AN ACT ***to create*** 71.05 (6) (a) 25., 71.05 (6) (a) 26., 71.05 (6) (b) 47., 71.05 (6) (b) 48., 71.05 (6) (b) 49., 71.07 (6s) and 106.115 of the statutes; **relating to:** lifelong learning accounts program and creating income tax modifications and an income tax credit for contributions and withdrawals related to lifelong learning accounts.

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

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill draft was prepared for the Joint Legislative Council's Special Committee on Building Wisconsin's Workforce.

This bill draft creates the lifelong learning accounts program. Under the program, a lifelong learning accounts plan, and the accounts established and administered under the plan, must be approved by the Department of Workforce Development (DWD).

Under the program, a participating employer and participating employee make contributions to the lifelong learning account of an employee. An employer must make matching contributions of at least 25% of the amount contributed annually by an employee. The combined contributions of the employer and employee may not exceed $5,000 annually.

Employee contributions and withdrawals and employer contributions may be subtracted from the employee's or employer's taxable income, respectively. An employer may claim a non−refundable income tax credit for certain contributions to the lifelong learning accounts of its employees. The account must be used to pay for qualified education expenses. If a withdrawal from the account is made for any other purpose, the holder of the account incurs a penalty, unless the holder is aged 70 years or older, in which case the withdrawal is taxed as ordinary income.

SECTION 1. 71.05 (6) (a) 25. of the statutes is created to read:

71.05 **(6)** (a) 25. For taxable years beginning after December 31, 2009, an amount equal to 200% of the amount withdrawn by an individual less than 70 years of age from a lifelong learning account and not used for qualified education expenses under s. 106.115 (1) (h).

> **NOTE:** This SECTION creates a penalty for non−qualified withdrawals from a lifelong learning account through an addition to an individual's taxable income. The penalty does not apply to persons aged 70 years or older.
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> **COMMENT:** For a taxpayer with a 6.5% marginal rate of taxation and a $1,000 non−qualified withdrawal, the 200% multiplier would result in tax liability of $130. Ordinary taxation of $1,000 under the same marginal rate yields a tax of $65. The committee might consider whether the 200% amount is appropriate.
>
> Please note that the draft language relating to taxation is intended to provide a narrative of the committee's intent. Upon review by the Legislative Reference Bureau (LRB), the language is likely to be modified and other sections may be added in order to align the committee's intent with the drafting style used in statutes related to taxation.

SECTION 2. 71.05 (6) (a) 26. of the statutes is created to read:

71.05 **(6)** (a) 26. For taxable years beginning after December 31, 2009, the amount withdrawn by an individual aged 70 years or older from a lifelong learning account and not used for qualified education expenses under s. 106.115 (1) (h).

> **NOTE:** This SECTION includes non−qualified lifelong learning account withdrawals by an individual aged 70 years or older in the individual's taxable income.
>
> **COMMENT:** This SECTION clarifies the treatment of non−qualified withdrawals by persons aged 70 or older.
>
> Please note that the draft language relating to taxation is intended to provide a narrative of the committee's intent. Upon review by the LRB, the language is likely to be modified and other sections may be added in order to align the committee's intent with the drafting style used in statutes related to taxation.

SECTION 3. 71.05 (6) (b) 47. of the statutes is created to read:

71.05 **(6)** (b) 47. For a participating employee under s. 106.115 (1) (e), and for taxable years beginning after December 31, 2009, the amount contributed by or on behalf of an individual to a lifelong learning account established under s. 106.115.

NOTE: This SECTION subtracts employee and employer lifelong learning account contributions from an individual's Wisconsin taxable income.

COMMENT: Please note that the draft language relating to taxation is intended to provide a narrative of the committee's intent. Upon review by the LRB, the language is likely to be modified and other sections may be added in order to align the committee's intent with the drafting style used in statutes related to taxation.

SECTION 4. 71.05 (6) (b) 48. of the statutes is created to read:

71.05 **(6)** (b) 48. For taxable years beginning after December 31, 2009, the amount withdrawn by an individual from a lifelong learning account established under s. 106.115 and used for qualified education expenses under s. 106.115 (1) (h).

NOTE: This SECTION subtracts withdrawals from a lifelong learning account used for qualified education expenses from an individual's Wisconsin taxable income.

COMMENT: Please note that the draft language relating to taxation is intended to provide a narrative of the committee's intent. Upon review by the LRB, the language is likely to be modified and other sections may be added in order to align the committee's intent with the drafting style used in statutes related to taxation.

