 20 percent.
9. Based on DOR income tax simulations, and the utilization rate assumption, income tax liabilities will be reduced \$1.620 million annually, beginning with tax year 1993.
10. Requiring taxpayers to prorate the itemized deduction for federal income taxes by the ratio of Montana adjusted gross income to federal adjusted gross income increases income tax liabilities \$2.120 million annually (DOR).

Either HB671 or SB235 is passed and approved

11. If either HB671 or SB235 is passed and approved, the contingency provisions provide for an exclusion of the interest income of the medical care account when it is withdrawn for medical care expenses. The tax benefit for contributions to the account is no longer available. In this case, the fiscal impact will be minimal during the biennium.

(continued)

David M. Lewis 3-29-93
DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

William E. Boharski 3-29-93
WILLIAM BOHARSKI, PRIMARY SPONSOR DATE

Fiscal Note for HB0670, third reading
HB 670. #2

ASSUMPTIONS: (Continued)

State Fund

1. Program specifications, system testing and implementation for the claims systems will be handled by the State Fund MIS staff.
2. Systems analysis, program specifications and any other programming modifications necessary for the Policy Services changes will be contracted.
3. Systems review and analysis is estimated at 80 hours @ \$80.00/hour; programming for implementation are estimated at 528 hours @ \$60.00/hour; and computer access is estimated at 528 hours @ \$14.00/hour.
4. Reporting the amount contributed to an employee's account is on a fiscal year, not a calendar year basis. If the reporting is to be on a calendar year basis there will be a considerable additional fiscal impact.
5. The notice of intent to contribute and the amount of the contribution must be declared before the beginning of the fiscal year.
6. Bills paid by the employee from their medical savings account would be submitted to the State Fund for verification prior to State Fund payment for expenses in excess of account contributions.
7. Amounts contributed by employers by class, as well as amounts paid by employees from the medical savings accounts, would be captured for actuarial purposes.
8. This program may conceal actuarial differences which will not be detected without an actuarial study; however, for the purposes of this fiscal note any loss in premiums collected, due to the reduction in wages by excluding a contribution to an individual medical care savings account, should be offset by a reduction in medical benefits.
9. All policyholders will be advised of the new definition of wages and the requirement to advise the State Fund of program participation.

FISCAL IMPACT:

Department of Revenue

Expenditures:

Income Tax

	FY '94			FY '95		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
FTE	123.45	124.45	1.00	123.45	124.45	1.00
Personal Services	\$ 3,296,520	\$ 3,317,628	\$21,108	\$ 3,305,267	\$ 3,329,562	\$ 24,295
Operating Expenses	1,424,031	1,437,960	13,929	1,390,128	1,395,576	5,448
Equipment	72,561	77,866	5,305	52,971	52,971	0
Total	\$ 4,793,112	\$ 4,833,454	\$40,342	\$ 4,748,366	\$ 4,778,109	\$ 29,743
General Fund	\$ 4,298,112	\$ 4,338,454	\$40,342	\$ 4,238,366	\$ 4,268,109	\$ 29,743
State Special	495,000	495,000	0	510,000	510,000	0
Total	\$ 4,793,122	\$ 4,833,454	\$40,342	\$ 4,748,366	\$ 4,778,109	\$ 29,743

Revenues:

	FY '94			FY '95		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
Neither HB671 nor SB235 is passed and approved						
Individual Income Tax (01)	328,943,000	329,143,000	500,000	339,696,000	340,196,000	500,000
Either HB671 or SB235 is passed and approved						
Individual Income Tax (01)	328,943,000	328,943,000	0	339,696,000	339,696,000	0

HB 670

FISCAL IMPACT: (Continued)

State Fund

Expenditures:

	<u>FY '94</u>			<u>FY '95</u>		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
FTE	224.5	224.5	0	227.5	227.5	0
Personal Service	6,498,681	6,498,681	0	6,584,924	6,584,924	0
Operating Expenses	3,615,187	3,671,182	55,995	3,922,172	3,929,145	6,973
Equipment	310,066	310,066	0	236,597	236,597	0
Benefits and Claims	166,027,953	166,027,953	0	182,948,465	182,948,465	0
Transfers	2,839,300	2,839,300	0	2,716,695	2,716,695	0
Debt Service	<u>134,256</u>	<u>134,256</u>	<u>0</u>	<u>221,580</u>	<u>221,580</u>	<u>0</u>
TOTAL	179,425,443	179,481,398	55,995	196,630,433	196,637,406	6,973

Funding: Proprietary Fund (06)

Revenues:

It cannot be determined at what level premium income will decrease or if that decrease will be offset by a similar reduction in benefits.

HB 670

APPROVED BY COMMITTEE
ON TAXATION

HOUSE BILL NO. 670

INTRODUCED BY BOHARSKI, T. NELSON, S. RICE,

SIMON, BENEDICT, HARP, HIBBARD,

BARNHART, FRANKLIN, ECK

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE ESTABLISHMENT OF INDIVIDUAL MEDICAL CARE SAVINGS ACCOUNTS; PROVIDING DEFINITIONS; PROVIDING FOR EXEMPTIONS FROM ADJUSTED GROSS INCOME; SPECIFYING CONDITIONS FOR ESTABLISHING ACCOUNTS; PROVIDING FOR DISQUALIFICATION OF ACCOUNTS; PROVIDING FOR USE OF MONEY IN ACCOUNTS FOR SPECIFIED PURPOSES; PROHIBITING THE MAKING OF FALSE CLAIMS OR RECEIPTS TO JUSTIFY WITHDRAWAL FROM A MEDICAL CARE SAVINGS ACCOUNT; PROVIDING PENALTIES; LIMITING THE DEDUCTIBILITY OF FEDERAL INCOME TAXES; PROVIDING FOR DEDUCTIONS FROM A CORPORATION'S GROSS INCOME OF AMOUNTS CONTRIBUTED TO AN EMPLOYEE'S INDIVIDUAL MEDICAL CARE SAVINGS ACCOUNT; EXCLUDING FROM COVERAGE UNDER WORKERS' COMPENSATION AMOUNTS EQUAL TO CONTRIBUTIONS MADE TO INDIVIDUAL MEDICAL CARE SAVINGS ACCOUNTS; EXCLUDING PAYMENTS TO INDIVIDUAL MEDICAL CARE SAVINGS ACCOUNTS FROM THE DEFINITION OF WAGES FOR THE PURPOSES OF WORKERS' COMPENSATION; AMENDING SECTIONS 15-30-111, 15-30-121, 15-31-114, AND 39-71-123, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 4] requires the department of revenue to adopt rules implementing [sections 1 through 3]. The legislature intends that the rules adopted by the department specify additional types of investments that may serve as "qualifying investments" under [this act]. The legislature does not intend by the use of such terms as "account" and "income" to limit qualifying investments to such low-yielding investments as passbook savings accounts. In the adoption of implementing rules, the department should allow the broadest practicable category of investments that will serve the purposes of [this act], including the funding of retirement.

The department shall also adopt rules providing for the collection of the penalty for withdrawals from accounts for nonhealth care purposes. The legislature intends that these rules provide for the collection of a penalty directly from the fiduciary. The rules must provide the taxpayer with due process of law.

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

NEW SECTION. **Section 1.** Short title. [Sections 1 through 5, 10, and 11] may be cited as the "Montana

1 Individual Medical Care Savings Account Act".

2 NEW SECTION. Section 2. Definitions. As used in
3 [sections 1 through 5], the following definitions apply:

4 (1) "Cafeteria plan" means a cafeteria plan established
5 pursuant to 26 U.S.C. 125.

6 (2) "Individual medical care savings account" or
7 "account" means an account established in accordance with
8 [section 3].

9 (3) "Knowingly" has the meaning defined in 45-2-101.

10 (4) "Medical care expense" means a payment for medical
11 care as defined by 26 U.S.C. 213, excluding insurance
12 premiums, that is not compensated for by insurance or by any
13 other method.

14 (5) "Person" means an individual, business association,
15 partnership, corporation, sole proprietorship, firm, office,
16 or governmental entity.

17 (6) "Qualifying investment" means the principal and
18 income from a savings account, mutual fund, shares of
19 corporate stock, bonds, or other investment authorized by
20 the department of revenue.

21 (7) "Taxpayer" has the meaning defined in 15-30-101.

22 NEW SECTION. Section 3. Individual medical care
23 savings accounts -- tax exemption -- conditions. (1) A
24 taxpayer who is a resident of this state may establish an
25 individual medical care savings account. To qualify for the

1 exclusion provided in subsection (2), the account must be
2 established:

3 (a) with a fiduciary within the United States;

4 (b) with a contribution of principal from any source or
5 combination of sources of no more than \$2,000 a tax year;
6 and

7 (c) by purchase of or investment in a qualifying
8 investment.

9 (2) Except as provided in this section, the amount of
10 principal provided for in subsection (3) contributed
11 annually by a taxpayer to an account and all interest or
12 other income on that principal may be excluded from the
13 adjusted gross income of the taxpayer and are exempt from
14 taxation, in accordance with 15-30-111(2)(j), as long as the
15 principal and interest are contained within the account. ANY
16 AMOUNT CONTRIBUTED TO AN ACCOUNT THAT IS INTENDED TO BE USED
17 FOR WORKERS' COMPENSATION PURPOSES MUST BE IDENTIFIED FOR
18 THAT PURPOSE AT THE TIME IT IS CONTRIBUTED TO THE ACCOUNT.

