



State of Wisconsin
2015 - 2016 LEGISLATURE

LRBs0411/1
MES&GMM:ahe/emw/wlj

**SENATE SUBSTITUTE AMENDMENT 1,
TO ASSEMBLY BILL 731**

March 15, 2016 - Offered by Senators LASSA, C. LARSON, SHILLING, L. TAYLOR, RISSER,
ERPENBACH, MILLER, RINGHAND, WIRCH, HANSEN and BEWLEY.

1 **AN ACT to repeal** 16.643 (1) (a) 1. and 16.643 (1) (a) 2.; **to renumber and amend**
2 16.643 (1) (a) (intro.); **to amend** 16.642 (title), 16.643 (title), 16.643 (1) (b),
3 16.643 (1) (c), 16.643 (1) (d), 16.643 (1) (e), 16.643 (3) (a) 2., 16.643 (3) (d), 71.05
4 (6) (a) 27., 71.05 (6) (a) 28., 71.05 (6) (b) 52. and 71.07 (5) (a) 9.; **to repeal and**
5 **recreate** 16.643 (3) (a) 3.; and **to create** 15.105 (25p), 16.257, 16.643 (1) (ag),
6 16.643 (1) (bm), 16.643 (2m), 16.644, 20.505 (1) (am), 20.505 (1) (tr), 20.505 (1)
7 (tt), 25.14 (1) (a) 20., 25.17 (1) (ab), 25.17 (2) (fm), 25.86 and 71.98 (7) of the
8 statutes; **relating to:** changing the authority to create ABLE accounts in this
9 state, creating tax benefits for contributions to ABLE accounts in other states,
10 updating references to the Internal Revenue Code, and making appropriations.

Analysis by the Legislative Reference Bureau

This substitute amendment makes changes to the laws in this state related to the federal Achieving a Better Life Experience Act of 2014. Under federal law, an eligible resident of this state may participate in a qualified ABLE program of another

state and establish an ABLE account. The proceeds of an ABLE account may be used 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.

2015 Wisconsin Act 55, the state budget bill, authorized the creation of ABLE accounts in this state. Generally, contributions to such an account could be subtracted from the contributor's federal adjusted gross income in the calculation of the taxpayer's Wisconsin taxes. The substitute amendment makes significant changes to current law and does all of the following:

1. Creates an ABLE savings program board to perform certain functions, including a) ensuring that the ABLE savings program meets the requirements of a qualified ABLE program under the Internal Revenue Code and all other legal requirements applicable to the program; b) establishing investment guidelines for ABLE savings accounts; and c) seeking rulings and guidance from federal agencies to ensure the proper implementation and administration of the ABLE savings program.

2. Expands the types of financial institutions at which an individual may establish an ABLE savings account to include investment companies, investment trusts, trust companies, insurance companies, insurance associations, and other persons carrying on a banking or insurance business. Current law limits those institutions to banks, savings and loan associations, and credit unions.

3. Provides that the owner and beneficiary of an ABLE savings account are the same person. Current law provides that when the beneficiary is a minor or is otherwise incapable of handling his or her financial affairs, the account owner is the beneficiary's parent or guardian.

4. Requires the Department of Administration to select a nongovernmental person as a vendor to manage the ABLE savings program and requires the vendor to, among other things, reimburse the state for all administrative costs that the state incurs for the program.

5. Establishes a separate, nonlapsible ABLE savings program trust fund, consisting of all revenues from enrollment fees for contributions to ABLE savings accounts and from distributions and fees paid by the vendor of the program.

6. Creates a general purpose revenue appropriation to DOA for the administrative expenses of the ABLE savings program, appropriates \$500,000 in fiscal year 2016-17 for that appropriation, authorizes 2.0 full-time equivalent positions for DOA for the purpose of administering that program, and requires repayment to the general fund from the ABLE savings program trust fund of the amount expended from that appropriation when the secretary of administration determines that moneys in the trust fund are sufficient to make that repayment.

Also under the substitute amendment, ABLE accounts in this state and contributions to another state's ABLE account continue to be tax-advantaged. The

substitute amendment also adopts for Wisconsin purposes certain parts of the Internal Revenue Code related to ABLE accounts.

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

1 **SECTION 1a.** 15.105 (25p) of the statutes is created to read:

2 15.105 **(25p)** ABLE SAVINGS PROGRAM BOARD. There is created in the department
3 of administration an ABLE savings program board. The board shall consist of all of
4 the following members:

5 (a) The secretary of administration or his or her designee.

6 (b) The chairperson of the investment board or his or her designee.

7 (c) A representative of the board for people with developmental disabilities.

8 (d) Four other members, appointed for 4-year terms.

