

2015 DRAFTING REQUEST

Bill

Received: 2/25/2015 Received By: mshovers
Wanted: As time permits Same as LRB:
For: John Macco (608) 266-0485 By/Representing: Rep. Macco
May Contact: Drafter: mshovers
Subject: Tax, Individual - dedct/sbtrct Addl. Drafters:
Extra Copies:

Submit via email: YES
Requester's email: Rep.Macco@legis.wisconsin.gov
Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Subtract modification; create tax advantaged accounts to support persons with disabilities; based on EdVest

Instructions:

See attached. Create state program based on IRC's 529A plans.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mshovers 3/5/2015			_____			
/P1	mshovers 4/22/2015	wjackson 3/5/2015	jmurphy 3/5/2015	_____	srose 3/5/2015		State Tax
/1	mshovers 4/29/2015	wjackson 4/22/2015		_____	lparisi 4/22/2015	lparisi 4/22/2015	State Tax
/2	mshovers	wjackson		_____	sbasford	sbasford	State

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	5/1/2015	4/30/2015		_____	4/30/2015	4/30/2015	Tax
/3		wjackson 5/1/2015		_____	lparisi 5/1/2015		State Tax
/4		wjackson 5/1/2015		_____	lparisi 5/1/2015	lparisi 5/1/2015	State Tax

FE Sent For:

4/30/2015 [REDACTED]

<END>

(1/2")

old version

05-20-2015
(1/4")

per MES
(see attached)

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/2		wjackson		_____	sbasford	sbasford	State