19 (3) A taxpayer may exclude a percentage of a maximum
20 annual contribution of \$2,000 to an account that corresponds
21 to the MONTANA adjusted gross income of the taxpayer, as
22 follows:

23 Adjusted <u>MONTANA ADJUSTED</u>	Percent of
24 gross income of taxpayer	\$2,000 contribution
25	that may be excluded

1	less than \$20,000	100%
2	\$20,000 to \$24,999	75%
3	\$25,000 to \$29,999	50%
4	\$30,000 to \$34,999	25%
5	\$35,000 and above	0%

(4) An exclusion in accordance with subsections (2) and (3) is allowed only to the extent that an exclusion is not claimed for contributions of principal to a cafeteria plan.

(5) Any part of the principal contribution that exceeds \$2,000 to an account in any tax year does not qualify for an exclusion provided for in this section.

(6) A deduction pursuant to 15-30-121 is not allowed to an individual taxpayer for an amount contributed to an account.

(7) Any part of the principal or income, or both, of an account and amounts withdrawn from the account for the payment of a medical care expense may be excluded under subsection (2). Any part of the principal or income, or both, withdrawn from an account may not be excluded under subsection (2) and this subsection if the amount is withdrawn from the account and used for a purpose other than a medical care expense.

(8) Except as provided in this section, an amount that is withdrawn from an account and that may not be excluded under subsection (2) pursuant to subsection (7) is subject

to a penalty of 10% per year on the excluded amount. The penalty must be collected in accordance with rules established by the department of revenue.

(9) An amount exceeding \$10,000 in an account may be withdrawn by the taxpayer to whom the account belongs and, if used for either or both of the following purposes, is not subject to the penalty provided in subsection (8):

(a) payment for postsecondary education for the person to whom the account belongs or for someone in the immediate family of that person; and

(b) first-time purchase of a single-family home by the person to whom the account belongs.

(10) An amount withdrawn from an account that is not subject to a penalty under the provisions of subsection (9) is taxable as ordinary income of the taxpayer to whom the account belongs in the tax year that the amount is withdrawn from the account.

(11) An amount within an account may be withdrawn for any purpose by the taxpayer to whom the account belongs if the taxpayer is at least 59 1/2 years of age. The amount withdrawn pursuant to this subsection is taxable as ordinary income of the taxpayer in the year that it is withdrawn.

(12) A change in the fiduciary with whom the account is located does not subject the owner of the account to tax liability.

NEW SECTION. Section 4. Rulemaking. The department of revenue shall adopt rules implementing [sections 1 through 3].

NEW SECTION. Section 5. False claims prohibited -- penalty. (1) A person may not knowingly prepare or cause to be prepared a false claim, receipt, statement, or billing to justify the withdrawal of money from an account.

(2) A person who violates subsection (1) by preparing or causing the preparation of a false claim, receipt, statement, or billing in an amount not exceeding \$300 is guilty of theft and upon conviction shall be fined an amount not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of a second offense shall be fined \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of a third or subsequent offense shall be fined \$1,000 and be imprisoned in the county jail for a term of not less than 30 days or more than 6 months.

(3) A person who violates subsection (1) by preparing or causing the preparation of a false claim, receipt, statement, or billing in an amount exceeding \$300 is guilty of theft and upon conviction shall be fined an amount not to exceed \$50,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both.

(4) Amounts involved in thefts committed pursuant to a

common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the amount withdrawn from an account in violation of this section.

Section 6. Section 15-30-111, MCA, is amended to read:

"15-30-111. **Adjusted gross income.** (1) Adjusted gross income ~~shall be~~ is the taxpayer's federal income tax adjusted gross income as defined in section 62 of the Internal Revenue Code of 1954 or as that section may be labeled or amended and in addition ~~shall~~ must include the following:

(a) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision thereof;

(b) refunds received of federal income tax, to the extent the deduction of such the tax resulted in a reduction of Montana income tax liability;

(c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue Code of 1954, that has been reduced by any federal taxes paid by the subchapter S. corporation on the income; and

(d) depreciation or amortization taken on a title plant as defined in 33-25-105(15).

(2) Notwithstanding the provisions of the federal Internal Revenue Code of 1954, as labeled or amended,

1 adjusted gross income does not include the following which
2 are exempt from taxation under this chapter:

3 (a) all interest income from obligations of the United
4 States government, the state of Montana, county,
5 municipality, district, or other political subdivision
6 thereof;

7 (b) interest income earned by a taxpayer age 65 or
8 older in a taxable year up to and including \$800 for a
9 taxpayer filing a separate return and \$1,600 for each joint
10 return;

11 (c) (i) except as provided in subsection (2)(c)(ii),
12 the first \$3,600 of all pension and annuity income received
13 as defined in 15-30-101;

14 (ii) for pension and annuity income described under
15 subsection (2)(c)(i), as follows:

16 (A) each taxpayer filing singly, head of household, or
17 married filing separately shall reduce the total amount of
18 the exclusion provided in (2)(c)(i) by \$2 for every \$1 of
19 federal adjusted gross income in excess of \$30,000 as shown
20 on the taxpayer's return;

21 (B) in the case of married taxpayers filing jointly, if
22 both taxpayers are receiving pension or annuity income or if
23 only one taxpayer is receiving pension or annuity income,
24 the exclusion claimed as provided in subsection (2)(c)(i)
25 must be reduced by \$2 for every \$1 of federal adjusted gross

1 income in excess of \$30,000 as shown on their joint return;

2 (d) all Montana income tax refunds or tax refund
3 credits;

4 (e) gain required to be recognized by a liquidating
5 corporation under 15-31-113(1)(a)(ii);

6 (f) all tips covered by section 3402(k) of the Internal
7 Revenue Code of 1954, as amended and applicable on January
8 1, 1983, received by persons for services rendered by them
9 to patrons of premises licensed to provide food, beverage,
10 or lodging;

11 (g) all benefits received under the workers'
12 compensation laws;

13 (h) all health insurance premiums paid by an employer
14 for an employee if attributed as income to the employee
15 under federal law; and

16 (i) all money received because of a settlement
17 agreement or judgment in a lawsuit brought against a
18 manufacturer or distributor of "agent orange" for damages
19 resulting from exposure to "agent orange"; and

20 (j) principal and income in an individual medical care
21 savings account established in accordance with [section 3].

22 (3) A shareholder of a DISC that is exempt from the
23 corporation license tax under 15-31-102(1)(1) shall include
24 in his adjusted gross income the earnings and profits of the
25 DISC in the same manner as provided by federal law (section

1 995, Internal Revenue Code) for all periods for which the
2 DISC election is effective.

3 (4) A taxpayer who, in determining federal adjusted
4 gross income, has reduced his business deductions by an
5 amount for wages and salaries for which a federal tax credit
6 was elected under section 44B of the Internal Revenue Code
7 of 1954 or as that section may be labeled or amended is
8 allowed to deduct the amount of the wages and salaries paid
9 regardless of the credit taken. The deduction must be made
10 in the year the wages and salaries were used to compute the
11 credit. In the case of a partnership or small business
12 corporation, the deduction must be made to determine the
13 amount of income or loss of the partnership or small
14 business corporation.

15 (5) Married taxpayers filing a joint federal return who
16 must include part of their social security benefits or part
17 of their tier 1 railroad retirement benefits in federal
18 adjusted gross income may split the federal base used in
19 calculation of federal taxable social security benefits or
20 federal taxable tier 1 railroad retirement benefits when
21 they file separate Montana income tax returns. The federal
22 base must be split equally on the Montana return.

23 (6) A taxpayer receiving retirement disability benefits
24 who has not attained age 65 by the end of the taxable year
25 and who has retired as permanently and totally disabled may

1 exclude from adjusted gross income up to \$100 per week
2 received as wages or payments in lieu of wages for a period
3 during which the employee is absent from work due to the
4 disability. If the adjusted gross income before this
5 exclusion and before application of the two-earner married
6 couple deduction exceeds \$15,000, the excess reduces the
7 exclusion by an equal amount. This limitation affects the
8 amount of exclusion, but not the taxpayer's eligibility for
9 the exclusion. If eligible, married individuals shall apply
10 the exclusion separately, but the limitation for income
11 exceeding \$15,000 is determined with respect to the spouses
12 on their combined adjusted gross income. For the purpose of
13 this subsection, permanently and totally disabled means
14 unable to engage in any substantial gainful activity by
15 reason of any medically determined physical or mental
16 impairment lasting or expected to last at least 12 months.
17 (Subsection (2)(f) terminates on occurrence of
18 contingency--sec. 3, Ch. 634, L. 1983.)"