SECTION 5. 71.05 (6) (b) 49. of the statutes is created to read:

71.05 **(6)** (b) 49. For a participating employer under s. 106.115 (1) (f), and for taxable years beginning after December 31, 2009, the amount contributed by a participating employer to a lifelong learning account pursuant to a lifelong learning account plan approved under s. 106.115, unless previously subtracted in the computation of the employer's taxable income.

NOTE: This SECTION subtracts an employer's lifelong learning account contributions made on behalf of the employer's employees from the employer's Wisconsin taxable income.

COMMENT: Please note that the draft language relating to taxation is intended to provide a narrative of the committee's intent. Upon review by the LRB, the language is likely to be modified and other sections may be added in order to align the committee's intent with the drafting style used in statutes related to taxation. In particular, a future draft will repeat the employer subtraction language to indicate its availability to employers regardless of their filing status.

SECTION 6. 71.07 (6s) of the statutes is created to read:

71.07 **(6s)** LIFELONG LEARNING ACCOUNT CREDIT. (a) *Definition.* In this subsection, "claimant" means a participating employer under s. 106.115 (1) (f).

(b) *Filing claims.* For taxable years beginning after December 31, 2009, subject to par. (c), a claimant may claim as a credit against the tax imposed under s. 71.02, up to the amount of those taxes, an amount equal to 50% of the claimant's lifelong learning account contributions under s. 106.115.

(c) *Limitations and conditions.* 1. No credit may be claimed on contributions in excess of $1,000 per employee.

2. The total credit claimed by a claimant may not exceed $50,000.

(d) *Administration.* The provisions of s. 71.28 (4) (e) to (h), as they apply to the credit under s. 71.28 (4), apply to the credit under this subsection.

NOTE: This SECTION creates a non−refundable employer credit for employer contributions to lifelong learning accounts. The SECTION grants of credit equal to 50% of the employer's first $1,000 contributed per employee. The SECTION places a $50,000 yearly aggregate limit on the credit available to an employer. The credit may be carried forward and credited against taxes due for the following 15 years.

COMMENT: Please note that the draft language relating to taxation is intended to provide a narrative of the committee's intent. The committee might consider whether the substantive choices described in the NOTE are appropriate.

This SECTION includes several fixed dollar thresholds. The committee might consider whether to link the size of the thresholds to an index to adjust for inflation.

> Upon review by the LRB, the language is likely to be modified and other sections may be added in order to align the committee's intent with the drafting style used in statutes related to taxation. In particular, a future draft will repeat the credit language to indicate its availability to employers regardless of their filing status.

SECTION 7. 106.115 of the statutes is created to read:

106.115 Lifelong learning accounts program. (1) In this section:

(a) "Account" means a lifelong learning account that is approved by the department under this section.

(b) "Eligible employee" means an employee who is eligible to participate in a participating employer's plan.

(c) "Full−time employee" means an employee who is employed by a participating employer to work at least 2,080 hours per year, including paid leave and holidays, and whose principal place of employment is in Wisconsin.

(d) "Part−time employee" means an employee who is employed by a participating employer to work less than 2,080 hours per year, including paid leave and holidays, and whose principal place of employment is in Wisconsin.

(e) "Participating employee" means an eligible employee who participates in a lifelong learning accounts program under this section.

(f) "Participating employer" means an employer that participates in a lifelong learning accounts program under this section.

(g) "Plan" means a lifelong learning account plan that is approved by the department under this section.

(h) "Qualified education expenses" means expenses for tuition and fees, books, supplies, equipment, and tools or supplies that may be retained by the participating employee after completion of a course of instruction; and the transfer of money from a participating employee's account to the participating employee's account established under the plan of another participating employer. "Qualified education expenses" does not include expenses for meals, lodging, transportation, or any course or other education involving sports, games, or hobbies.

> **COMMENT:** This subsection defines "qualified education expenses". The committee might consider what expenses to include in the definition of "qualified education expenses". The committee also might consider whether to specify what types of education a lifelong learning account may be used for.

(2) The department shall establish by rule a procedure to approve plans under sub. (3) and accounts under sub. (4).

(3) The department shall approve a plan that satisfies all of the following:

(a) Is in writing.

(b) Covers at least all full−time employees of the participating employer and, if the participating employer elects to cover part−time employees under the plan, all part−time employees.

(c) Provides for voluntary participation by eligible employees.

(d) Establishes an account for each participating employee to which the participating employee makes contributions for the payment of qualified education expenses and the participating employer makes matching contributions of at least 25% of the amount contributed annually by the participating employee. The combined contributions of the participating employee and participating employer may not exceed $5,000 annually. The account shall be owned by the participating employee.