13 MES 5/1/15

Vers. Drafted

Reviewed
4/30/2015

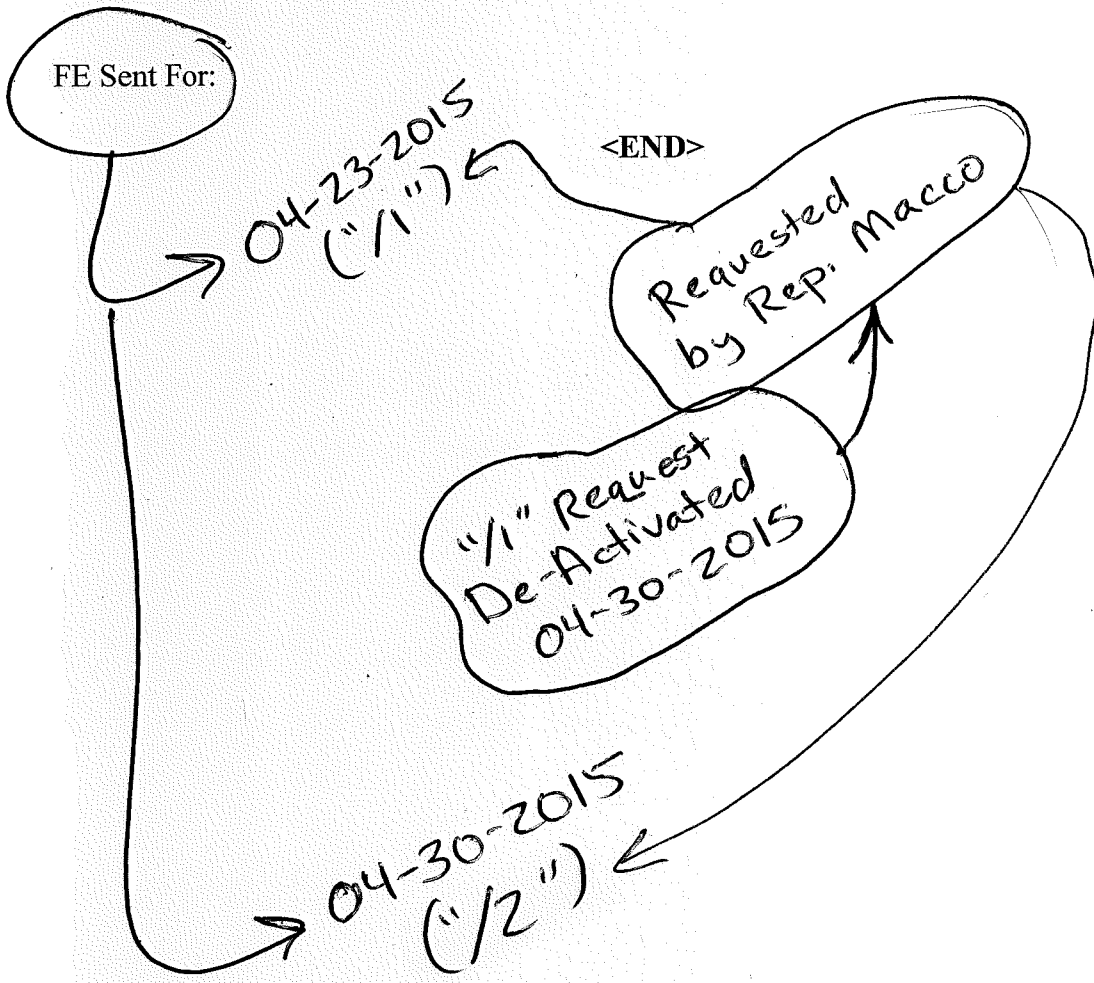
Typed

Proofed

Submitted
4/30/2015

Jacketed
4/30/2015

Required
Tax



- base on 529
- 1) \$14,000 / yr / beneficiaries - total cap excess back
bank sends
 - 2) anybody may contribute - donor owes
beneficiary
 - 3)

make sure their assets don't count against
family one, THIS, these acts -
beneficiary can't be done

- 4) max contributions level is \$100,000
act value is unlt'd, but contrib are capped
{ 5 yr component in 529? 5 yr x 14K = \$70K

5) no specific mechanism - same as 529s

6) keep consistent w/ fed law - -

no penalty - treat it as ord. income
it → taxable

7) all \$ becomes taxable thru ord. income

could roll it over to another disabled person
if family has another qualified family member

bed law enacted 12/10/14

529A in
NS code

set up accounts like 529 -

~~than~~ like Ed Vest ABL E account -

administered like Ed Vest -

Key - no expir at age 30

Beneficiary can't be an owner

Achieving a Better Life Experience Act of 2014 or the ABLE Act of 2014 - **Title I: Qualified ABLE Programs** - (Sec. 101) States as the purposes of this title to: (1) encourage and assist individuals and families in saving private funds for the purpose of supporting individuals with disabilities to maintain health, independence, and quality of life; and (2) provide secure funding for disability-related expenses of beneficiaries with disabilities that will supplement, but not supplant, benefits provided through private insurance, title XVI (Supplemental Security Income) and title XIX (Medicaid) of the Social Security Act, the beneficiary's employment, and other sources.

(Sec. 102) Amends the Internal Revenue Code to exempt from taxation a qualified ABLE program established and maintained by a state, or by an agency or instrumentality of the state, to pay the qualified disability expenses related to the blindness or disability of a program beneficiary, including expenses for education, housing, transportation, employment training and support, assistive technology and personal support services, health, prevention and wellness, financial management and administrative services, legal fees, and expenses for oversight and monitoring, funeral and burial expenses.

Requires officers and employees who have control of the qualified ABLE program to make reports as required by the Secretary of the Treasury. Imposes an additional 10% tax on individuals who do not use distributions from an ABLE account for disability expenses. Subjects ABLE accounts to the penalty tax for excess contributions and for failure to file required reports.

(Sec. 103) Requires amounts in ABLE accounts to be disregarded in determining eligibility for means-tested federal programs, except distributions for housing expenses under the supplemental security income program and for amounts in an ABLE account exceeding \$100,000. Suspends the payment of supplemental security income benefits to an individual during any period in which such individual has excess resources in an ABLE account, but does not suspend or affect the Medicaid eligibility of such individual.

(Sec. 104) Amends the bankruptcy code to exclude funds placed in an account of a qualified ABLE program from a bankruptcy estate, but only if: (1) the designated beneficiary of such account was a child, stepchild, grandchild, or step grandchild of the debtor; (2) such funds are not pledged or promised to any entity in connection with any extension of credit and are not excess contributions to an ABLE account; and (3) such funds do not exceed \$6,225 during a specified time period.

(Sec. 105) Amends the Internal Revenue Code to permit contributors to or beneficiaries of a qualified tuition program (529 program) to direct the investment of contributions to a 529 program (or any earnings thereon) up to two times in any calendar year (currently, no investment direction is allowed).

Title II: Offsets- (Sec. 201) Amends title II (Old Age, Survivors, and Disability Insurance Benefits) of the Social Security Act to change the age at which disability benefits are no longer subject to reductions from 65 to the normal retirement age range as set forth in such Act.