19 **Section 7.** Section 15-30-121, MCA, is amended to read:

20 "15-30-121. Deductions allowed in computing net income.
21 In computing net income, there are allowed as deductions:

22 (1) the items referred to in sections 161, including
23 the contributions referred to in 33-15-201(5)(b), and 211 of
24 the Internal Revenue Code of 1954, or as sections 161 and
25 211 shall be labeled or amended, subject to the following

1 exceptions which are not deductible:

2 (a) items provided for in 15-30-123;

3 (b) state income tax paid;

4 (2) A PORTION OF federal income tax paid within the

5 taxable year according to the ratio that the taxpayer's

6 Montana adjusted gross income bears to the taxpayer's

7 federal adjusted gross income FOR THE SAME TAX YEAR,

8 provided that the deduction may not be greater than 100% of

9 the federal tax;

10 (3) expenses of household and dependent care services

11 as outlined in subsections (3)(a) through (3)(c) and subject

12 to the limitations and rules as set out in subsections

13 (3)(d) through (3)(f) as follows:

14 (a) expenses for household and dependent care services

15 necessary for gainful employment incurred for:

16 (i) a dependent under 15 years of age for whom an

17 exemption can be claimed;

18 (ii) a dependent as allowable under 15-30-112(5), except

19 that the limitations for age and gross income do not apply,

20 who is unable to care-for-himself provide self-care because

21 of physical or mental illness; and

22 (iii) a spouse who is unable to care-for-himself provide

23 self-care because of physical or mental illness;

24 (b) employment-related expenses incurred for the

25 following services, but only if such the expenses are

1 incurred to enable the taxpayer to be gainfully employed:

2 (i) household services which are attributable to the

3 care of the qualifying individual; and

4 (ii) care of an individual who qualifies under

5 subsection (3)(a);

6 (c) expenses incurred in maintaining a household if

7 over half of the cost of maintaining the household is

8 furnished by an individual or, if the individual is married

9 during the applicable period, is furnished by the individual

10 and his the individual's spouse;

11 (d) the amounts deductible in subsection (3)(a) through

12 (3)(c) are subject to the following limitations:

13 (i) a deduction is allowed under subsection (3)(a) for

14 employment-related expenses incurred during the year only to

15 the extent such the expenses do not exceed \$4,800;

16 (ii) expenses for services in the household are

17 deductible under subsection (3)(a) for employment-related

18 expenses only if they are incurred for services in the

19 taxpayer's household, except that employment-related

20 expenses incurred for services outside the taxpayer's

21 household are deductible, but only if incurred for the care

22 of a qualifying individual described in subsection (3)(a)(i)

23 and only to the extent such the expenses incurred during the

24 year do not exceed:

25 (A) \$2,400 in the case of one qualifying individual;

1 (B) \$3,600 in the case of two qualifying individuals;
 2 and
 3 (C) \$4,800 in the case of three or more qualifying
 4 individuals;
 5 (e) if the combined adjusted gross income of the
 6 taxpayers exceeds \$18,000 for the taxable year during which
 7 the expenses are incurred, the amount of the
 8 employment-related expenses incurred must be reduced by
 9 one-half of the excess of the combined adjusted gross income
 10 over \$18,000;
 11 (f) for purposes of this subsection (3):
 12 (i) married couples shall file a joint return or file
 13 separately on the same form;
 14 (ii) if the taxpayer is married during any period of the
 15 taxable year, employment-related expenses incurred are
 16 deductible only if:
 17 (A) both spouses are gainfully employed, in which case
 18 the expenses are deductible only to the extent that they are
 19 a direct result of the employment; or
 20 (B) the spouse is a qualifying individual described in
 21 subsection (3)(a)(iii);
 22 (iii) an individual legally separated from his a spouse
 23 under a decree of divorce or of separate maintenance may not
 24 be considered as married;
 25 (iv) the deduction for employment-related expenses must

1 be divided equally between the spouses when filing
 2 separately on the same form;
 3 (v) payment made to a child of the taxpayer who is
 4 under 19 years of age at the close of the taxable year and
 5 payments made to an individual with respect to whom a
 6 deduction is allowable under 15-30-112(5) are not deductible
 7 as employment-related expenses;
 8 (4) in the case of an individual, political
 9 contributions determined in accordance with the provisions
 10 of section 218(a) and (b) of the Internal Revenue Code that
 11 were in effect for the taxable year ended December 31, 1978;
 12 (5) that portion of expenses for organic fertilizer
 13 allowed as a deduction under 15-32-303 which was not
 14 otherwise deducted in computing taxable income;
 15 (6) contributions to the child abuse and neglect
 16 prevention program provided for in 41-3-701, subject to the
 17 conditions set forth in 15-30-156;
 18 (7) premium payments for long-term care insurance with
 19 benefits that meet or exceed the minimum standards as
 20 established by the state insurance commissioner; and
 21 (8) contributions to the Montana drug abuse resistance
 22 education program provided for in 44-2-702, subject to the
 23 conditions set forth in 15-30-159. (Subsection (8)
 24 terminates on occurrence of contingency--sec. 12, Ch. 808,
 25 L. 1991.)"

Section 8. Section 15-31-114, MCA, is amended to read:

"15-31-114. Deductions allowed in computing income. In computing the net income, the following deductions ~~shall~~ must be allowed from the gross income received by such the corporation within the year from all sources:

(1) All the ordinary and necessary expenses paid or incurred during the taxable year in the maintenance and operation of its business and properties, including reasonable allowance for salaries for personal services actually rendered, subject to the limitation hereinafter contained in this section, rentals or other payments required to be made as a condition to the continued use or possession of property to which the corporation has not taken or is not taking title or in which it has no equity. No A deduction ~~shall--be~~ is not allowed for salaries paid upon which the recipient thereof has not paid Montana state income tax; ~~provided; however, that--where~~ when domestic corporations are taxed on income derived from ~~without~~ outside the state, salaries of officers paid in connection with securing such the income ~~shall--be~~ are deductible.

(2) (a) All losses actually sustained and charged off within the year and not compensated by insurance or otherwise, including a reasonable allowance for the wear and tear and obsolescence of property used in the trade or business, such the allowance to be determined according to

the provisions of section 167 of the Internal Revenue Code in effect with respect to the taxable year. All elections for depreciation ~~shall~~ must be the same as the elections made for federal income tax purposes. No A deduction ~~shall~~ be is not allowed for any amount paid out for any buildings, permanent improvements, or betterments made to increase the value of any property or estate, and no a deduction ~~shall~~ may not be made for any amount of expense of restoring property or making good the exhaustion thereof of property for which an allowance is or has been made. No A depreciation or amortization deduction ~~shall--be~~ is not allowed on a title plant as defined in 33-25-105(15).

(b) There ~~shall--be~~ is allowed as a deduction for the taxable period a net operating loss deduction determined according to the provisions of 15-31-119.

(3) In the case of mines, other natural deposits, oil and gas wells, and timber, a reasonable allowance for depletion and for depreciation of improvements; such the reasonable allowance to be determined according to the provisions of the Internal Revenue Code in effect for the taxable year. All elections made under the Internal Revenue Code with respect to capitalizing or expensing exploration and development costs and intangible drilling expenses for corporation license tax purposes ~~shall~~ must be the same as the elections made for federal income tax purposes.

(4) The amount of interest paid within the year on its indebtedness incurred in the operation of the business from which its income is derived; but no interest ~~shall be~~ is not allowed as a deduction if paid on an indebtedness created for the purchase, maintenance, or improvement of property or for the conduct of business unless the income from such the property or business would be taxable under this part.

(5) (a) Taxes paid within the year, except the following:

(i) Taxes imposed by this part.

(ii) Taxes assessed against local benefits of a kind tending to increase the value of the property assessed.

(iii) Taxes on or according to or measured by net income or profits imposed by authority of the government of the United States.

(iv) Taxes imposed by any other state or country upon or measured by net income or profits.

(b) Taxes deductible under this part ~~shall be~~ are construed to include taxes imposed by any county, school district, or municipality of this state.

(6) That portion of an energy-related investment allowed as a deduction under 15-32-103.

(7) (a) Except as provided in subsection (b), charitable contributions and gifts that qualify for deduction under section 170 of the Internal Revenue Code, as

amended.

(b) The public service commission ~~shall~~ may not allow in the rate base of a regulated corporation the inclusion of contributions made under this subsection.

(8) In lieu of the deduction allowed under subsection (7), the taxpayer may deduct the fair market value, not to exceed 30% of the taxpayer's net income, of a computer or other sophisticated technological equipment or apparatus intended for use with the computer donated to an elementary, secondary, or accredited postsecondary school located in Montana if:

(a) the contribution is made no later than 5 years after the manufacture of the donated property is substantially completed;

(b) the property is not transferred by the donee in exchange for money, other property, or services; and

(c) the taxpayer receives a written statement from the donee in which the donee agrees to accept the property and representing that the use and disposition of the property will be in accordance with the provisions of ~~(b) of this~~ subsection (8) (b).

(9) Contributions of principal of no more than \$2,000 a tax year made to an employee's individual medical care savings account established in accordance with [section 3], but only to the extent that payments to a cafeteria plan

1 established pursuant to 26 U.S.C. 125 are not likewise
 2 deducted."

3 **Section 9.** Section 39-71-123, MCA, is amended to read:

4 "39-71-123. **Wages defined.** (1) "Wages" means the gross
 5 remuneration paid in money, or in a substitute for money,
 6 for services rendered by an employee. Wages include but are
 7 not limited to:

8 (a) commissions, bonuses, and remuneration at the
 9 regular hourly rate for overtime work, holidays, vacations,
 10 and sickness periods;

11 (b) board, lodging, rent, or housing if it constitutes
 12 a part of the employee's remuneration and is based on its
 13 actual value; and

14 (c) payments made to an employee on any basis other
 15 than time worked, including but not limited to piecework, an
 16 incentive plan, or profit-sharing arrangement.

