

Rand Paul

AMENDMENT NO. 2

Calendar No. _____

Purpose: To amend the Internal Revenue Code of 1986 to eliminate limitations on contributions to health savings accounts.

IN THE SENATE OF THE UNITED STATES—116th Cong., 1st Sess.

S. 1895

To lower health care costs.

Referred to the Committee on _____ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by _____

Viz:

1 At the appropriate place, insert the following:

2 **TITLE _____ —HEALTH SAVINGS**
3 **ACCOUNTS**

4 **SEC. _01. REPEAL OF CONTRIBUTION LIMITATIONS.**

5 (a) IN GENERAL.—Subsection (b) of section 223 of
6 the Internal Revenue Code of 1986 is amended to read
7 as follows:

8 “(b) DENIAL OF DEDUCTION TO DEPENDENTS.—No
9 deduction shall be allowed under this section to any indi-
10 vidual with respect to whom a deduction under section 151
11 is allowable to another taxpayer for a taxable year begin-

1 ning in the calendar year in which such individual's tax-
2 able year begins.”.

3 (b) CONFORMING AMENDMENTS.—

4 (1) Subparagraph (A) of section 223(d)(1) of
5 the Internal Revenue Code of 1986 is amended—

6 (A) by striking “subsection (f)(5)” and in-
7 serting “subsection (f)(4)”, and

8 (B) by striking “accepted—” and all that
9 follows and inserting “accepted unless it is in
10 cash.”.

11 (2) Subsection (f) of section 223 of such Code
12 is amended by striking paragraph (3) and by redesi-
13 gnating paragraphs (4) through (8) as paragraphs
14 (3) through (7), respectively.

15 (3) Subsection (g) of section 223 of such Code
16 is amended—

17 (A) by striking “subsections (b)(2) and
18 (c)(2)(A)” both places it appears and inserting
19 “subsection (c)(2)(A)”, and

20 (B) by amending subparagraph (B) to read
21 as follows:

22 “(B) the cost-of-living adjustment deter-
23 mined under section 1(f)(3) for the calendar
24 year in which such taxable year begins deter-
25 mined by substituting ‘calendar year 2003’ for

1 'calendar year 2016' in subparagraph (A)(ii)
2 thereof.”.

3 (4) Section 26(b)(2) of such Code is amended—

4 (A) by striking “, 223(b)(8)(B)(i)(II),” in
5 subparagraph (S), and

6 (B) by striking “223(f)(4)” in subpara-
7 graph (U) and inserting “223(f)(3)”.

8 (5) Paragraph (1) of section 106(d) of such
9 Code is amended by striking “under an accident or
10 health plan” and all that follows and inserting
11 “under an accident or health plan.”.

12 (6) Subparagraph (C) of section 106(e)(4) of
13 such Code is amended by striking “223(f)(5)” and
14 inserting “223(f)(4)”.

15 (7) Subparagraph (C) of section 408(d)(9) of
16 such Code is amended—

17 (A) by striking “LIMITATIONS.—” in the
18 heading and all that follows through “(ii) ONE-
19 TIME TRANSFER.—” in clause (ii), and insert-
20 ing “ONE-TIME TRANSFER.—”,

21 (B) by redesignating subclauses (I) and
22 (II) as clauses (i) and (ii) and moving such
23 clauses 2 ems to the left, and

1 (C) by striking “subclause (II)” in clause
2 (i), as so redesignated, and inserting “clause
3 (ii)”.

4 (8) Section 4973 of such Code is amended by
5 striking subsection (g) and by redesignating sub-
6 section (h) as subsection (g).

7 (c) EFFECTIVE DATE.—The amendments made by
8 this section shall apply to taxable years beginning after
9 the date of the enactment of this Act.

10 **SEC. __02. FREEDOM FROM MANDATE.**

11 (a) IN GENERAL.—Section 223 of the Internal Rev-
12 enue Code of 1986, as amended by section __01, is further
13 amended by striking subsections (c) and (g) and by red-
14 esignating subsections (d), (e), (f), and (h) as subsections
15 (c), (d), (e), and (f), respectively.

16 (b) CONFORMING AMENDMENTS.—

17 (1) Subsection (a) of section 223 of the Inter-
18 nal Revenue Code of 1986 is amended to read as fol-
19 lows:

20 “(a) DEDUCTION ALLOWED.—In the case of an indi-
21 vidual, there shall be allowed as a deduction for the tax-
22 able year an amount equal to the aggregate amount paid
23 in cash during such taxable year by or on behalf of such
24 individual to a health savings account of such individual.”.

1 (2) Subsection (e)(1)(A) of section 223 of such
2 Code, as amended by section __01 and redesignated
3 by subsection (a), is further amended by striking
4 “subsection (f)(4)” and inserting “subsection
5 (e)(4)”.