(Sec. 202) Amends title XVIII (Medicare) of the Social Security Act to: (1) accelerate the beginning date for adjustments of relative value targets for misvalued services in Medicare physician fee schedules from 2017 to 2016; and (2) treat items and services for vacuum erection systems furnished on and after July 1, 2015, in the same manner as erectile dysfunction drugs for purposes of defining covered drugs under Medicare part D.

(Sec. 204) Amends the American Taxpayer Relief Act of 2012 to delay to January 1, 2025,

the implementation of oral-only end stage renal disease (ESRD)-related drugs in the ESRD prospective payment system.

(Sec. 205) Amends the Internal Revenue Code to increase the Inland Waterways Trust Fund financing rate to 29 cents per gallon for fuel used after March 31, 2015.

(Sec. 206) Amends the Internal Revenue Code to treat Internal Revenue Service (IRS)-certified professional employer organizations (PEOs) as employers for employment tax purposes (thus allowing such PEOs to pay wages and collect and remit payroll taxes on behalf of an employer).

Sets forth IRS certification requirements for PEOs, including independent financial review and reporting requirements. Requires a PEO, each year, to post a bond equal to the greater of 5% of the PEO's liability during the preceding calendar year (not exceeding \$1 million) or \$50,000.

(Sec. 207) Amends the Internal Revenue Code to exclude dividends received by a U.S. shareholder from a controlled foreign corporation from the definition of "personal holding company income" for purposes of personal holding company taxation.

(Sec. 208) Amends the Internal Revenue Code to require an annual inflation adjustment to tax penalty amounts for: (1) failure to file a tax return or pay tax, (2) failure to file certain information returns or registration statements, (3) noncompliance of tax return preparers, (4) failure to file partnership or S corporation returns, and (5) failure to file correct information returns or correct payee statements.

(Sec. 209) Amends the Internal Revenue Code to increase from 15 to 30% the rate of the continuous levy on payments due to a Medicare provider or supplier for overdue taxes.



State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-1861/P1

MES...l:...
6 wy

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

IN 3/5
today,
if possible

1 **AN ACT ...; relating to:** tax-exempt accounts for qualified expenses incurred by
2 individuals with disabilities and granting rule-making authority.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

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:

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

4 **16.643 Support accounts for individuals with disabilities. (1)**

5 **DEFINITIONS.** In this section:

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

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

3 (c) "Eligible individual" has the meaning given ^{21M} under 26 USC 529A.

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

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

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

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

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

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

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

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

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

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

1 3. Change the beneficiary of an account to a family member, as defined under^{9 in}
2 26 USC 529A, of the previous beneficiary, if the new beneficiary is an eligible
3 individual.

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

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

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

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

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

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

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

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

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

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

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

20 71.05 (6) (a) 26^{e 28}. Upon the termination of an account under s. 16.643 (3) (d), any
21 amount in the account that is returned to an account owner, or an account owner's
22 estate.

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

24 71.05 (6) (b) 52. Subject to the limits under s. 16.643 (3) (c) 1. and 2., any amount
25 that is deposited by an account owner or any other authorized person into an account

1 described under s. 16.643, and any interest, dividends, or other gain that accrues in
2 the account if the interest, dividends, or other gain is redeposited into the account.

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

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

8 **SECTION 6. Initial applicability.**

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

13

(END)

2015-2016 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1861/TDins
TJD:.....

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2
3
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5
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7
8

INSERT 4-11

(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 ^{over} assets accumulated in an account created under ~~s. 46.2899~~ ^{this section} for ~~that individual~~ ^{a beneficiary}.

END INSERT

Shovers, Marc

From: Joniaux, Benjamin
Sent: Tuesday, April 21, 2015 3:50 PM
To: Shovers, Marc; Coenen, Scott
Subject: Drafting Authority

Marc,

I wanted to let you know that Rep. Macco approved the language as-is on the ABLE bill so we're ready to go on it.

Also, I wanted to give Scott Coenen drafting authority on the bill.

Let me know if you have any additional questions,

Ben

Ben Joniaux
Legislative Aide
Office of Representative John Macco
22 West, State Capitol
Phone: 608-266-0485



State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-1861/P1

MES:wlj/jm

stays

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

today

repen

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

(This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.)

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.