17 (2) Wages do not include:

18 (a) employee expense reimbursements or allowances for
 19 meals, lodging, travel, subsistence, and other expenses, as
 20 set forth in department rules;

21 (b) special rewards for individual invention or
 22 discovery;

23 (c) tips and other gratuities received by the employee
 24 in excess of those documented to the employer for tax
 25 purposes;

1 (d) contributions made by the employer to a group
 2 insurance or pension plan; or

3 (e) contributions made by the employer of no more than
 4 \$2,000 a year for an employee to an individual medical care
 5 savings account established in accordance with [section 3];
 6 or

7 ~~(e)~~(f) vacation or sick leave benefits accrued but not
 8 paid.

9 (3) For compensation benefit purposes, the average
 10 actual earnings for the four pay periods immediately
 11 preceding the injury are the employee's wages, except if:

12 (a) the term of employment for the same employer is
 13 less than four pay periods, in which case the employee's
 14 wages are the hourly rate times the number of hours in a
 15 week for which the employee was hired to work; or

16 (b) for good cause shown by the claimant, the use of
 17 the four pay periods does not accurately reflect the
 18 claimant's employment history with the employer, in which
 19 case the insurer may use additional pay periods.

20 (4) (a) For the purpose of calculating compensation
 21 benefits for an employee working concurrent employments, the
 22 average actual wages must be calculated as provided in
 23 subsection (3).

24 (b) The compensation benefits for a covered volunteer
 25 must be based on the average actual wages in his regular

1 employment, except self-employment as a sole proprietor or
2 partner who elected not to be covered, from which he the
3 volunteer is disabled by the injury incurred.

4 (c) The compensation benefits for an employee working
5 at two or more concurrent remunerated employments must be
6 based on the aggregate of average actual wages of all
7 employments, except self-employment as a sole proprietor or
8 partner who elected not to be covered, from which the
9 employee is disabled by the injury incurred.

10 (5) The compensation benefits and the payroll, for
11 premium purposes, for a volunteer firefighter covered
12 pursuant to 39-71-118(4) must be based upon a wage of not
13 less than \$900 a month and not more than 1 1/2 times the
14 average weekly wage as defined in this chapter."

15 NEW SECTION. Section 10. Contributions to individual
16 medical care savings accounts -- exemption from schedules --
17 submission of medical bills to insurer. (1) An insurer is
18 not liable for the-amount-to-be-contributed-by-the--employer
19 to-an-individual-medical-care-savings-account-established-in
20 accordance--with--{section--3}, INSURANCE COVERAGE OF up to
21 \$2,000 a year for medical expenses incurred by an injured
22 employee as a result of a compensable injury or occupational
23 disease, if the employer is contributing the same amount
24 into an individual medical care savings account, ESTABLISHED
25 IN ACCORDANCE WITH [SECTION 3], for every employee.

1 (2) The medical expenses incurred by the employee are
2 not subject to the fee schedules or rates for hospital
3 services established by the department pursuant to
4 39-71-704.

5 (3) An injured employee who has established an account
6 shall submit copies of the medical bills paid by the
7 employee to the insurer when medical expenses as a result of
8 a compensable injury or occupational disease exceed the
9 amount contributed to the employee's individual medical care
10 savings account for the year.

11 NEW SECTION. Section 11. Individual medical care
12 savings accounts -- exemption from workers' compensation
13 premium. (1) Insurers may not assess a premium for the
14 amount to be contributed to an individual medical care
15 savings account established in accordance with [section 3]
16 on contributions, up to \$2,000 a year, made by the employer
17 for an employee if the employer is contributing the same
18 amount into an individual medical care savings account for
19 every employee.

20 (2) The employer of an employee who has established an
21 individual medical care savings account shall notify the
22 insurer, with the employer's report of an accident or an
23 occupational disease, that an account has been established
24 by the employee and shall notify the insurer of the amount
25 contributed to the account for that year.

1 (3) Failure to notify the insurer of the account
 2 subjects the employer to assessment of the premium on the
 3 amount to be contributed by the employer to an individual
 4 medical care savings account for the year.

5 NEW SECTION. Section 12. Codification instruction. (1)
 6 [Sections 1 through 5] are intended to be codified as an
 7 integral part of Title 15, and the provisions of Title 15
 8 apply to [sections 1 through 5].

9 (2) [Section 10] is intended to be codified as an
 10 integral part of Title 39, chapter 71, part 22, and the
 11 provisions of Title 39, chapter 71, part 22, apply to
 12 [section 10].

13 (3) [Section 11] is intended to be codified as an
 14 integral part of Title 39, chapter 71, parts 21 through 23,
 15 and the provisions of Title 39, chapter 71, parts 21 through
 16 23, apply to [section 11].

17 NEW SECTION. Section 13. Severability. If a part of
 18 [this act] is invalid, all valid parts that are severable
 19 from the invalid part remain in effect. If a part of [this
 20 act] is invalid in one or more of its applications, the part
 21 remains in effect in all valid applications that are
 22 severable from the invalid applications.

23 NEW SECTION. Section 14. Effective date. [This act] is
 24 effective on passage and approval.

25 NEW SECTION. Section 15. Retroactive applicability.

1 [This act] applies retroactively, within the meaning of
 2 1-2-109, to tax years beginning after December 31, 1992.

-End-

1 HOUSE BILL NO. 670

2 INTRODUCED BY BOHARSKI, T. NELSON, S. RICE,

3 SIMON, BENEDICT, HARP, HIBBARD,

4 BARNHART, FRANKLIN, ECK

5
6 A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE
7 ESTABLISHMENT OF INDIVIDUAL MEDICAL CARE SAVINGS ACCOUNTS;
8 PROVIDING DEFINITIONS; PROVIDING FOR EXEMPTIONS FROM
9 ADJUSTED GROSS INCOME; SPECIFYING CONDITIONS FOR
10 ESTABLISHING ACCOUNTS; PROVIDING FOR DISQUALIFICATION OF
11 ACCOUNTS; PROVIDING FOR USE OF MONEY IN ACCOUNTS FOR
12 SPECIFIED PURPOSES; PROHIBITING THE MAKING OF FALSE CLAIMS
13 OR RECEIPTS TO JUSTIFY WITHDRAWAL FROM A MEDICAL CARE
14 SAVINGS ACCOUNT; PROVIDING PENALTIES; LIMITING THE
15 DEDUCTIBILITY OF FEDERAL INCOME TAXES; PROVIDING FOR
16 DEDUCTIONS FROM A CORPORATION'S GROSS INCOME OF AMOUNTS
17 CONTRIBUTED TO AN EMPLOYEE'S INDIVIDUAL MEDICAL CARE SAVINGS
18 ACCOUNT; EXCLUDING FROM COVERAGE UNDER WORKERS' COMPENSATION
19 AMOUNTS EQUAL TO CONTRIBUTIONS MADE TO INDIVIDUAL MEDICAL
20 CARE SAVINGS ACCOUNTS; EXCLUDING PAYMENTS TO INDIVIDUAL
21 MEDICAL CARE SAVINGS ACCOUNTS FROM THE DEFINITION OF WAGES
22 FOR THE PURPOSES OF WORKERS' COMPENSATION; AMENDING SECTIONS
23 15-30-111, 15-30-121, 15-31-114, AND 39-71-123, MCA; AND
24 PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE
25 APPLICABILITY DATE."

2 STATEMENT OF INTENT

3 A statement of intent is required for this bill because
4 [section 4 5] requires the department of revenue to adopt
5 rules implementing [sections 1 through 3]. The legislature
6 intends that the rules adopted by the department specify
7 additional types of investments that may serve as
8 "qualifying investments" under [this act]. The legislature
9 does not intend by the use of such terms as "account" and
10 "income" to limit qualifying investments to such
11 low-yielding investments as passbook savings accounts. In
12 the adoption of implementing rules, the department should
13 allow the broadest practicable category of investments that
14 will serve the purposes of [this act], including the funding
15 of retirement.

16 The department shall also adopt rules providing for the
17 collection of the penalty for withdrawals from accounts for
18 nonhealth care purposes. The legislature intends that these
19 rules provide for the collection of a penalty directly from
20 the fiduciary. The rules must provide the taxpayer with due
21 process of law.

22
23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

24 NEW SECTION. Section 1. Short title. [Sections 1
25 through 57--107--and--11 6, 12, AND 13] may be cited as the .

"Montana Individual Medical Care Savings Account Act".

NEW SECTION. Section 2. Definitions. As used in [sections 1 through 5 6], the following definitions apply:

(1) "Cafeteria plan" means a cafeteria plan established pursuant to 26 U.S.C. 125.

(2) "Individual medical care savings account" or "account" means an account established in accordance with [section 3].

(3) "Knowingly" has the meaning defined in 45-2-101.

(4) "Medical care expense" means a payment for medical care as defined by 26 U.S.C. 213, excluding insurance premiums, that is not compensated for by insurance or by any other method.

(5) "Person" means an individual, business association, partnership, corporation, sole proprietorship, firm, office, or governmental entity.

(6) "Qualifying investment" means the principal and income from a savings account, mutual fund, shares of corporate stock, bonds, or other investment authorized by the department of revenue.