6 (3) Subparagraph (U) of section 26(b)(2) of
7 such Code, as amended by section __01, is further
8 amended by striking “section 223(f)(3)” and insert-
9 ing “section 223(e)(3)”.

10 (4) Sections 35(g)(3), 220(f)(5)(A),
11 848(e)(1)(B)(v), 4973(a)(5), and 6051(a)(12) of
12 such Code are each amended by striking “section
13 223(d)” each place it appears and inserting “section
14 223(c)”.

15 (5) Section 106(d)(1) of such Code is amend-
16 ed—

17 (A) by striking “who is an eligible indi-
18 vidual (as defined in section 223(e)(1))”, and

19 (B) by striking “section 223(d)” and in-
20 serting “section 223(c)”.

21 (6) Section 106(e) of such Code is amended—

22 (A) by striking paragraphs (3) and (4) and
23 by redesignating paragraph (5) as paragraph
24 (4),

1 (B) by inserting after paragraph (2) the
2 following new paragraph:

3 “(3) TREATMENT AS ROLLOVER CONTRIBU-
4 TION.—A qualified HSA distribution shall be treated
5 as a rollover contribution described in section
6 223(e)(4).”, and

7 (C) by striking “to any eligible individual
8 covered under a high deductible health plan of
9 the employer” in paragraph (4)(B)(ii) (as so re-
10 designated) and inserting “to any employee
11 with respect to whom a health savings account
12 has been established”.

13 (7) Section 408(d)(9)(A) of such Code is
14 amended by striking “who is an eligible individual
15 (as defined in section 223(c)) and”.

16 (8) Section 877A(g)(6) of such Code is amend-
17 ed by striking “223(f)(4)” and inserting
18 “223(e)(4)”.

19 (9) Section 4975 of such Code is amended—

20 (A) in subsection (c)(6)—

21 (i) by striking “section 223(d)” and
22 inserting “section 223(c)”, and

23 (ii) by striking “section 223(e)(2)”
24 and inserting “section 223(d)(2)”, and

1 (B) in subsection (e)(1)(E), by striking
2 “section 223(d)” and inserting “section
3 223(c)”.

4 (10) Subsection (b) of section 4980G of such
5 Code is amended to read as follows:

6 “(b) RULES AND REQUIREMENTS.—

7 “(1) IN GENERAL.—An employer meets the re-
8 quirements of this subsection for any calendar year
9 if the employer makes available comparable con-
10 tributions to the health savings accounts of all com-
11 parable participating employees for each coverage
12 period during such calendar year.

13 “(2) COMPARABLE CONTRIBUTIONS.—

14 “(A) IN GENERAL.—For purposes of para-
15 graph (1), the term ‘comparable contributions’
16 means contributions—

17 “(i) which are the same amount, or

18 “(ii) if the employees are covered by a
19 health plan, which are the same percentage
20 of the annual deductible limit under the
21 plan covering the employees.

22 “(B) PART-YEAR EMPLOYEES.—In the
23 case of an employee who is employed by the em-
24 ployer for only a portion of the calendar year,
25 a contribution to the health savings account of

1 such employee shall be treated as comparable if
2 it is an amount which bears the same ratio to
3 the comparable amount (determined without re-
4 gard to this subparagraph) as such portion
5 bears to the entire calendar year.

6 “(3) COMPARABLE PARTICIPATING EMPLOY-
7 EES.—For purposes of paragraph (1), the term
8 ‘comparable participating employees’ means all em-
9 ployees who are covered (if at all) under the same
10 health plan of the employer and have the same cat-
11 egory of coverage. For purposes of the preceding
12 sentence, the categories of coverage are self-only and
13 family coverage.

14 “(4) PART-TIME EMPLOYEES.—

15 “(A) IN GENERAL.—Paragraph (3) shall
16 be applied separately with respect to part-time
17 employees and other employees.

18 “(B) PART-TIME EMPLOYEE.—For pur-
19 poses of subparagraph (A), the term ‘part-time
20 employee’ means any employee who is custom-
21 arily employed for fewer than 30 hours per
22 week.”.

23 (11) Section 4980G(d) of such Code is amended
24 by striking “section 4980E” and inserting “this sec-
25 tion”.

1 “(f) REIMBURSEMENTS FOR ALL MEDICINES AND
2 DRUGS.—For purposes of this section and section 105,
3 reimbursement for expenses incurred for any prescription
4 or over-the-counter medicine or drug shall be treated as
5 a reimbursement for medical expenses.”.