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7 DEFINITIONS. In this section:

INS
ANL

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 3. If any person attempts to contribute to an account established under this
14 section and that contribution would exceed one or both of the limits specified in this
15 paragraph, the financial institution to which the contribution is sent shall return to
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3 (4) PAYMENT OF CLAIMS. If a beneficiary or account owner incurs costs for
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5 department, that summarizes the costs incurred, and payment and beneficiary
6 information, along with a copy of the bill, or a copy of the receipt if the account owner
7 has paid for the qualified expenses, to the financial institution at which the account
8 created under this section is established. The financial institution shall pay the bill,
9 or reimburse the account owner, if sufficient funds to do so are in the account.

10 (5) ELIGIBILITY FOR LONG-TERM CARE PROGRAMS. A person who is determining
11 eligibility for an individual for a long-term care program under s. 46.27, 46.275, or
12 46.277, the family care benefit under s. 46.286, the family care partnership program,
13 or the long-term care program defined in s. 46.2899 (1) shall exclude from the
14 determination any income from assets accumulated in an account created under this
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19 during the taxable year in which a withdrawal occurs from such an account if any
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12 funds used to pay for the unreimbursed expenses for which the deduction was
13 claimed were withdrawn from an account described under s. 16.643.

14 **SECTION 6. Initial applicability.**

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

19 (END)

2015-2016 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1861/lins
MES:wj:jm

INS ANL

Under current federal law, states may create a qualified ^(ABLE) ABL~~E~~ (Achieving a Better Life Experience) 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. These accounts are based on, and are similar to, Internal Revenue Code section 529 college savings programs.

This bill authorizes the creation of ABL~~E~~ 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 the 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 submit 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. ^{such} ^{an}

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 a long-term care programs and the family care partnership program.

Parisi, Lori

From: Joniaux, Benjamin
Sent: Wednesday, April 22, 2015 4:19 PM
To: LRB.Legal
Subject: Draft Review: LRB -1861/1 Topic: Subtract modification; create tax advantaged accounts to support persons with disabilities; based on EdVest

Please Jacket LRB -1861/1 for the ASSEMBLY.

max contrib \$14k / ~~to~~ tie to fed. cap.

max cap.

\$100k : Δ to max cap under 529
\$325k?

changes for/2

ownership : benef is owner, unless a minor
or has insufficient capacity - see TX law
see federal notice

payment of claims - allow more
flexibility - i.e. debit card

NO form - let DOA figure out how
the reimbursement system will work

remove limitations on req. owner to
designate who may contribute

Termination : upon term / state may
file for reimbursement for amounts spent
on medicare reimbursement

medicaid recovery 49,849

For purposes of recovery under
49849, this amount should be
considered prop. of that decedent

Joniaux, Benjamin

From: Lisa Pugh <Lisa.Pugh@drwi.org>
Sent: Monday, April 27, 2015 11:21 AM
To: Joniaux, Benjamin
Cc: Lisa Pugh
Subject: FW: Wisconsin ABLE Act - bill to add track changes to
Attachments: WI ABLE Recommendations.docx; TX ABLE Act Bill.doc

Hi Ben –

Here is the track changes document that Christopher created for us to discuss today. For the areas in which he says the Wisconsin definitions are in conflict or may be confusing (specifically the conflict between the role of beneficiary and account owner), he suggests looking at the Texas bill. I have attached that bill as well.

Here is the how the federal ABLE law defines “designated beneficiary”:

“(3) DESIGNATED BENEFICIARY.—The term ‘designated beneficiary’ in connection with an ABLE account established under a qualified ABLE program means the eligible individual who established an ABLE account and is the owner of such account.

Here is a modified way to treat the “designated beneficiary” as done in the TX law:

Sec. 162.009. DESIGNATED BENEFICIARY. (a) The participant is the designated beneficiary of the ABLE account except as described by Subsection (b) and as otherwise permitted by Section 529A, Internal Revenue Code.

(b) If the designated beneficiary of the account is a minor or has a custodian or other fiduciary appointed for the purpose of managing the minor's financial affairs, the parent or custodian or other fiduciary of the beneficiary may serve as the participant if that form of ownership is permitted or not prohibited by Section 529A, Internal Revenue Code.

See you at 1!

Lisa

Lisa Pugh, Public Policy Director
Coordinator, Wisconsin Disability Policy Partnership

DISABILITY RIGHTS WISCONSIN
131 W. Wilson St.
Suite 700
Madison, WI 53703
608-267-0214
608-267-0368 (fax)

lisa.pugh@drwi.org

Twitter: @WisDisPolicy <https://twitter.com/#!/WisDisPolicy>

From: Christopher Rodriguez [mailto:crodriguez@ndi-inc.org]

Sent: Monday, April 27, 2015 9:04 AM

To: Lisa Pugh; sspielman@autismspeaks.org; Heather Sachs

Subject: RE: Wisconsin ABLE Act - bill to add track changes to

Here is a draft with comments. We look forward to walking through it with Ben this afternoon.

