

118TH CONGRESS
1ST SESSION

S. 3172

To amend the Internal Revenue Code of 1986 to include certain over-the-counter dietary supplement products and foods for special dietary uses as qualified medical expenses.

IN THE SENATE OF THE UNITED STATES

OCTOBER 31, 2023

Mr. CRAMER introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to include certain over-the-counter dietary supplement products and foods for special dietary uses as qualified medical expenses.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. INCLUSION OF DIETARY SUPPLEMENT PROD-**
4 **UCTS AS QUALIFIED MEDICAL EXPENSES.**

5 (a) HSAs.—Section 223(d)(2) of the Internal Rev-
6 enue Code of 1986 is amended—

7 (1) by inserting “, dietary supplement products,
8 or foods for a special dietary use” after “menstrual

1 care products” in the last sentence of subparagraph
2 (A); and

3 (2) by adding at the end the following new sub-
4 paragraphs:

5 “(E) DIETARY SUPPLEMENT PRODUCT.—

6 For purposes of this paragraph, the term ‘die-
7 tary supplement product’ means a nutritional
8 product that is labeled with—

9 “(i) a statement describing how the
10 product is intended to affect the structure
11 or function of the human body, or

12 “(ii) a statement characterizing the
13 mechanism by which the product acts to
14 maintain such structure or function.

15 “(F) FOOD FOR A SPECIAL DIETARY
16 USE.—For purposes of this paragraph, the term
17 ‘food for a special dietary use’ means any food
18 which section 411 of the Federal Food, Drug,
19 and Cosmetic Act (21 U.S.C. 350) applies.”.

20 (b) ARCHER MSAs.—The last sentence of section
21 220(d)(2)(A) of such Code is amended by inserting “, die-
22 tary supplement products (as defined in section
23 223(d)(2)(E)), or foods for a special dietary use (as de-
24 fined in section 223(d)(2)(F))” after “menstrual care prod-
25 ucts (as defined in section 223(d)(2)(D))”.

1 (c) HEALTH FLEXIBLE SPENDING ARRANGEMENTS
2 AND HEALTH REIMBURSEMENT ARRANGEMENTS.—Sec-
3 tion 106(f) of such Code is amended—

4 (1) by inserting “, dietary supplement products
5 (as defined in section 223(d)(2)(E)), or foods for a
6 special dietary use (as defined in section
7 223(d)(2)(F)” after “menstrual care products (as
8 defined in section 223(d)(2)(D))”; and

9 (2) in the heading, by inserting “M DIETARY
10 SUPPLEMENT PRODUCTS, AND FOODS FOR A SPE-
11 CIAL DIETARY USE” after “MENSTRUAL CARE
12 PRODUCTS”.

13 (d) EFFECTIVE DATES.—

14 (1) DISTRIBUTIONS FROM SAVINGS AC-
15 COUNTS.—The amendment made by subsections (a)
16 and (b) shall apply to amounts paid after December
17 31, 2022.

18 (2) REIMBURSEMENTS.—The amendment made
19 by subsection (c) shall apply to expenses incurred
20 after December 31, 2022.

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