9 **SECTION 1b.** 16.257 of the statutes is created to read:

10 **16.257 ABLE savings program vendor.** (1) The department shall
11 determine the factors to be considered in selecting a vendor of the ABLE savings
12 program under s. 16.643, which factors shall include all of the following:

13 (a) The person's ability to satisfy record-keeping and reporting requirements.

14 (b) The fees, if any, that the person proposes to charge account owners.

15 (c) The person's plan for promoting the ABLE savings program and the
16 investment that the person is willing to make to promote the program.

17 (d) The minimum initial contribution or minimum contributions that the
18 person will require.

19 (e) The ability and willingness of the person to accept electronic contributions.

20 (f) The ability of the person to augment the ABLE savings program with
21 additional, beneficial services related to the program.

1 **(2)** The department shall solicit competitive sealed proposals under s. 16.75
2 (2m) from nongovernmental persons to serve as vendor of the ABLE savings
3 program. The department shall select the vendor based upon factors determined by
4 the department under sub. (1).

5 **(3)** The contract between the department and the vendor shall ensure all of the
6 following:

7 (a) That the vendor reimburses the state for all administrative costs that the
8 state incurs for the ABLE savings program.

9 (b) That a firm of certified public accountants selected by the vendor annually
10 audits the ABLE savings program and provides a copy of the audit to the ABLE
11 savings program board.

12 (c) That each account owner receives a quarterly statement that identifies the
13 contributions to the owner's ABLE savings account during the preceding quarter, the
14 total contributions to and the value of the owner's ABLE savings account through the
15 end of the preceding quarter, and any distributions made during the preceding
16 quarter.

17 (d) That the vendor communicate to the beneficiary and account owner the
18 provisions of s. 16.643 (3) to (5).

19 **SECTION 1c.** 16.642 (title) of the statutes is amended to read:

20 **16.642** (title) **~~Repayment~~ College savings program; repayment to the**
21 **general fund.**

22 **SECTION 1d.** 16.643 (title) of the statutes, as created by 2015 Wisconsin Act 55,
23 is amended to read:

24 **16.643** (title) **~~Support accounts~~ ABLE savings program for individuals**
25 **with disabilities.**

1 **SECTION 1e.** 16.643 (1) (a) (intro.) of the statutes, as created by 2015 Wisconsin
2 Act 55, is renumbered 16.643 (1) (am) and amended to read:

3 16.643 (1) (am) “Account owner” means an individual who establishes, and
4 owns, an account under this section ~~and who is one of the following:~~

5 **SECTION 1f.** 16.643 (1) (a) 1. of the statutes, as created by 2015 Wisconsin Act
6 55, is repealed.

7 **SECTION 1g.** 16.643 (1) (a) 2. of the statutes, as created by 2015 Wisconsin Act
8 55, is repealed.

9 **SECTION 1h.** 16.643 (1) (ag) of the statutes is created to read:

10 16.643 (1) (ag) “ABLE savings program” has the meaning given for “qualified
11 ABLE program” under 26 USC 529A (b) (1).

12 **SECTION 1i.** 16.643 (1) (b) of the statutes, as created by 2015 Wisconsin Act 55,
13 is amended to read:

14 16.643 (1) (b) “Beneficiary” means an eligible individual ~~for whom~~ who has
15 established an account ~~is established~~ under this section.

16 **SECTION 1j.** 16.643 (1) (bm) of the statutes is created to read:

17 16.643 (1) (bm) “Board” means the ABLE savings program board.

18 **SECTION 1k.** 16.643 (1) (c) of the statutes, as created by 2015 Wisconsin Act 55,
19 is amended to read:

20 16.643 (1) (c) “Eligible individual” has the meaning given in 26 USC 529A (e)
21 (1).

22 **SECTION 1L.** 16.643 (1) (d) of the statutes, as created by 2015 Wisconsin Act 55,
23 is amended to read:

24 16.643 (1) (d) “Financial institution” means any bank, savings bank, savings
25 and loan association, ~~or~~ credit union, investment company, investment trust, trust

1 company, insurance company, insurance association, or other person carrying on a
2 banking or insurance business that is authorized to do business under state or
3 federal laws relating to financial institutions.

4 **SECTION 1m.** 16.643 (1) (e) of the statutes, as created by 2015 Wisconsin Act
5 55, is amended to read:

6 16.643 (1) (e) “Qualified expenses” has the meaning given for “qualified
7 disability expenses” under 26 USC 529A (e) (5).

8 **SECTION 1n.** 16.643 (2m) of the statutes is created to read:

9 16.643 (2m) DUTIES OF THE BOARD. The board shall do all of the following:

10 (a) Ensure that the program under this section meets the requirements of a
11 qualified ABLE program under 26 USC 529A and all other requirements applicable
12 to the program under any other state or federal law, rule, or regulation.