Christopher J. Rodriguez \ Senior Public Policy Advisor

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National Disability Institute: Celebrating 10 Years of Real Economic Impact for People with Disabilities

LRB-1861/1
MES:wlj:wj

**2015 - 2016 LEGISLATURE
2015 BILL**

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 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

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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:

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.
6. (b) "Beneficiary" means an eligible individual for whom an account is
7. established under this section.
8. (c) "Eligible individual" has the meaning given in 26 USC 529A.
9. (d) "Financial institution" means any bank, savings bank, savings and loan
10. association, or credit union that is authorized to do business under state or federal
11. laws relating to financial institutions.
12. (e) "Qualified expenses" has the meaning given for "qualified disability
13. expenses" under 26 USC 529A.
14. (2) **DUTIES OF THE DEPARTMENT.** The department shall do all of the following:

Commented [CR1]: Keep in mind that in the federal statute and confirmed in the recently released notice by the IRS, the beneficiary is the owner of the account. Other state bills have addressed giving another some kind of decision making capacity in the event that the beneficiary is a minor or has a guardian.

Commented [CR2]: Is "Department" defined in the statute anywhere?

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1. (a) Ensure that an account established under this section meets the
2. requirements of a qualified ABLÉ program under 26 USC 529A.
3. (b) Promulgate rules to implement and administer this section and ensure that
4. amounts deposited into an account and any interest, dividends, or other gain that
5. accrues on amounts deposited into the account may be used only to pay qualified
6. expenses of a beneficiary.
7. (c) Prepare and distribute reimbursement forms for claims that are submitted
8. as described in sub. (4).
9. **(3) ACCOUNT OWNERS; BENEFICIARIES; CONTRIBUTIONS; TERMINATION OF ACCOUNTS.**
10. (a) An account owner may do all of the following:
11. 1. Establish an account under this section, at a financial institution, for a
12. beneficiary.
13. (b) Contribute to an account or authorize any other person to contribute to the
14. account.
15. (c) Change the beneficiary of an account to a family member, as defined in 26
16. USC 529A, of the previous beneficiary, if the new beneficiary is an eligible individual.
17. 4. Terminate an account upon the death of a beneficiary if the account owner
18. is unable to change the beneficiary under subd. 3.
19. (b) An individual may not be the beneficiary of more than one account that is
20. established under this section.
21. (c) 1. The maximum total amount of annual contributions that may be made
22. by an account owner, and all persons authorized by the account owner, to an account
23. that is established under this section for a particular beneficiary is \$14,000.

Commented [CR3]: While this of course is the intent of the law, a beneficiary can technically use the funds for non qualified expenses. In that circumstance he/she would be held responsible for the tax implications and penalties as described in the federal statute.

Commented [CR4]: This reimbursement model is interesting. I don't believe other states go into such detail on how the program is going to work in the actual language of the bill. It is our hope that these accounts/programs can be as flexible as possible in order to meet the needs of the beneficiaries. Might want to consider leaving this out and replacing it with more ambiguous language and letting the department make those decisions so long as they are in line with the federal language.

Commented [CR5]: Again the beneficiary is the owner of the account so this language is somewhat confusing.

Commented [CR6]: Not that it is in conflict with the federal law, but I don't believe any of the other states have included the provision that a contributor would have to be "authorized" by the account owner in order to put funds in the account (might be something to think through, and again you could always leave this up to the DoA to decide on their own).

Commented [CR7]: This gets a bit confusing considering that the beneficiary is the account owner.

Commented [CR8]: It is good that you include the annual cap, but you might want to consider tying directly to the federal language so that if the gift tax is raised, your state cap can match it without having to amend this section.

