



State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-1861/4
MES:wlj

2015 ASSEMBLY BILL 236

May 20, 2015 – Introduced by Representatives MACCO, JAGLER, BALLWEG, BERNIER, E. BROOKS, CZAJA, GANNON, HEATON, JACQUE, JARCHOW, KAPENGA, KATZMA, KITCHENS, KNODL, KNUDSON, KRUG, KULP, T. LARSON, LOUDENBECK, MURPHY, MURSAU, A. OTT, PETERSEN, PETRYK, QUINN, ROHRKASTE, RIPP, SPIROS, STEFFEN, TAUCHEN, THIESFELDT, VORPAGEL, WEATHERSTON, BROSTOFF, GOYKE, SINICKI, SPREITZER, STUCK and SUBECK, cosponsored by Senators MARKLEIN, ROTH, GUDEX, HARSDDORF, PETROWSKI, COWLES, WANGGAARD, HARRIS DODD, C. LARSON, LASSA and WIRCH. Referred to Committee on Ways and Means.

AUTHORS SUBJECT TO CHANGE

1 **AN ACT** *to create* 16.643, 71.05 (6) (a) 27., 71.05 (6) (a) 28., 71.05 (6) (b) 52. and
2 71.07 (5) (a) 9. of the statutes; **relating to:** tax-exempt accounts for qualified
3 expenses incurred by individuals with disabilities and granting rule-making
4 authority.

Analysis by the Legislative Reference Bureau

Under current federal law, states may create a qualified Achieving a Better Life Experience (ABLE) program under which an individual may establish a tax-exempt savings account to pay for qualified expenses, such as education, housing, and transportation costs, for a beneficiary who is an individual with disabilities, as defined under federal law. The savings accounts are based on, and are similar to, Internal Revenue Code, section 529, college savings programs.

This bill authorizes the creation of ABLE accounts in this state. Under the bill, the Department of Administration (DOA) is required to ensure that accounts set up in this state meet all federal requirements, and DOA must implement and administer the program as specified under federal law.

Under the bill, an account owner is the beneficiary of the account unless the beneficiary is a minor or incapable of handling his or her financial affairs, in which case the beneficiary's parent or guardian is the account owner. Generally, an account owner may establish an account at a financial institution and may change the beneficiary to another family member who must be an eligible individual under federal law. The maximum amount that may be contributed to an account for a particular beneficiary each year is tied to federal law, and is currently \$14,000, and

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the maximum total amount of contributions that may be made to such an account for that beneficiary is tied to the maximum contribution limit of Edvest, Wisconsin's 529 plan. The current limit is \$330,000. If a beneficiary incurs costs for qualified expenses, the financial institution must pay the expenses if there are sufficient funds in the account.

Any gain that accumulates in the account is exempt from taxation, and amounts contributed to the account, subject to the annual and lifetime contribution limits, are tax deductible. In addition, any assets accumulated in the account may not be used to determine a beneficiary's eligibility for various state programs, such as long-term care programs and the family care partnership program. Upon termination of an account, any amounts left in the account are subject to recovery by the state to reimburse the state for payments the state made for medical assistance and other public assistance programs that benefitted the beneficiary. This method of recovery is similar to a current law provision for recovery of state-paid public assistance payments.

Because this bill relates to an exemption from state or local taxes, it may be referred to the Joint Survey Committee on Tax Exemptions for a report to be printed as an appendix to the bill.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 16.643 of the statutes is created to read:

2 **16.643 Support accounts for individuals with disabilities. (1)**

3 DEFINITIONS. In this section:

4 (a) "Account owner" means an individual who establishes, and owns, an
5 account under this section and who is one of the following:

6 1. The beneficiary of the account.

7 2. If the beneficiary is a minor or otherwise incapable of handling his or her
8 financial affairs, the parent or guardian of the beneficiary.

9 (b) "Beneficiary" means an eligible individual for whom an account is
10 established under this section.

11 (c) "Eligible individual" has the meaning given in 26 USC 529A.

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1 (d) "Financial institution" means any bank, savings bank, savings and loan
2 association, or credit union that is authorized to do business under state or federal
3 laws relating to financial institutions.

4 (e) "Qualified expenses" has the meaning given for "qualified disability
5 expenses" under 26 USC 529A.

6 **(2) DUTIES OF THE DEPARTMENT.** The department shall do all of the following:

7 (a) Ensure that an account established under this section meets the
8 requirements of a qualified ABLE program under 26 USC 529A.

9 (b) Promulgate rules to implement and administer this section.

10 **(3) ACCOUNT OWNERS; BENEFICIARIES; CONTRIBUTIONS; TERMINATION OF ACCOUNTS.**

11 (a) An account owner may do all of the following:

12 1. Establish an account under this section at a financial institution.