(7) "Taxpayer" has the meaning defined in 15-30-101.

NEW SECTION. Section 3. Individual medical care savings accounts -- tax exemption -- conditions. (1) A taxpayer who is a resident of this state may establish an individual medical care savings account. To qualify for the

exclusion provided in subsection (2), the account must be established:

(a) with a fiduciary within the United States;

(b) with a contribution of principal from any source or combination of sources of no more than \$2,000 a tax year; and

(c) by purchase of or investment in a qualifying investment.

(2) Except as provided in this section, the amount of principal provided for in subsection (3) contributed annually by a taxpayer to an account and all interest or other income on that principal may be excluded from the adjusted gross income of the taxpayer and are exempt from taxation, in accordance with 15-30-111(2)(j), as long as the principal and interest are contained within the account. ANY AMOUNT CONTRIBUTED TO AN ACCOUNT THAT IS INTENDED TO BE USED FOR WORKERS' COMPENSATION PURPOSES MUST BE IDENTIFIED FOR THAT PURPOSE AT THE TIME IT IS CONTRIBUTED TO THE ACCOUNT.

(3) A taxpayer may exclude a percentage of a maximum annual contribution of \$2,000 to an account that corresponds to the MONTANA adjusted gross income of the taxpayer, as follows:

Adjusted <u>MONTANA</u> ADJUSTED	Percent of
gross income of taxpayer	\$2,000 contribution
	that may be excluded

1 less than \$20,000 100%

2 \$20,000 to \$24,999 75%

3 \$25,000 to \$29,999 50%

4 \$30,000 to \$34,999 25%

5 \$35,000 and above 0%

6 (4) An exclusion in accordance with subsections (2) and

7 (3) is allowed only to the extent that an exclusion is not

8 claimed for contributions of principal to a cafeteria plan.

9 (5) Any part of the principal contribution that exceeds

10 \$2,000 to an account in any tax year does not qualify for an

11 exclusion provided for in this section.

12 (6) A deduction pursuant to 15-30-121 is not allowed to

13 an individual taxpayer for an amount contributed to an

14 account.

15 (7) Any part of the principal or income, or both, of an

16 account and amounts withdrawn from the account for the

17 payment of a medical care expense may be excluded under

18 subsection (2). Any part of the principal or income, or

19 both, withdrawn from an account may not be excluded under

20 subsection (2) and this subsection if the amount is

21 withdrawn from the account and used for a purpose other than

22 a medical care expense.

23 (8) Except as provided in this section, an amount that

24 is withdrawn from an account and that may not be excluded

25 under subsection (2) pursuant to subsection (7) is subject

1 to a penalty of 10% per year on the excluded amount. The

2 penalty must be collected in accordance with rules

3 established by the department of revenue.

4 (9) An amount exceeding \$10,000 in an account may be

5 withdrawn by the taxpayer to whom the account belongs and,

6 if used for either or both of the following purposes, is not

7 subject to the penalty provided in subsection (8):

8 (a) payment for postsecondary education for the person

9 to whom the account belongs or for someone in the immediate

10 family of that person; and

11 (b) first-time purchase of a single-family home by the

12 person to whom the account belongs.

13 (10) An amount withdrawn from an account that is not

14 subject to a penalty under the provisions of subsection (9)

15 is taxable as ordinary income of the taxpayer to whom the

16 account belongs in the tax year that the amount is withdrawn

17 from the account.

18 (11) An amount within an account may be withdrawn for

19 any purpose by the taxpayer to whom the account belongs if

20 the taxpayer is at least 59 1/2 years of age. The amount

21 withdrawn pursuant to this subsection is taxable as ordinary

22 income of the taxpayer in the year that it is withdrawn.

23 (12) A change in the fiduciary with whom the account is

24 located does not subject the owner of the account to tax

25 liability.

1 NEW SECTION. SECTION 4. INDIVIDUAL MEDICAL CARE
 2 SAVINGS ACCOUNTS -- TAX EXEMPTION -- CONDITIONS. (1) A
 3 TAXPAYER WHO IS A RESIDENT OF THIS STATE MAY ESTABLISH AN
 4 INDIVIDUAL MEDICAL CARE SAVINGS ACCOUNT. TO QUALIFY FOR THE
 5 EXCLUSION PROVIDED IN SUBSECTION (2), THE ACCOUNT MUST BE
 6 ESTABLISHED:

7 (A) WITH A FIDUCIARY WITHIN THE UNITED STATES;

8 (B) WITH A CONTRIBUTION OF PRINCIPAL FROM ANY SOURCE OR
 9 COMBINATION OF SOURCES OF NO MORE THAN \$2,000 A TAX YEAR;
 10 AND

11 (C) BY PURCHASE OF OR INVESTMENT IN A QUALIFYING
 12 INVESTMENT.

13 (2) EXCEPT AS PROVIDED IN THIS SECTION, ALL INTEREST OR
 14 OTHER INCOME EARNED ON THE PRINCIPAL IN THE ACCOUNT MAY BE
 15 EXCLUDED FROM THE ADJUSTED GROSS INCOME OF THE TAXPAYER AND
 16 IS EXEMPT FROM TAXATION, IN ACCORDANCE WITH 15-30-111(2)(J),
 17 AS LONG AS THE PRINCIPAL AND INTEREST ARE CONTAINED IN THE
 18 ACCOUNT. ANY AMOUNT CONTRIBUTED TO AN ACCOUNT THAT IS
 19 INTENDED TO BE USED FOR WORKERS' COMPENSATION PURPOSES MUST
 20 BE IDENTIFIED FOR THAT PURPOSE AT THE TIME IT IS CONTRIBUTED
 21 TO THE ACCOUNT.

22 (3) ANY PART OF THE PRINCIPAL OR INCOME, OR BOTH, OF AN
 23 ACCOUNT AND AMOUNTS WITHDRAWN FROM THE ACCOUNT FOR THE
 24 PAYMENT OF MEDICAL CARE EXPENSES MAY BE EXCLUDED UNDER
 25 SUBSECTION (2). ANY PART OF THE INCOME WITHDRAWN FROM AN

1 ACCOUNT MAY NOT BE EXCLUDED UNDER SUBSECTION (2) AND THIS
 2 SUBSECTION IF THE AMOUNT IS WITHDRAWN FROM THE ACCOUNT AND
 3 USED FOR A PURPOSE OTHER THAN A MEDICAL CARE EXPENSE.

4 (4) EXCEPT AS PROVIDED IN THIS SECTION, INCOME THAT IS
 5 WITHDRAWN FROM AN ACCOUNT AND THAT MAY NOT BE EXCLUDED UNDER
 6 SUBSECTION (2) PURSUANT TO SUBSECTION (3) IS SUBJECT TO A
 7 PENALTY OF 10% PER YEAR ON THE EXCLUDED AMOUNT. THE PENALTY
 8 MUST BE COLLECTED IN ACCORDANCE WITH RULES ESTABLISHED BY
 9 THE DEPARTMENT OF REVENUE.

10 (5) AN AMOUNT EXCEEDING \$10,000 IN AN ACCOUNT MAY BE
 11 WITHDRAWN BY THE TAXPAYER TO WHOM THE ACCOUNT BELONGS AND,
 12 IF USED FOR EITHER OR BOTH OF THE FOLLOWING PURPOSES, IS NOT
 13 SUBJECT TO THE PENALTY PROVIDED IN SUBSECTION (4):

14 (A) PAYMENT FOR POSTSECONDARY EDUCATION FOR THE PERSON
 15 TO WHOM THE ACCOUNT BELONGS OR FOR SOMEONE IN THE IMMEDIATE
 16 FAMILY OF THAT PERSON; AND

17 (B) FIRST-TIME PURCHASE OF A SINGLE-FAMILY HOME BY THE
 18 PERSON TO WHOM THE ACCOUNT BELONGS.

19 (6) INCOME WITHDRAWN FROM AN ACCOUNT THAT IS NOT
 20 SUBJECT TO A PENALTY UNDER THE PROVISIONS OF SUBSECTION (5)
 21 IS TAXABLE AS ORDINARY INCOME OF THE TAXPAYER TO WHOM THE
 22 ACCOUNT BELONGS IN THE TAX YEAR THAT THE AMOUNT IS WITHDRAWN
 23 FROM THE ACCOUNT.

24 (7) AN AMOUNT WITHIN THE ACCOUNT MAY BE WITHDRAWN FOR
 25 ANY PURPOSE BY THE TAXPAYER TO WHOM THE ACCOUNT BELONGS IF

1 THE TAXPAYER IS AT LEAST 59 1/2 YEARS OF AGE. INCOME
 2 WITHDRAWN PURSUANT TO THIS SUBSECTION IS TAXABLE AS ORDINARY
 3 INCOME OF THE TAXPAYER IN THE YEAR THAT IT IS WITHDRAWN.

4 (8) A CHANGE IN THE FIDUCIARY WITH WHOM THE ACCOUNT IS
 5 LOCATED DOES NOT SUBJECT THE OWNER OF THE ACCOUNT TO TAX
 6 LIABILITY.

7 NEW SECTION. Section 5. Rulemaking. The department of
 8 revenue shall adopt rules implementing [sections 1 through 3
 9 4].