BILL SECTION 1

1. ~~2.~~ The maximum total amount of all annual contributions that may be made
2. by an account owner, and all persons authorized by the account owner, to an account
3. that is established under this section for a particular beneficiary is \$100,000.
4. If any person attempts to contribute to an account established under this
5. section and that contribution would exceed one or both of the limits specified in this
6. paragraph, the financial institution to which the contribution is sent shall return to
7. the prospective contributor any amount of the attempted contribution that is
8. necessary to prevent the limits from being exceeded.
9. ~~4.~~ If more than one person attempts to contribute to an account established
10. under this section and such contributions would exceed the limits specified in this
11. paragraph, and if the attempted contributions arrive at the financial institution on
12. the same day, the financial institution to which the contributions are sent shall
13. return to the prospective contributors any amount of the attempted contributions,
14. on a prorated basis, that is necessary to prevent the limits from being exceeded.
15. ~~(d)~~ Upon the termination of an account as described in par. (a) ~~4.~~ or, if the
16. account owner does not terminate the account, upon the death of all beneficiaries of
17. an account, ~~the account shall terminate and any amount remaining in the account~~
18. ~~shall be returned to the account owner, if he or she is still alive, or to his or her estate.~~
19. ~~(4)~~ PAYMENT OF CLAIMS. If a beneficiary or account owner incurs costs for
20. qualified expenses, the account owner may submit a form, created by the
21. department, that summarizes the costs incurred, and payment and beneficiary
22. information, along with a copy of the bill, or a copy of the receipt if the account owner
23. has paid for the qualified expenses, to the financial institution at which the account
24. created under this section is established. The financial institution shall pay the bill,
25. or reimburse the account owner, if sufficient funds to do so are in the account.

Commented [CR9]: States can cap the total amount of funds in the account as they see fit so long as they don't exceed the cap for the state's typical 529 College Savings Plans Program. That being said, from what I have read most states are just matching the typical cap.

Commented [CR10]: This is a bit confusing considering there can only be 1 beneficiary per account (and 1 account per beneficiary).

Commented [CR11]: I don't think this is consistent with the federal law and again is confusing due to the account owner being defined differently in the federal law.

Commented [CR12]: While each state can implement their programs how they see fit (within the parameters of the federal law), most are not getting into this type of detail in the state statute. Additionally, this type of system may be prohibitive considering that the beneficiary would still need to have the initial funds in their personal accounts.

BILL SECTION 1

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. or the long-term care program defined in s. 46.2899 (1) shall exclude from the
5. determination any income from assets accumulated in an account created under this
6. section for a beneficiary.]
7. **SECTION 2.** 71.05 (6) (a) 27. of the statutes is created to read:
8. 71.05 (6) (a) 27. Except as provided in subd. 28., any accumulated interest,
9. dividends, or other gain that accrues from an account described under s. 16.643
10. during the taxable year in which a withdrawal occurs from such an account if any
11. amount of the money or other assets in the account is withdrawn by, or at the
12. direction of, an account owner for any reason other than the payment of qualified
13. expenses, as defined in s. 16.643 (1) (e), for the account beneficiary.
14. **SECTION 3.** 71.05 (6) (a) 28. of the statutes is created to read:
15. 71.05 (6) (a) 28. Upon the termination of an account under s. 16.643 (3) (d), any
16. amount in the account that is returned to an account owner, or an account owner's
17. estate.
18. **SECTION 4.** 71.05 (6) (b) 52. of the statutes is created to read:
19. 71.05 (6) (b) 52. Subject to the limits under s. 16.643 (3) (c) 1. and 2., any amount
20. that is deposited by an account owner or any other authorized person into an account
21. described under s. 16.643, and any interest, dividends, or other gain that accrues in
22. the account if the interest, dividends, or other gain is redeposited into the account.
23. **SECTION 5.** 71.07 (5) (a) 9. of the statutes is created to read:
24. 71.07 (5) (a) 9. The amount claimed as a deduction for unreimbursed medical
25. expenses under section 213 (a) of the Internal Revenue Code to the extent that the

too narrow?
all means-tested programs?
children's long-term support programs?
UTMA acct?

Commented [CR13]: I believe this is how you are going about disregarding the funds for state funded programs. I think that is great, and most states are doing the same. That being said, you may want to consider having a more blanket statements that covers all programs instead of citing specific long term care programs.

UTMA is completed gift - it's the minor's property

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1. funds used to pay for the unreimbursed expenses for which the deduction was
2. claimed were withdrawn from an account described under s. 16.643.
3. **SECTION 6. Initial applicability.**
4. **(1)** This act first applies to taxable years beginning on January 1 of the year
5. in which this subsection takes effect, except that if this subsection takes effect after
6. July 31, this act first applies to taxable years beginning on January 1 of the year
7. following the year in which this subsection takes effect.
8. **(END)**

Commented [CR14]: Is this the Medicaid pay back provision?