

CHAPTER 118

Substitute for SENATE BILL No. 257

AN ACT concerning health and health care; relating to health benefit plans and health savings accounts; income tax credits for certain employer contributions thereto; amending K.S.A. 40-2239, 40-2242 and 40-2246 and K.S.A. 2004 Supp. 40-2240 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 40-2239 is hereby amended to read as follows: 40-2239. As used in this act, unless the context requires otherwise:

(a) "Carrier" means an insurance company, medical or hospital service corporation, medical and hospital service corporation or health maintenance organization which holds a valid certificate of authority from the insurance commissioner.

(b) "Commissioner" means the commissioner of insurance.

(c) "Eligible employee" means an employee who is employed by the employer for an average of at least 30 hours per week and who elects to participate in one of the benefit plans provided under this act, and includes individuals who are sole proprietors, business partners and limited partners. The term "eligible employee" does not include individuals:

(1) Engaged as independent contractors;

(2) whose periods of employment are on an intermittent or irregular basis; or

(3) who have been employed by the employer for fewer than 90 days.

(d) "Family member" means an eligible employee's spouse and any unmarried dependent child or stepchild.

(e) "Health benefit plan" means a contract for group medical, surgical, hospital or any other remedial care recognized by state law and related services and supplies.

(f) "*Health savings account*" means a trust created or organized in the United States as a health savings account exclusively for the purpose of paying the qualified medical expenses of the account beneficiary, but only if the written governing instrument creating the trust meets the requirements specified by the medicare, prescription drug, improvement and modernization act of 2003, Pub. L. No. 108-173, 117 Stat. 2067.

(g) "Premium" means the monthly or other periodic charge for a health benefit plan.

~~(g)~~ (h) "Small employer health benefit plan" means an arrangement providing a health benefit plan for the purpose described in K.S.A. 40-2240, and amendments thereto.

Sec. 2. K.S.A. 2004 Supp. 40-2240 is hereby amended to read as follows: 40-2240. (a) Any small employer as defined in subsection (4) of K.S.A. 40-2209d, and amendments thereto, may establish a small employer health benefit plan for the purpose of providing a health benefit plan as described in subsection (u) of K.S.A. 40-2209d, and amendments thereto, covering such employers' eligible employees and such employees' family members. If an association or trust is used for such purposes, the association or trust may not condition eligibility or membership on the health status of members or employees.

~~(b) Employers desiring to offer a small employer health benefit plan shall notify the commissioner and provide the commissioner with information on the number of employees and family members to be covered by the insurance described in K.S.A. 40-2209d, and amendments thereto. The commissioner shall provide assistance to employers desiring to organize and maintain any such benefit plan and may aid in the acquisition of the health care insurance by the small employer health benefit plan. The commissioner shall issue a certificate to every employer participating in any such small employer health benefit plan entitling such employer to claim the tax credit authorized by K.S.A. 40-2246 and amendments thereto subject to the following limitation: No certificate shall be issued to any employer seeking the same after certificates have already been issued under this act to employers offering health benefits described in K.S.A. 40-2209d, and amendments thereto, to employees and family members entitling such employers to claim the credits for taxable years which commence after December 31, 1999.~~

Sec. 3. K.S.A. 40-2242 is hereby amended to read as follows: 40-2242. As a condition to participation as a member of any small employer

health benefit plan as provided in K.S.A. 40-2240 and amendments thereto, an employer shall have not contributed within the preceding two years to any health insurance premium or *health savings account* on behalf of an employee who is to be covered by the employer's contribution other than a contribution by an employer to a health insurance premium or *health savings account* within the preceding two years solely for the benefit of the employer or the employer's dependents.

Sec. 4. K.S.A. 40-2246 is hereby amended to read as follows: 40-2246. (a) A credit against the taxes otherwise due under the Kansas income tax act shall be allowed to an employer for amounts paid during the taxable year for purposes of this act on behalf of an eligible employee as defined in K.S.A. 40-2239 and amendments thereto to provide health insurance or care *and amounts contributed to health savings accounts of eligible covered employees.*

(b) (1) *For employers that have established a small employer health benefit plan after December 31, 1999, but prior to January 1, 2005, the amount of the credit allowed by subsection (a) shall be \$35 per month per eligible covered employee or 50% of the total amount paid by the employer during the taxable year, whichever is less, for the first two years of participation. In the third year, the credit shall be equal to 75% of the lesser of \$35 per month per employee or 50% of the total amount paid by the employer during the taxable year. In the fourth year, the credit shall be equal to 50% of the lesser of \$35 per month per employee or 50% of the total amount paid by the employer during the taxable year. In the fifth year, the credit shall be equal to 25% of the lesser of \$35 per month per employee or 50% of the total amount paid by the employer during the taxable year. For the sixth and subsequent years, no credit shall be allowed.*

(2) *For employers that have established a small employer health benefit plan or made contributions to a health savings account of an eligible covered employee after December 31, 2004, the amount of credit allowed by subsection (a) shall be \$70 per month per eligible covered employee for the first 12 months of participation, \$50 per month per eligible covered employee for the next 12 months of participation and \$35 per eligible covered employee for the next 12 months of participation. After 36 months of participation, no credit shall be allowed.*

(c) If the credit allowed by this section is claimed, the amount of any deduction allowable under the Kansas income tax act for expenses described in this section shall be reduced by the dollar amount of the credit. The election to claim the credit shall be made at the time of filing the tax return in accordance with law. If the credit allowed by this section exceeds the taxes imposed under the Kansas income tax act for the taxable year, that portion of the credit which exceeds those taxes shall be refunded to the taxpayer.

(d) Any amount of expenses paid by an employer under this act shall not be included as income to the employee for purposes of the Kansas income tax act. If such expenses have been included in federal taxable income of the employee, the amount included shall be subtracted in arriving at state taxable income under the Kansas income tax act.

(e) *The secretary of revenue shall promulgate rules and regulations to carry out the provisions of this section.*

(f) This section shall apply to all taxable years commencing after December 31, 1999.

Sec. 5. K.S.A. 40-2239, 40-2242 and 40-2246 and K.S.A. 2004 Supp. 40-2240 are hereby repealed.

Sec. 6. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 12, 2005.