10 NEW SECTION. Section 6. False claims prohibited --
 11 penalty. (1) A person may not knowingly prepare or cause to
 12 be prepared a false claim, receipt, statement, or billing to
 13 justify the withdrawal of money from an account.

14 (2) A person who violates subsection (1) by preparing
 15 or causing the preparation of a false claim, receipt,
 16 statement, or billing in an amount not exceeding \$300 is
 17 guilty of theft and upon conviction shall be fined an amount
 18 not to exceed \$500 or be imprisoned in the county jail for a
 19 term not to exceed 6 months, or both. A person convicted of
 20 a second offense shall be fined \$500 or be imprisoned in the
 21 county jail for a term not to exceed 6 months, or both. A
 22 person convicted of a third or subsequent offense shall be
 23 fined \$1,000 and be imprisoned in the county jail for a term
 24 of not less than 30 days or more than 6 months.

25 (3) A person who violates subsection (1) by preparing

1 or causing the preparation of a false claim, receipt,
 2 statement, or billing in an amount exceeding \$300 is guilty
 3 of theft and upon conviction shall be fined an amount not to
 4 exceed \$50,000 or be imprisoned in the state prison for a
 5 term not to exceed 10 years, or both.

6 (4) Amounts involved in thefts committed pursuant to a
 7 common scheme or the same transaction, whether from the same
 8 person or several persons, may be aggregated in determining
 9 the value of the amount withdrawn from an account in
 10 violation of this section.

11 **Section 7.** Section 15-30-111, MCA, is amended to read:

12 "15-30-111. **Adjusted gross income.** (1) Adjusted gross
 13 income shall--be is the taxpayer's federal income tax
 14 adjusted gross income as defined in section 62 of the
 15 Internal Revenue Code of 1954 or as that section may be
 16 labeled or amended and in addition shall must include the
 17 following:

18 (a) interest received on obligations of another state
 19 or territory or county, municipality, district, or other
 20 political subdivision thereof;

21 (b) refunds received of federal income tax, to the
 22 extent the deduction of such the tax resulted in a reduction
 23 of Montana income tax liability;

24 (c) that portion of a shareholder's income under
 25 subchapter S. of Chapter 1 of the Internal Revenue Code of .

1 1954, that has been reduced by any federal taxes paid by the
2 subchapter S. corporation on the income; and

3 (d) depreciation or amortization taken on a title plant
4 as defined in 33-25-105(15).

5 (2) Notwithstanding the provisions of the federal
6 Internal Revenue Code of 1954, as labeled or amended,
7 adjusted gross income does not include the following which
8 are exempt from taxation under this chapter:

9 (a) all interest income from obligations of the United
10 States government, the state of Montana, county,
11 municipality, district, or other political subdivision
12 thereof;

13 (b) interest income earned by a taxpayer age 65 or
14 older in a taxable year up to and including \$800 for a
15 taxpayer filing a separate return and \$1,600 for each joint
16 return;

17 (c) (i) except as provided in subsection (2)(c)(ii),
18 the first \$3,600 of all pension and annuity income received
19 as defined in 15-30-101;

20 (ii) for pension and annuity income described under
21 subsection (2)(c)(i), as follows:

22 (A) each taxpayer filing singly, head of household, or
23 married filing separately shall reduce the total amount of
24 the exclusion provided in (2)(c)(i) by \$2 for every \$1 of
25 federal adjusted gross income in excess of \$30,000 as shown

1 on the taxpayer's return;

2 (B) in the case of married taxpayers filing jointly, if
3 both taxpayers are receiving pension or annuity income or if
4 only one taxpayer is receiving pension or annuity income,
5 the exclusion claimed as provided in subsection (2)(c)(i)
6 must be reduced by \$2 for every \$1 of federal adjusted gross
7 income in excess of \$30,000 as shown on their joint return;

8 (d) all Montana income tax refunds or tax refund
9 credits;

10 (e) gain required to be recognized by a liquidating
11 corporation under 15-31-113(1)(a)(ii);

12 (f) all tips covered by section 3402(k) of the Internal
13 Revenue Code of 1954, as amended and applicable on January
14 1, 1983, received by persons for services rendered by them
15 to patrons of premises licensed to provide food, beverage,
16 or lodging;

17 (g) all benefits received under the workers'
18 compensation laws;

19 (h) all health insurance premiums paid by an employer
20 for an employee if attributed as income to the employee
21 under federal law; and

22 (i) all money received because of a settlement
23 agreement or judgment in a lawsuit brought against a
24 manufacturer or distributor of "agent orange" for damages
25 resulting from exposure to "agent orange"; and

1 (j) principal and income in an individual medical care
2 savings account established in accordance with [section 3].

3 (3) A shareholder of a DISC that is exempt from the
4 corporation license tax under 15-31-102(1)(1) shall include
5 in his adjusted gross income the earnings and profits of the
6 DISC in the same manner as provided by federal law (section
7 995, Internal Revenue Code) for all periods for which the
8 DISC election is effective.

9 (4) A taxpayer who, in determining federal adjusted
10 gross income, has reduced his business deductions by an
11 amount for wages and salaries for which a federal tax credit
12 was elected under section 44B of the Internal Revenue Code
13 of 1954 or as that section may be labeled or amended is
14 allowed to deduct the amount of the wages and salaries paid
15 regardless of the credit taken. The deduction must be made
16 in the year the wages and salaries were used to compute the
17 credit. In the case of a partnership or small business
18 corporation, the deduction must be made to determine the
19 amount of income or loss of the partnership or small
20 business corporation.

21 (5) Married taxpayers filing a joint federal return who
22 must include part of their social security benefits or part
23 of their tier 1 railroad retirement benefits in federal
24 adjusted gross income may split the federal base used in
25 calculation of federal taxable social security benefits or

1 federal taxable tier 1 railroad retirement benefits when
2 they file separate Montana income tax returns. The federal
3 base must be split equally on the Montana return.

4 (6) A taxpayer receiving retirement disability benefits
5 who has not attained age 65 by the end of the taxable year
6 and who has retired as permanently and totally disabled may
7 exclude from adjusted gross income up to \$100 per week
8 received as wages or payments in lieu of wages for a period
9 during which the employee is absent from work due to the
10 disability. If the adjusted gross income before this
11 exclusion and before application of the two-earner married
12 couple deduction exceeds \$15,000, the excess reduces the
13 exclusion by an equal amount. This limitation affects the
14 amount of exclusion, but not the taxpayer's eligibility for
15 the exclusion. If eligible, married individuals shall apply
16 the exclusion separately, but the limitation for income
17 exceeding \$15,000 is determined with respect to the spouses
18 on their combined adjusted gross income. For the purpose of
19 this subsection, permanently and totally disabled means
20 unable to engage in any substantial gainful activity by
21 reason of any medically determined physical or mental
22 impairment lasting or expected to last at least 12 months.
23 (Subsection (2)(f) terminates on occurrence of
24 contingency--sec. 3, Ch. 634, L. 1983.)"

25 SECTION 8. SECTION 15-30-111, MCA, IS AMENDED TO READ:

1 "15-30-111. Adjusted gross income. (1) Adjusted gross
2 income shall--be is the taxpayer's federal income tax
3 adjusted gross income as defined in section 62 of the
4 Internal Revenue Code of 1954 or as that section may be
5 labeled or amended and in addition shall must include the
6 following:

7 (a) interest received on obligations of another state
8 or territory or county, municipality, district, or other
9 political subdivision thereof;

10 (b) refunds received of federal income tax, to the
11 extent the deduction of such the tax resulted in a reduction
12 of Montana income tax liability;

13 (c) that portion of a shareholder's income under
14 subchapter S. of Chapter 1 of the Internal Revenue Code of
15 1954, that has been reduced by any federal taxes paid by the
16 subchapter S. corporation on the income; and

17 (d) depreciation or amortization taken on a title plant
18 as defined in 33-25-105(15).

19 (2) Notwithstanding the provisions of the federal
20 Internal Revenue Code of 1954, as labeled or amended,
21 adjusted gross income does not include the following which
22 are exempt from taxation under this chapter:

23 (a) all interest income from obligations of the United
24 States government, the state of Montana, county,
25 municipality, district, or other political subdivision

1 thereof;

2 (b) interest income earned by a taxpayer age 65 or
3 older in a taxable year up to and including \$800 for a
4 taxpayer filing a separate return and \$1,600 for each joint
5 return;

6 (c) (i) except as provided in subsection (2)(c)(ii),
7 the first \$3,600 of all pension and annuity income received
8 as defined in 15-30-101;

9 (ii) for pension and annuity income described under
10 subsection (2)(c)(i), as follows:

11 (A) each taxpayer filing singly, head of household, or
12 married filing separately shall reduce the total amount of
13 the exclusion provided in (2)(c)(i) by \$2 for every \$1 of
14 federal adjusted gross income in excess of \$30,000 as shown
15 on the taxpayer's return;

16 (B) in the case of married taxpayers filing jointly, if
17 both taxpayers are receiving pension or annuity income or if
18 only one taxpayer is receiving pension or annuity income,
19 the exclusion claimed as provided in subsection (2)(c)(i)
20 must be reduced by \$2 for every \$1 of federal adjusted gross
21 income in excess of \$30,000 as shown on their joint return;

22 (d) all Montana income tax refunds or tax refund
23 credits;

24 (e) gain required to be recognized by a liquidating
25 corporation under 15-31-113(1)(a)(ii);

(f) all tips covered by section 3402(k) of the Internal Revenue Code of 1954, as amended and applicable on January 1, 1983, received by persons for services rendered by them to patrons of premises licensed to provide food, beverage, or lodging;

(g) all benefits received under the workers' compensation laws;

(h) all health insurance premiums paid by an employer for an employee if attributed as income to the employee under federal law; and

(i) all money received because of a settlement agreement or judgment in a lawsuit brought against a manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange"; and

(j) income in an individual medical care savings account established in accordance with [section 4].