13 2. Change the beneficiary of an account to a family member, as defined in 26
14 USC 529A, of the previous beneficiary, if the new beneficiary is an eligible individual.

15 3. If the account owner is not the beneficiary, terminate an account upon the
16 death of a beneficiary if the account owner is unable to change the beneficiary under
17 subd. 2.

18 (b) An individual may not be the beneficiary of more than one account
19 established under this section.

20 (c) 1. The maximum total amount of annual contributions that may be made
21 to an account established under this section for a particular beneficiary is the
22 amount described in 26 USC 529A (b) (2) (B).

23 2. The maximum total amount of all annual contributions that may be made
24 to an account established under this section for a particular beneficiary is the same

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1 as the maximum aggregate contribution limit to an account described under s.
2 16.641, as set by the college program savings board.

3 3. If any person attempts to contribute to an account established under this
4 section and that contribution would exceed one or both of the limits specified in this
5 paragraph, the financial institution to which the contribution is sent shall return to
6 the prospective contributor any amount of the attempted contribution that is
7 necessary to prevent the limits from being exceeded.

8 4. If more than one person attempts to contribute to an account established
9 under this section and such contributions would exceed the limits specified in this
10 paragraph, and if the attempted contributions arrive at the financial institution on
11 the same day, the financial institution to which the contributions are sent shall
12 return to the prospective contributors any amount of the attempted contributions,
13 on a prorated basis, that is necessary to prevent the limits from being exceeded.

14 (d) Upon the death of the beneficiary who is the account owner the account shall
15 terminate, and upon the termination of an account as described in par. (a) 3., any
16 amount remaining in the account shall be recoverable by the state under s. 49.849
17 as property of a decedent is recoverable under that statute. Any amount that
18 remains in the account following such recovery under s. 49.849 shall be paid to the
19 account owner's estate. Recovery authorized under this paragraph may relate only
20 to public assistance received by a beneficiary on and after the date on which an
21 account is established under this section.

22 **(4) PAYMENT OF CLAIMS.** If a beneficiary incurs costs for qualified expenses, the
23 financial institution shall pay such expenses if sufficient funds to do so are in the
24 account.

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1 **(5) ELIGIBILITY FOR LONG-TERM CARE PROGRAMS.** A person who is determining
2 eligibility for an individual for a long-term care program under s. 46.27, 46.275, or
3 46.277, the family care benefit under s. 46.286, the family care partnership program,
4 the long-term care program defined in s. 46.2899 (1), or any other demonstration
5 program or program operated under a waiver of federal medicaid law that provides
6 long-term care benefits shall exclude from the determination any income from
7 assets accumulated in an account created under this section for a beneficiary.

8 **SECTION 2.** 71.05 (6) (a) 27. of the statutes is created to read:

9 71.05 **(6)** (a) 27. Except as provided in subd. 28., any accumulated interest,
10 dividends, or other gain that accrues from an account described under s. 16.643
11 during the taxable year in which a withdrawal occurs from such an account if any
12 amount of the money or other assets in the account is withdrawn by, or at the
13 direction of, an account owner for any reason other than the payment of qualified
14 expenses, as defined in s. 16.643 (1) (e), for the account beneficiary.

15 **SECTION 3.** 71.05 (6) (a) 28. of the statutes is created to read:

16 71.05 **(6)** (a) 28. Upon the termination of an account under s. 16.643 (3) (d), any
17 amount in the account that is returned to an account owner, or an account owner's
18 estate.

19 **SECTION 4.** 71.05 (6) (b) 52. of the statutes is created to read:

20 71.05 **(6)** (b) 52. Subject to the limits under s. 16.643 (3) (c) 1. and 2., any amount
21 that is deposited by an account owner or any other person into an account described
22 under s. 16.643, and any interest, dividends, or other gain that accrues in the account
23 if the interest, dividends, or other gain is redeposited into the account.

24 **SECTION 5.** 71.07 (5) (a) 9. of the statutes is created to read:

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1 71.07 (5) (a) 9. The amount claimed as a deduction for unreimbursed medical
2 expenses under section 213 (a) of the Internal Revenue Code to the extent that the
3 funds used to pay for the unreimbursed expenses for which the deduction was
4 claimed were withdrawn from an account described under s. 16.643.

5 **SECTION 6. Initial applicability.**

6 (1) This act first applies to taxable years beginning on January 1 of the year
7 in which this subsection takes effect, except that if this subsection takes effect after
8 July 31, this act first applies to taxable years beginning on January 1 of the year
9 following the year in which this subsection takes effect.

10

(END)