13 (b) Establish investment guidelines for contributions to and the earnings on
14 accounts established under this section.

15 (c) Seek rulings and guidance from the U.S. department of the treasury, the
16 internal revenue service, the securities and exchange commission, and the social
17 security administration to ensure the proper implementation and administration of
18 the program under this section.

19 (d) Ensure that if the department changes vendors the balances of accounts
20 established under this section are promptly transferred into investment
21 instruments as similar to the original investment instruments as possible.

22 (e) Keep personal and financial information pertaining to a beneficiary closed
23 to the public, except that the board may release to the appropriate state agency
24 information necessary in determining a beneficiary’s eligibility for any of the
25 long-term care programs specified under sub. (5).

1 **SECTION 1o.** 16.643 (3) (a) 2. of the statutes, as created by 2015 Wisconsin Act
2 55, is amended to read:

3 16.643 (3) (a) 2. Change the beneficiary of an account to a member of the family
4 ~~member~~, as defined in 26 USC 529A (e) (4), of the previous beneficiary, if the new
5 beneficiary is an eligible individual.

6 **SECTION 1p.** 16.643 (3) (a) 3. of the statutes, as created by 2015 Wisconsin Act
7 55, is repealed and recreated to read:

8 16.643 (3) (a) 3. Directly or indirectly, direct the investment of any
9 contributions to the account owner's account and any earning on those contributions
10 no more than 2 times in any calendar year.

11 **SECTION 1q.** 16.643 (3) (d) of the statutes, as created by 2015 Wisconsin Act 55,
12 is amended to read:

13 16.643 (3) (d) Upon the death of ~~the beneficiary who is the account owner the~~
14 account shall terminate, and upon the termination of an account as described in par.
15 ~~(a) 3.~~, any amount remaining in the account shall be recoverable by the state under
16 s. 49.849 as property of a decedent is recoverable under that statute. Any amount
17 that remains in the account following such recovery under s. 49.849 shall be paid to
18 the account owner's estate. Recovery authorized under this paragraph may relate
19 only to public assistance received by a beneficiary an account owner on and after the
20 date on which an account is established ~~under this section.~~

21 **SECTION 1r.** 16.644 of the statutes is created to read:

22 **16.644 ABLE savings program; repayment to the general fund.** (1) The
23 secretary shall transfer from the ABLE savings program trust fund to the general
24 fund an amount equal to the amount expended from the appropriation under s.
25 20.505 (1) (am) when the secretary determines that moneys in that trust fund are

1 sufficient to make the transfer. The secretary may make the transfer in
 2 installments.

3 (2) Annually, by June 1, the secretary shall submit a report to the joint
 4 committee on finance on the amount available for repayment under sub. (1), the
 5 amount repaid under sub. (1), and the outstanding balance under sub. (1).

6 **SECTION 1s.** 20.005 (3) (schedule) of the statutes: at the appropriate place,
 7 insert the following amounts for the purposes indicated:

8 **2015-16 2016-17**

9 **20.505 Administration, Department of**

10 (1) SUPERVISION AND MANAGEMENT

11 (am) Administrative expenses; ABLE

savings program	GPR	A	-0-	500,000
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13 (tt) Administrative expenses; ABLE

savings program	SEG	A	-0-	-0-
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15 **SECTION 1t.** 20.505 (1) (am) of the statutes is created to read:

16 20.505 (1) (am) *Administrative expenses; ABLE savings program.* The
 17 amounts in the schedule for the administrative expenses of the ABLE savings
 18 program under s. 16.643, including the expense of promoting the program.

19 **SECTION 1u.** 20.505 (1) (tr) of the statutes is created to read:

20 20.505 (1) (tr) *Payment of qualified disability expenses; ABLE savings program*
 21 *trust fund.* From the ABLE savings program trust fund, a sum sufficient for the
 22 payment of qualified disability expenses under s. 16.643 (4).

23 **SECTION 1v.** 20.505 (1) (tt) of the statutes is created to read:

1 20.505 (1) (tt) *Administrative expenses; ABLE savings program.* From the
2 ABLE savings program trust fund, the amounts in the schedule for the
3 administrative expenses of the ABLE savings program under s. 16.643, including the
4 expense of promoting the program.

5 **SECTION 1w.** 25.14 (1) (a) 20. of the statutes is created to read:

6 25.14 (1) (a) 20. The ABLE savings program trust fund.

7 **SECTION 1x.** 25.17 (1) (ab) of the statutes is created to read:

8 25.17 (1) (ab) ABLE savings program trust fund (s. 25.86), but subject to sub.
9 (2) (fm).