(3) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(1) shall include in his adjusted gross income the earnings and profits of the DISC in the same manner as provided by federal law (section 995, Internal Revenue Code) for all periods for which the DISC election is effective.

(4) A taxpayer who, in determining federal adjusted gross income, has reduced his business deductions by an amount for wages and salaries for which a federal tax credit

was elected under section 44B of the Internal Revenue Code of 1954 or as that section may be labeled or amended is allowed to deduct the amount of the wages and salaries paid regardless of the credit taken. The deduction must be made in the year the wages and salaries were used to compute the credit. In the case of a partnership or small business corporation, the deduction must be made to determine the amount of income or loss of the partnership or small business corporation.

(5) Married taxpayers filing a joint federal return who must include part of their social security benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement benefits when they file separate Montana income tax returns. The federal base must be split equally on the Montana return.

(6) A taxpayer receiving retirement disability benefits who has not attained age 65 by the end of the taxable year and who has retired as permanently and totally disabled may exclude from adjusted gross income up to \$100 per week received as wages or payments in lieu of wages for a period during which the employee is absent from work due to the disability. If the adjusted gross income before this exclusion and before application of the two-earner married

1 couple deduction exceeds \$15,000, the excess reduces the
 2 exclusion by an equal amount. This limitation affects the
 3 amount of exclusion, but not the taxpayer's eligibility for
 4 the exclusion. If eligible, married individuals shall apply
 5 the exclusion separately, but the limitation for income
 6 exceeding \$15,000 is determined with respect to the spouses
 7 on their combined adjusted gross income. For the purpose of
 8 this subsection, permanently and totally disabled means
 9 unable to engage in any substantial gainful activity by
 10 reason of any medically determined physical or mental
 11 impairment lasting or expected to last at least 12 months.
 12 (Subsection (2)(f) terminates on occurrence of
 13 contingency--sec. 3, Ch. 634, L. 1983.)"

14 **Section 9.** Section 15-30-121, MCA, is amended to read:

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

17 (1) the items referred to in sections 161, including
 18 the contributions referred to in 33-15-201(5)(b), and 211 of
 19 the Internal Revenue Code of 1954, or as sections 161 and
 20 211 shall be labeled or amended, subject to the following
 21 exceptions which are not deductible:

22 (a) items provided for in 15-30-123;
 23 (b) state income tax paid;

24 (2) A PORTION OF federal income tax paid within the
 25 taxable year according to the ratio that the taxpayer's

1 Montana adjusted gross income bears to the taxpayer's
 2 federal adjusted gross income FOR THE SAME TAX YEAR,
 3 provided that the deduction may not be greater than 100% of
 4 the federal tax;

5 (3) expenses of household and dependent care services
 6 as outlined in subsections (3)(a) through (3)(c) and subject
 7 to the limitations and rules as set out in subsections
 8 (3)(d) through (3)(f) as follows:

9 (a) expenses for household and dependent care services
 10 necessary for gainful employment incurred for:

11 (i) a dependent under 15 years of age for whom an
 12 exemption can be claimed;

13 (ii) a dependent as allowable under 15-30-112(5), except
 14 that the limitations for age and gross income do not apply,
 15 who is unable to care-for-himself provide self-care because
 16 of physical or mental illness; and

17 (iii) a spouse who is unable to care-for-himself provide
 18 self-care because of physical or mental illness;

19 (b) employment-related expenses incurred for the
 20 following services, but only if such the expenses are
 21 incurred to enable the taxpayer to be gainfully employed:

22 (i) household services which are attributable to the
 23 care of the qualifying individual; and

24 (ii) care of an individual who qualifies under
 25 subsection (3)(a);

(c) 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 ~~his~~ the individual's spouse;

(d) the amounts deductible in subsection (3)(a) through (3)(c) are subject to the following limitations:

(i) a deduction is allowed under subsection (3)(a) for employment-related expenses incurred during the year only to the extent such the expenses do not exceed \$4,800;

(ii) expenses for services in the household are deductible under subsection (3)(a) 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 (3)(a)(i) and only to the extent such the expenses incurred during the year do not exceed:

(A) \$2,400 in the case of one qualifying individual;

(B) \$3,600 in the case of two qualifying individuals;

and

(C) \$4,800 in the case of three or more qualifying individuals;

(e) if the combined adjusted gross income of the

taxpayers exceeds \$18,000 for the taxable year during which the expenses are incurred, the amount of the employment-related expenses incurred must be reduced by one-half of the excess of the combined adjusted gross income over \$18,000;

(f) for purposes of this subsection (3):

(i) married couples shall file a joint return or file separately on the same form;

(ii) if the taxpayer is married during any period of the taxable year, employment-related expenses incurred are deductible only if:

(A) 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

(B) the spouse is a qualifying individual described in subsection (3)(a)(iii);

(iii) an individual legally separated from ~~his~~ a spouse under a decree of divorce or of separate maintenance may not be considered as married;

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

(v) payment made to a child of the taxpayer who is under 19 years of age at the close of the taxable 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;

(4) 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 that were in effect for the taxable year ended December 31, 1978;

(5) that portion of expenses for organic fertilizer allowed as a deduction under 15-32-303 which was not otherwise deducted in computing taxable income;

(6) contributions to the child abuse and neglect prevention program provided for in 41-3-701, subject to the conditions set forth in 15-30-156;

(7) premium payments for long-term care insurance with benefits that meet or exceed the minimum standards as established by the state insurance commissioner; and

(8) contributions to the Montana drug abuse resistance education program provided for in 44-2-702, subject to the conditions set forth in 15-30-159. (Subsection (8) terminates on occurrence of contingency--sec. 12, Ch. 808, L. 1991.)"

Section 10. Section 15-31-114, MCA, is amended to read:

"15-31-114. Deductions allowed in computing income. In computing the net income, the following deductions shall must be allowed from the gross income received by such the corporation within the year from all sources:

(1) All the ordinary and necessary expenses paid or incurred during the taxable year in the maintenance and operation of its business and properties, including reasonable allowance for salaries for personal services actually rendered, subject to the limitation hereinafter contained in this section, rentals or other payments required to be made as a condition to the continued use or possession of property to which the corporation has not taken or is not taking title or in which it has no equity. ~~No A deduction shall-be~~ is not allowed for salaries paid upon which the recipient thereof has not paid Montana state income tax; ~~provided, however, that--where~~ when domestic corporations are taxed on income derived from ~~without~~ outside the state, salaries of officers paid in connection with securing such the income ~~shall-be~~ are deductible.

(2) (a) All losses actually sustained and charged off within the year and not compensated by insurance or otherwise, including a reasonable allowance for the wear and tear and obsolescence of property used in the trade or business, such the allowance to be determined according to the provisions of section 167 of the Internal Revenue Code in effect with respect to the taxable year. All elections for depreciation ~~shall~~ must be the same as the elections made for federal income tax purposes. ~~No A deduction shall~~ be is not allowed for any amount paid out for any buildings,

1 permanent improvements, or betterments made to increase the
 2 value of any property or estate, and ~~no a~~ deduction ~~shall~~
 3 ~~may not~~ be made for any amount of expense of restoring
 4 property or making good the exhaustion thereof of property
 5 for which an allowance is or has been made. No A
 6 depreciation or amortization deduction ~~shall--be~~ is not
 7 allowed on a title plant as defined in 33-25-105(15).

8 (b) There ~~shall--be~~ is allowed as a deduction for the
 9 taxable period a net operating loss deduction determined
 10 according to the provisions of 15-31-119.

11 (3) In the case of mines, other natural deposits, oil
 12 and gas wells, and timber, a reasonable allowance for
 13 depletion and for depreciation of improvements; such the
 14 reasonable allowance to be determined according to the
 15 provisions of the Internal Revenue Code in effect for the
 16 taxable year. All elections made under the Internal Revenue
 17 Code with respect to capitalizing or expensing exploration
 18 and development costs and intangible drilling expenses for
 19 corporation license tax purposes ~~shall must~~ be the same as
 20 the elections made for federal income tax purposes.

21 (4) The amount of interest paid within the year on its
 22 indebtedness incurred in the operation of the business from
 23 which its income is derived; but ~~no interest shall--be~~ is not
 24 allowed as a deduction if paid on an indebtedness created
 25 for the purchase, maintenance, or improvement of property or

1 for the conduct of business unless the income from such the
 2 property or business would be taxable under this part.

3 (5) (a) Taxes paid within the year, except the
 4 following:

5 (i) Taxes imposed by this part.

6 (ii) Taxes assessed against local benefits of a kind
 7 tending to increase the value of the property assessed.

8 (iii) Taxes on or according to or measured by net income
 9 or profits imposed by authority of the government of the
 10 United States.