6 (d) EFFECTIVE DATES.—

7 (1) DISTRIBUTIONS FROM SAVINGS AC-
8 COUNTS.—The amendments made by subsections (a)
9 and (b) shall apply to amounts paid in taxable years
10 beginning after the date of the enactment of this
11 Act.

12 (2) REIMBURSEMENTS.—The amendment made
13 by subsection (c) shall apply to expenses incurred in
14 plan years beginning after the date of the enactment
15 of this Act.

16 **SEC. __04. PURCHASE OF HEALTH INSURANCE FROM HSA.**

17 (a) IN GENERAL.—Paragraph (2) of section 223(c)
18 of the Internal Revenue Code of 1986, as redesignated by
19 section __02, is amended by striking subparagraphs (B)
20 and (C).

21 (b) CONFORMING AMENDMENT.—Paragraph (2) of
22 section 223(c) of the Internal Revenue Code of 1986, as
23 amended by the preceding sections of this Act, is further
24 amended by striking “and any dependent (as defined in
25 section 152, determined without regard to subsections

1 (b)(1), (b)(2), and (d)(1)(B) thereof) of such individual”
2 and inserting “any dependent (as defined in section 152,
3 determined without regard to subsections (b)(1), (b)(2),
4 and (d)(1)(B) thereof) of such individual, and any child
5 (as defined in section 152(f)(1)) of such individual who
6 has not attained the age of 27 before the end of such indi-
7 vidual’s taxable year”.

8 (c) EFFECTIVE DATE.—The amendments made by
9 this section shall apply with respect to insurance pur-
10 chased after the date of the enactment of this Act in tax-
11 able years beginning after such date.

12 **SEC. __05. SPECIAL RULE FOR CERTAIN MEDICAL EX-**
13 **PENSES INCURRED BEFORE ESTABLISHMENT**
14 **OF ACCOUNT.**

15 (a) IN GENERAL.—Paragraph (2) of section 223(c)
16 of the Internal Revenue Code of 1986, as amended and
17 redesignated by the preceding sections of this Act, is fur-
18 ther amended by adding at the end the following new sub-
19 paragraph:

20 “(B) CERTAIN MEDICAL EXPENSES IN-
21 CURRED BEFORE ESTABLISHMENT OF ACCOUNT
22 TREATED AS QUALIFIED.—An expense shall not
23 fail to be treated as a qualified medical expense
24 solely because such expense was incurred before

1 the establishment of the health savings account
2 if such expense was incurred—

3 “(i) during either—

4 “(I) the taxable year in which the
5 health savings account was estab-
6 lished, or

7 “(II) the preceding taxable year,
8 in the case of a health savings ac-
9 count established after the taxable
10 year in which such expense was in-
11 curred but before the time prescribed
12 by law for filing the return for such
13 taxable year (not including extensions
14 thereof), and

15 “(ii) for medical care which (but for
16 the fact that it was incurred before the es-
17 tablishment of the account) otherwise
18 meets the requirements of the preceding
19 subparagraphs.”.

20 (b) EFFECTIVE DATE.—The amendment made by
21 this section shall apply to taxable years beginning after
22 the date of the enactment of this Act.

1 **SEC. 06. ADMINISTRATIVE ERROR CORRECTION BEFORE**
2 **DUE DATE OF RETURN.**

3 (a) **IN GENERAL.**—Paragraph (3) of section 223(e)
4 of the Internal Revenue Code of 1986, as amended and
5 redesignated by the preceding sections of this Act, is
6 amended by adding at the end the following new subpara-
7 graph:

8 “(D) **EXCEPTION FOR ADMINISTRATIVE**
9 **ERRORS CORRECTED BEFORE DUE DATE OF RE-**
10 **TURN.**—Subparagraph (A) shall not apply if
11 any payment or distribution is made to correct
12 an administrative, clerical, or payroll contribu-
13 tion error and if—

14 “(i) such distribution is received by
15 the individual on or before the last day
16 prescribed by law (including extensions of
17 time) for filing such individual’s return for
18 such taxable year, and

19 “(ii) such distribution is accompanied
20 by the amount of net income attributable
21 to such contribution.

22 Any net income described in clause (ii) shall be
23 included in the gross income of the individual
24 for the taxable year in which it is received.”

1 (b) **EFFECTIVE DATE.**—The amendment made by
2 this section shall take effect on the date of the enactment
3 of this Act.

