



State of Wisconsin
2023 - 2024 LEGISLATURE

LRB-3528/2
ARG&KP:skw

2023 ASSEMBLY BILL 387

September 1, 2023 - Introduced by Representatives GOEBEN, HURD, ALLEN, BINSFELD, BRANDTJEN, EDMING, GREEN, GUNDRUM, GUSTAFSON, KRUG, MAGNAFICI, MAXEY, O'CONNOR, PENTERMAN, PETERSEN, PETRYK, PLUMER, RODRIGUEZ, ROZAR, SCHMIDT, STEFFEN, SUMMERFIELD, SWEARINGEN, TRANEL, VANDERMEER and ARMSTRONG, cosponsored by Senators QUINN and CABRAL-GUEVARA. Referred to Committee on Ways and Means. Referred to Joint Survey Committee on Tax Exemptions.

AUTHORS SUBJECT TO CHANGE

1 **AN ACT** *to amend* 16.705 (1b) (d) and 16.71 (5r); and *to create* 71.05 (6) (a) 30.,
2 71.05 (6) (b) 57. and 224.55 of the statutes; **relating to:** creating a child care
3 reimbursement account program, providing an income tax subtraction for
4 certain contributions to a child care reimbursement account, and granting
5 rule-making authority.

Analysis by the Legislative Reference Bureau

This bill requires the Department of Financial Institutions to establish a child care reimbursement account program under which a parent or other legal guardian may create a tax-advantaged account to pay qualifying expenses of a qualifying child. A “qualifying child” is a dependent who is less than 13 years of age. “Qualifying expenses” are, with limitations, expenses for the care of a qualifying child or household services incurred to enable the parent or legal guardian to be gainfully employed.

Under the bill, after a parent or legal guardian (account owner) of a qualifying child has established a child care reimbursement account (account), any person, with the account owner’s permission, may contribute to the account, but the maximum total contribution per account per calendar year is \$10,000. Persons may deduct contributions to an account for state income tax purposes. A person may not establish an account if the person or the person’s spouse participates in an employer-sponsored dependent care assistance program that for federal income tax purposes excludes any amount of income used to pay dependent care expenses. Only

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an account owner may withdraw funds held in an account, and the account owner may withdraw these funds only to pay for the qualifying expenses of a qualifying child. Generally, if funds contributed to an account are not expended for qualifying expenses in the calendar year they were contributed, the funds are forfeited.

The bill requires DFI to contract with a vendor to administer the program. The program vendor may charge fees to account owners to cover the cost of administering the program and may retain any unused contributions that are forfeited at the end of the year. The contract between DFI and the vendor must require the vendor, upon request, to provide information to the Department of Revenue for purposes of verifying account contributions and withdrawals.

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.** 16.705 (1b) (d) of the statutes is amended to read:

2 16.705 **(1b)** (d) The department of financial institutions under s. 224.51 or
3 224.55.

4 **SECTION 2.** 16.71 (5r) of the statutes is amended to read:

5 16.71 **(5r)** The department shall delegate authority to the department of
6 financial institutions to enter into vendor contracts under s. 224.51 and to enter into
7 vendor contracts under s. 224.55 (3).

8 **SECTION 3.** 71.05 (6) (a) 30. of the statutes is created to read:

9 71.05 **(6)** (a) 30. For taxable years beginning after December 31, 2023, any
10 amount distributed during the taxable year from a child care reimbursement
11 account established under s. 224.55 that was not used to pay for a qualifying expense,
12 as defined in s. 224.55 (1) (d), except that this subdivision applies only to amounts
13 for which a subtraction was made under par. (b) 57.

14 **SECTION 4.** 71.05 (6) (b) 57. of the statutes is created to read:

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1 71.05 (6) (b) 57. a. For taxable years beginning after December 31, 2023, an
2 amount equal to a contribution made during the taxable year to a child care
3 reimbursement account established under s. 224.55.

4 b. The total of the subtraction made under this subdivision and any deduction
5 under section 162 of the Internal Revenue Code for contributions to a child care
6 reimbursement account established under s. 224.55 may not exceed an amount equal
7 to \$10,000 in a taxable year, or \$5,000 for an account owned by a person who is
8 married and files separately.

9 c. No subtraction may be made under this subdivision for an amount
10 distributed from a child care reimbursement account established under s. 224.55 and
11 used to claim a credit under section 21 of the Internal Revenue Code.

12 **SECTION 5.** 224.55 of the statutes is created to read:

13 **224.55 Child care reimbursement accounts. (1) DEFINITIONS.** In this
14 section:

15 (a) “Account owner” means the parent or legal guardian of a qualifying child
16 who has established a child care reimbursement account under this section.

17 (b) “Child care reimbursement account” means an account established under
18 this section.

19 (c) “Qualifying child” has the meaning given for “qualifying individual” under
20 section 21 (b) (1) (A) of the Internal Revenue Code.

21 (d) “Qualifying expenses” has the meaning given for “employment-related
22 expenses” under section 21 (b) (2) of the Internal Revenue Code.

23 **(2) PROGRAM.** (a) The department shall establish a child care reimbursement
24 account program. The program shall allow a parent or other legal guardian with a

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1 qualifying child to establish a child care reimbursement account from which
2 qualifying expenses are paid.

3 (b) Any person, with the account owner's permission, may contribute to a child
4 care reimbursement account. The maximum contribution that may be made to such
5 an account in a calendar year is \$10,000.

6 (c) Subject to par. (e), only an account owner may withdraw funds held in a child
7 care reimbursement account, and the account owner may withdraw these funds only
8 to pay for the qualifying expenses of a qualifying child.

9 (d) Subject to par. (e), any funds contributed to a child care reimbursement
10 account during a calendar year that are not expended for qualifying expenses
11 incurred by December 31 of that year are forfeited to the program vendor under sub.
12 (3) (a).

13 (e) If a qualifying child's death results in there being no qualifying child for a
14 child care reimbursement account, all of the following apply:

15 1. The account owner may direct the vendor to distribute the balance of the
16 child care reimbursement account, including principal and earnings, to those
17 persons who contributed to the account in proportion to their contributions, except
18 that contributions made by the account owner's employer shall not be so distributed.

19 2. If the vendor required the account owner to make an advance commitment
20 of contributions for the calendar year in which the death occurs, the account owner
21 may rescind this commitment and halt future contributions to the account.

22 (f) No person may establish a child care reimbursement account or contribute
23 to the person's child care reimbursement account if, for the same taxable year, any
24 amount is excluded from the income of the person or the person's spouse under
25 section 129 of the Internal Revenue Code.

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1 **(3) PROGRAM VENDOR.** (a) The department shall contract with a vendor to
2 administer the program under this section. The program vendor may charge fees to
3 account owners to cover the cost of administering the program and may retain any
4 funds forfeited under sub. (2) (d).

5 (b) The department shall determine the factors to be considered in selecting a
6 vendor to administer the child care reimbursement account program. Using the
7 process under s. 16.75 (2m), the department shall solicit from nongovernmental
8 persons competitive sealed proposals to serve as vendor of the program. The
9 department shall select the vendor on the basis of factors determined by the
10 department and shall enter into a contract with the vendor.

11 (c) The contract between the department and the vendor under this subsection
12 shall require the vendor, upon request, to provide information to the department of
13 revenue for purposes of verifying contributions and withdrawals from child care
14 reimbursement accounts.

15 **(4) RULES.** The department may promulgate rules to implement and
16 administer this section.

17 **SECTION 6. Effective date.**

18 (1) This act takes effect on the first day of the 7th month beginning after
19 publication.

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(END)