(e) Except as provided in sub. (6), provides that the account shall be used to pay qualified education expenses incurred by a participating employee for education selected at the sole discretion of the participating employee.

(f) Provides procedures for the dissemination of information about the plan, including the federal and state income tax consequences of the plan.

COMMENT: This subsection lists the criteria that a plan must satisfy to be approved by DWD. The committee might consider what criteria should be included in the list.

This subsection allows a plan to cover part−time employees, if the participating employer elects to do so. The committee might consider what employees should be eligible to participate in a plan.

This subsection requires that a participating employer makes matching contributions of at least 25% of the amount contributed annually by the participating employee. The committee might consider whether a minimum contribution by the employer should be required.

This subsection limits the amount of combined contributions of a participating employer and participating employee to $5,000 annually. The committee might consider whether to include a maximum for combined contributions, and, if so, what maximum amount is appropriate.

This subsection includes a fixed dollar threshold. The committee might consider whether to link the size of the threshold to an index to adjust for inflation.

(4) The department shall approve an account that satisfies all of the following:

(a) Is established and administered in accordance with a plan.

(b) Except as provided in sub. (6), is used to pay qualified education expenses incurred by a participating employee for education selected at the sole discretion of the participating employee.

(c) Is held by a trustee or fiduciary, including the state treasurer, as approved by the department.

COMMENT: This subsection lists the criteria that an account must satisfy to be approved by DWD. The committee might consider what criteria should be included in the list.

(5) A participating employer shall provide information to the department that the department determines is necessary to approve a plan or account.

(6) A participating employee may withdraw the participating employee's contribution to the account at any time for any purpose. If an amount is withdrawn for a purpose other than to pay qualified education expenses under sub. (3) (e) or (4) (b), the account shall incur a penalty under s. 71.05 (6) (a) 25.

(7) The department shall establish a program to provide information to participating employers and eligible employees about the lifelong learning accounts program established by this section.

> **NOTE:** This SECTION creates the lifelong learning accounts program. DWD must establish a procedure to approve plans and accounts under the program.
>
> A plan or account must be approved by DWD if it satisfies the criteria outlined in this SECTION. A participating employer must provide information to DWD that DWD determines is necessary for approval of a plan or account. DWD must establish a program to provide information to participating employers and eligible employees about the lifelong learning accounts program.
>
> A participating employee may withdraw the participating employee's contribution to the account at any time for any purpose. Generally, however, if an amount is withdrawn for a purpose other than to pay qualified education expenses, the account incurs a penalty. "Qualified education expenses" are defined in this SECTION as expenses for tuition and fees, books, supplies, equipment, and tools or supplies that may be retained by the employee after completion of a course of instruction; and the transfer of money from a participating employee's account to the participating employee's account established under the plan of another participating employer. "Qualified education expenses" does not include expenses for meals, lodging, transportation, or any course or other education involving sports, games, or hobbies.

SECTION 8. Nonstatutory provisions.

(1) SUBMISSION OF PROPOSED RULES. The department of workforce development shall submit in proposed form the rules required under section 106.115 (2) of the statutes, as created by this act, to the legislative council staff under section 227.15 (1) of the statutes no later than the first day of the 4th month beginning after the effective date of this subsection.

Notwithstanding section 227.137 (2) of the statutes, the secretary of administration may not require the department of workforce development to prepare an economic impact report for the rules required under section 106.115 (2) of the statutes, as created by this act.

NOTE: This SECTION requires that DWD submit proposed rules regarding the approval procedure for plans and accounts under the lifelong learning accounts program to the Legislative Council staff by the first day of the 4th month beginning after the effective date. [SECTION 9 provides that the effective date is the day after publication of the act.]

Current law provides that, under certain circumstances, the Secretary of the Department of Administration (DOA) may direct an agency to prepare an economic impact report for a proposed rule before the proposed rule is submitted to the legislature for review. [s. 227.137 (2), stats.] This SECTION provides that the Secretary of DOA may not require that DWD prepare an economic impact report for these proposed rules.

SECTION 9. Effective dates. This act takes effect on the first day of the 12th month beginning after publication, except as follows:

(1) SECTION 8 (1) of this act takes effect on the day after publication.

NOTE: This SECTION provides that the act is effective on the first day of the 12th month beginning after publication, except that the provision requiring that DWD submit proposed rules is effective on the day after publication of the act.

(END)