4 **SEC. 07. ALLOWING HSA ROLLOVER TO CHILD OR PAR-**
5 **ENT OF ACCOUNT HOLDER.**

6 (a) **IN GENERAL.**—Paragraph (7)(A) of section
7 223(e) of the Internal Revenue Code of 1986, as redesignig-
8 nated by the preceding sections of this Act, is amended—

9 (1) by inserting “, child, parent, or grand-
10 parent” after “surviving spouse”,

11 (2) by inserting “, child, parent, or grand-
12 parent, as the case may be,” after “the spouse”,

13 (3) by inserting “, CHILD, PARENT, OR GRAND-
14 PARENT” after “SPOUSE” in the heading thereof,
15 and

16 (4) by adding at the end the following: “In the
17 case of a child who acquires such beneficiary’s inter-
18 est and with respect to whom a deduction under sec-
19 tion 151 is allowable to another taxpayer for a tax-
20 able year beginning in the calendar year in which
21 such individual’s taxable year begins, such health
22 savings account shall be treated as a health savings
23 account of such child.”.

1 (b) **EFFECTIVE DATE.**—The amendments made by
2 this section shall apply to taxable years beginning after
3 the date of the enactment of this Act.

4 **SEC. __08. CREDIT FOR CONTRIBUTIONS TO AN HSA.**

5 (a) **IN GENERAL.**—Subpart A of part IV of sub-
6 chapter A of chapter 1 of the Internal Revenue Code of
7 1986 is amended by inserting after section 25D the fol-
8 lowing new section:

9 **“SEC. 25E. CONTRIBUTIONS TO A HEALTH SAVINGS AC-**
10 **COUNT.**

11 **“(a) ALLOWANCE OF CREDIT.**—In the case of an in-
12 dividual, there shall be allowed as a credit against the tax
13 imposed by this subtitle for the taxable year an amount
14 equal to so much of the qualified HSA contributions of
15 the individual as does not exceed \$5,000 (\$10,000 in the
16 case of a joint return).

17 **“(b) QUALIFIED HSA CONTRIBUTION.**—

18 **“(1) IN GENERAL.**—For purposes of this sec-
19 tion, the term ‘qualified HSA contribution’ means
20 an amount paid in cash during the taxable year by
21 or on behalf of an individual to a health savings ac-
22 count (as defined in section 223(c)) of such indi-
23 vidual.

24 **“(2) EXCEPTION FOR AMOUNTS NOT USED FOR**
25 **QUALIFIED MEDICAL EXPENSES.**—The amount

1 taken into account as qualified HSA contributions of
2 the individual under paragraph (1) for a taxable
3 year shall be reduced by the amount of any distribu-
4 tion from such health savings account during such
5 taxable year which is not used exclusively to pay the
6 qualified medical expenses of the account beneficiary
7 (within the meaning of section 223(e)(2)).

8 “(c) COORDINATION WITH DEDUCTION.—For co-
9 ordination rule, see section 223(b)(1).”.

10 (b) CLERICAL AMENDMENT.—The table of sections
11 for subpart A of part IV of subchapter A of chapter 1
12 of the Internal Revenue Code of 1986 is amended by in-
13 serting after the item relating to section 25D the following
14 new item:

“Sec. 25E. Contributions to a health savings account.”.

15 (c) CONFORMING AMENDMENT.—Subsection (b) of
16 section 223 of the Internal Revenue Code of 1986, as
17 amended by section __01, is further amended to read as
18 follows:

19 “(b) SPECIAL RULES.—

20 “(1) COORDINATION WITH CREDIT.—The
21 amount taken into account under subsection (a) with
22 respect to any individual shall be reduced (but not
23 below zero) by the amount of any credit allowed
24 under section 25E for qualified HSA contributions
25 with respect to the individual.

1 “(2) DENIAL OF DEDUCTION TO DEPEND-
2 ENTS.—No deduction shall be allowed under this
3 section to any individual with respect to whom a de-
4 duction under section 151 is allowable to another
5 taxpayer for a taxable year beginning in the cal-
6 endar year in which such individual’s taxable year
7 begins.”.

8 (d) EFFECTIVE DATE.—The amendments made by
9 this section shall apply to taxable years beginning after
10 the date of the enactment of this Act.

11 **SEC. __09. EQUIVALENT BANKRUPTCY PROTECTIONS FOR**
12 **HEALTH SAVINGS ACCOUNTS AS RETIRE-**
13 **MENT FUNDS.**

14 (a) IN GENERAL.—Section 522 of title 11, United
15 States Code, is amended by adding at the end the fol-
16 lowing new subsection:

17 “(r) TREATMENT OF HEALTH SAVINGS AC-
18 COUNTS.—For purposes of this section, any health savings
19 account (as described in section 223 of the Internal Rev-
20 enue Code of 1986) shall be treated in the same manner
21 as an individual retirement account described in section
22 408 of such Code.”.

23 (b) EFFECTIVE DATE.—The amendment made by
24 this section shall apply to cases commencing under title

1 11, United States Code, after the date of the enactment
2 of this Act.