10 **SECTION 1y.** 25.17 (2) (fm) of the statutes is created to read:

11 25.17 (2) (fm) Invest the moneys belonging to the ABLE savings program trust
12 fund in a manner consistent with the guidelines established under s. 16.643 (2m) (b),
13 unless the moneys are under the management and control of a vendor selected under
14 s. 16.257. In making investments under this paragraph, the investment board shall
15 accept any reasonable terms and conditions that the ABLE savings program board
16 specifies and is relieved of any obligations relevant to prudent investment of the
17 fund, including the standard of responsibility under s. 25.15 (2).

18 **SECTION 1z.** 25.86 of the statutes is created to read:

19 **25.86 ABLE savings program trust fund.** There is established a separate
20 nonlapsible trust fund designated as the ABLE savings program trust fund,
21 consisting of all revenue from enrollment fees for and contributions to accounts
22 established under s. 16.643 and from distributions and fees paid by the vendor under
23 s. 16.257 (3).

24 **SECTION 2.** 71.05 (6) (a) 27. of the statutes, as created by 2015 Wisconsin Act
25 55, is amended to read:

1 71.05 (6) (a) 27. Except as provided in subd. 28., to the extent that an amount
2 is not included in federal adjusted gross income, any accumulated interest,
3 dividends, or other gain that accrues is withdrawn from an account described under
4 s. 16.643 or any amount withdrawn from a qualified ABLE program described under
5 section 529A (b) (1) of the Internal Revenue Code, during the taxable year in which
6 a withdrawal occurs ~~from such an account if any amount of the money or other assets~~
7 ~~in the account is withdrawn by, or at the direction of, an account owner~~ for any reason
8 other than the payment of qualified disability expenses, as defined in s. 16.643 (1)
9 (e) section 529A (e) (5) of the Internal Revenue Code, for the account beneficiary.

10 **SECTION 3.** 71.05 (6) (a) 28. of the statutes, as created by 2015 Wisconsin Act
11 55, is amended to read:

12 71.05 (6) (a) 28. Upon the termination of an account as described under s.
13 16.643 (3) (d), or an account that is part of a qualified ABLE program under section
14 529A of the Internal Revenue Code, any amount in the account that is returned to
15 an account owner, or an account owner's estate.

16 **SECTION 4.** 71.05 (6) (b) 52. of the statutes, as created by 2015 Wisconsin Act
17 55, is amended to read:

18 71.05 (6) (b) 52. Subject to the limits under s. 16.643 (3) (c) 1. and 2. or section
19 529A (b) (2) of the Internal Revenue Code, any amount that is deposited by an
20 account owner or any other person for the taxable year in which the contribution is
21 made into an ABLE account described under s. 16.643 or section 529A (b) (1) of the
22 Internal Revenue Code, and any interest, dividends, or other gain that accrues in the
23 account if the interest, dividends, or other gain is redeposited into the account. The
24 subtraction under this subdivision does not apply to rollover contributions or
25 transfers.

1 **SECTION 5.** 71.07 (5) (a) 9. of the statutes, as created by 2015 Wisconsin Act 55,
2 is amended to read:

3 71.07 (5) (a) 9. The amount claimed as a deduction for unreimbursed medical
4 expenses under section 213 (a) of the Internal Revenue Code to the extent that the
5 funds used to pay for the unreimbursed expenses for which the deduction was
6 claimed were withdrawn from an ABLE account described under s. 16.643 or section
7 529A (b) (1) of the Internal Revenue Code.

8 **SECTION 5e.** 71.98 (7) of the statutes is created to read:

9 71.98 (7) ABLE ACCOUNTS. For taxable years beginning after December 31,
10 2015, section 303 of Division Q of P.L. 114-113, related to state of residence changes
11 that relate to qualified ABLE accounts.

12 **SECTION 5m. Nonstatutory provisions.**

13 (1) ABLE SAVINGS PROGRAM BOARD; INITIAL TERMS. Notwithstanding section
14 15.105 (25p) (d) of the statutes, as created by this act, of the initial members
15 appointed to the ABLE savings program board under section 15.105 (25p) (d) of the
16 statutes, as created by this act, the term of one of those members expires on July 1,
17 2019, the term of one of those members expires on July 1, 2018, and the term of one
18 of those members expires on July 1, 2017.

19 (2) ABLE SAVINGS PROGRAM BOARD; POSITION AUTHORIZATIONS. The authorized
20 FTE positions for the department of administration are increased by 2.0 GPR
21 positions on July 1, 2016, to be funded from the appropriation under section 20.505
22 (1) (am) of the statutes, as created by this act, for the purpose of administering the
23 ABLE savings program.

24 **SECTION 6. Initial applicability.**