11 (iv) Taxes imposed by any other state or country upon or
 12 measured by net income or profits.

13 (b) Taxes deductible under this part ~~shall--be~~ are
 14 construed to include taxes imposed by any county, school
 15 district, or municipality of this state.

16 (6) That portion of an energy-related investment
 17 allowed as a deduction under 15-32-103.

18 (7) (a) Except as provided in subsection (b),
 19 charitable contributions and gifts that qualify for
 20 deduction under section 170 of the Internal Revenue Code, as
 21 amended.

22 (b) The public service commission ~~shall may~~ not allow
 23 in the rate base of a regulated corporation the inclusion of
 24 contributions made under this subsection.

25 (8) In lieu of the deduction allowed under subsection

(7), the taxpayer may deduct the fair market value, not to exceed 30% of the taxpayer's net income, of a computer or other sophisticated technological equipment or apparatus intended for use with the computer donated to an elementary, secondary, or accredited postsecondary school located in Montana if:

(a) the contribution is made no later than 5 years after the manufacture of the donated property is substantially completed;

(b) the property is not transferred by the donee in exchange for money, other property, or services; and

(c) the taxpayer receives a written statement from the donee in which the donee agrees to accept the property and representing that the use and disposition of the property will be in accordance with the provisions of ~~(b)~~--of--this subsection (8)(b).

(9) Contributions of principal of no more than \$2,000 a tax year made to an employee's individual medical care savings account established in accordance with [section 3 OR 4], but only to the extent that payments to a cafeteria plan established pursuant to 26 U.S.C. 125 are not likewise deducted."

Section 11. Section 39-71-123, MCA, is amended to read:

"39-71-123. **Wages defined.** (1) "Wages" means the gross remuneration paid in money, or in a substitute for money,

for services rendered by an employee. Wages include but are not limited to:

(a) commissions, bonuses, and remuneration at the regular hourly rate for overtime work, holidays, vacations, and sickness periods;

(b) board, lodging, rent, or housing if it constitutes a part of the employee's remuneration and is based on its actual value; and

(c) payments made to an employee on any basis other than time worked, including but not limited to piecework, an incentive plan, or profit-sharing arrangement.

(2) Wages do not include:

(a) employee expense reimbursements or allowances for meals, lodging, travel, subsistence, and other expenses, as set forth in department rules;

(b) special rewards for individual invention or discovery;

(c) tips and other gratuities received by the employee in excess of those documented to the employer for tax purposes;

(d) contributions made by the employer to a group insurance or pension plan; or

(e) contributions made by the employer of no more than \$2,000 a year for an employee to an individual medical care savings account established in accordance with [section 3 OR

4); or

(e) (F) vacation or sick leave benefits accrued but not paid.

(3) For compensation benefit purposes, the average actual earnings for the four pay periods immediately preceding the injury are the employee's wages, except if:

(a) the term of employment for the same employer is less than four pay periods, in which case the employee's wages are the hourly rate times the number of hours in a week for which the employee was hired to work; or

(b) for good cause shown by the claimant, the use of the four pay periods does not accurately reflect the claimant's employment history with the employer, in which case the insurer may use additional pay periods.

(4) (a) For the purpose of calculating compensation benefits for an employee working concurrent employments, the average actual wages must be calculated as provided in subsection (3).

(b) The compensation benefits for a covered volunteer must be based on the average actual wages in his regular employment, except self-employment as a sole proprietor or partner who elected not to be covered, from which he the volunteer is disabled by the injury incurred.

(c) The compensation benefits for an employee working at two or more concurrent remunerated employments must be

based on the aggregate of average actual wages of all employments, except self-employment as a sole proprietor or partner who elected not to be covered, from which the employee is disabled by the injury incurred.

(5) The compensation benefits and the payroll, for premium purposes, for a volunteer firefighter covered pursuant to 39-71-118(4) must be based upon a wage of not less than \$900 a month and not more than 1 1/2 times the average weekly wage as defined in this chapter."

NEW SECTION. Section 12. Contributions to individual medical care savings accounts -- exemption from schedules -- submission of medical bills to insurer. (1) An insurer is not liable for the amount to be contributed by the employer to an individual medical care savings account established in accordance with ~~section 3~~, INSURANCE COVERAGE OF up to \$2,000 a year for medical expenses incurred by an injured employee as a result of a compensable injury or occupational disease, if the employer is contributing the same amount into an individual medical care savings account, ESTABLISHED IN ACCORDANCE WITH [SECTION 3 OR 4], for every employee.

(2) The medical expenses incurred by the employee are not subject to the fee schedules or rates for hospital services established by the department pursuant to 39-71-704.

(3) An injured employee who has established an account

shall submit copies of the medical bills paid by the employee to the insurer when medical expenses as a result of a compensable injury or occupational disease exceed the amount contributed to the employee's individual medical care savings account for the year.

NEW SECTION. Section 13. Individual medical care savings accounts -- exemption from workers' compensation premium. (1) Insurers may not assess a premium for the amount to be contributed to an individual medical care savings account established in accordance with [section 3] on contributions, up to \$2,000 a year, made by the employer for an employee if the employer is contributing the same amount into an individual medical care savings account for every employee.

(2) The employer of an employee who has established an individual medical care savings account shall notify the insurer, with the employer's report of an accident or an occupational disease, that an account has been established by the employee and shall notify the insurer of the amount contributed to the account for that year.

(3) Failure to notify the insurer of the account subjects the employer to assessment of the premium on the amount to be contributed by the employer to an individual medical care savings account for the year.

NEW SECTION. Section 14. Codification instruction. (1)

[Sections 1 through 5 6] are intended to be codified as an integral part of Title 15, and the provisions of Title 15 apply to [sections 1 through 5 6].

(2) [Section ~~10~~ 12] is intended to be codified as an integral part of Title 39, chapter 71, part 22, and the provisions of Title 39, chapter 71, part 22, apply to [section ~~10~~ 12].

(3) [Section ~~11~~ 13] is intended to be codified as an integral part of Title 39, chapter 71, parts 21 through 23, and the provisions of Title 39, chapter 71, parts 21 through 23, apply to [section ~~11~~ 13].

NEW SECTION. SECTION 15. COORDINATION INSTRUCTION. IF HOUSE BILL NO. 671 IS PASSED AND APPROVED AND IF IT REPEALS 15-30-121, THEN [SECTIONS 3 AND 7 OF THIS ACT] ARE VOID AND [SECTIONS 4 AND 8 OF THIS ACT] APPLY. IF SENATE BILL NO. 235 IS PASSED AND APPROVED BY THE VOTERS AND IT REPEALS 15-30-121, THEN [SECTIONS 3 AND 7 OF THIS ACT] ARE VOID AND [SECTIONS 4 AND 8 OF THIS ACT] APPLY. IF 15-30-121 IS NOT REPEALED, [SECTIONS 4 AND 8 OF THIS ACT] ARE VOID.

NEW SECTION. Section 16. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

1 NEW SECTION. **Section 17.** Effective date. [This act] is
2 effective on passage and approval.

3 NEW SECTION. **Section 18.** Retroactive applicability.
4 [This act] applies retroactively, within the meaning of
5 1-2-109, to tax years beginning after December 31, 1992.

-End-

SENATE STANDING COMMITTEE REPORT

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April 12, 1993

Page 1 of 2
April 12, 1993

MR. PRESIDENT:

We, your committee on Taxation having had under consideration House Bill No. 670 (third reading copy -- blue), respectfully report that House Bill No. 670 be amended as follows and as so amended be concurred in.

Signed: 
Senator Mike Harrigan, Chair

That such amendments read:

1. Title, lines 18 through 22.
Following: "ACCOUNT;" on line 18
Strike: the remainder of line 18 through "COMPENSATION;" on line 22

2. Title, line 23.
Following: "15-30-121,"
Insert: "AND"
Following: "15-31-114,"
Strike: "AND 39-71-123,"

3. Page 2, line 25.
Strike: ", 12, AND 13"

4. Page 4, lines 15 through 18.
Strike: "ANY" on line 15 through "." on line 18

5. Page 6, lines 4 through 17.
Strike: subsections (9) and (10) in their entirety
Renumber: subsequent subsections

6. Page 7, lines 18 through 21.
Following: "ACCOUNT." on line 18
Strike: the remainder of line 18 through "ACCOUNT." on line 21

7. Page 8, lines 10 through 23.
Strike: subsections (5) and (6) in their entirety
Renumber: subsequent subsections

8. Page 27, line 17.
Following: "(9)"
Insert: "(a)"

9. Page 27, line 23.
Following: line 22
Insert: "(b) Contributions to employees' individual medical care savings accounts under subsection (9)(a) must be provided on a nondiscriminatory basis.

(c) An employer is prohibited from reducing an employee's wages as a result of a contribution to an employee's individual medical care savings account under subsection (9)(a) unless the reduction is part of a collective bargaining agreement."

10. Page 27, line 23 through page 31, line 24.
Strike: sections 11 through 13 in their entirety
Renumber: subsequent sections

11. Page 31, line 25.
Strike: "(1)"

12. Page 32, lines 4 through 11.
Strike: subsections (2) and (3) in their entirety

-END-

MM Amd. Coord.
CM Sec. of Senate

Eck
Senator Carrying Bill

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HB 670
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