State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-2295/1
MES:wlj

2015 SENATE BILL 165

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

AN ACT ***to create*** 16.643, 71.05 (6) (a) 27., 71.05 (6) (a) 28., 71.05 (6) (b) 52. and 71.07 (5) (a) 9. of the statutes; **relating to:** tax-exempt accounts for qualified expenses incurred by individuals with disabilities and granting rule-making 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 to ensure that amounts deposited into an account are used only to pay for qualified expenses, as defined under federal law.

Under the bill, an individual may establish an account at a financial institution, contribute to an account, authorize any other person to contribute to such an account, and 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 $14,000, and the maximum total amount of contributions that may be made to such an account for that beneficiary is $100,000. If a beneficiary or account owner incurs costs for qualified expenses and submits a claim to the financial institution at which the account has been established, the financial institution must pay the claim 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.

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:

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

16.643 Support accounts for individuals with disabilities. (1) DEFINITIONS. In this section:

(a) "Account owner" means an individual who establishes, and owns, an account under this section.

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

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

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

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

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

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

(b) Promulgate rules to implement and administer this section and ensure that amounts deposited into an account and any interest, dividends, or other gain that accrues on amounts deposited into the account may be used only to pay qualified expenses of a beneficiary.

(c) Prepare and distribute reimbursement forms for claims that are submitted as described in sub. (4).

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

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

1. Establish an account under this section, at a financial institution, for a beneficiary.

2. Contribute to an account or authorize any other person to contribute to the account.

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

4. Terminate an account upon the death of a beneficiary if the account owner is unable to change the beneficiary under subd. 3.

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

(c) 1. The maximum total amount of annual contributions that may be made by an account owner, and all persons authorized by the account owner, to an account that is established under this section for a particular beneficiary is $14,000.

2. The maximum total amount of all annual contributions that may be made by an account owner, and all persons authorized by the account owner, to an account that is established under this section for a particular beneficiary is $100,000.

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

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

(d) Upon the termination of an account as described in par. (a) 4. or, if the account owner does not terminate the account, upon the death of all beneficiaries of an account, the account shall terminate and any amount remaining in the account shall be returned to the account owner, if he or she is still alive, or to his or her estate.

(4) PAYMENT OF CLAIMS. If a beneficiary or account owner incurs costs for qualified expenses, the account owner may submit a form, created by the department, that summarizes the costs incurred, and payment and beneficiary information, along with a copy of the bill, or a copy of the receipt if the account owner has paid for the qualified expenses, to the financial institution at which the account created under this section is established. The financial institution shall pay the bill, or reimburse the account owner, if sufficient funds to do so are in the account.

(5) ELIGIBILITY FOR LONG–TERM CARE PROGRAMS. A person who is determining eligibility for an individual for a long–term care program under s. 46.27, 46.275, or 46.277, the family care benefit under s. 46.286, the family care partnership program, or the long–term care program defined in s. 46.2899 (1) shall exclude from the determination any income from assets accumulated in an account created under this section for a beneficiary.

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

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

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

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

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

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

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

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

SECTION 6. Initial applicability.

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

(END)