

A bill for an act

relating to long-term care; creating the long-term care benefits trust fund; establishing the long-term care financing program and a governing board; requiring actuarial studies; imposing an income tax to fund long-term care benefits; exempting benefits from income taxation; allowing disclosure of tax data to administer the program; appropriating money; amending Minnesota Statutes 2008, sections 270B.14, by adding a subdivision; 290.01, subdivision 19b; 290.06, by adding a subdivision; 290.62; proposing coding for new law in Minnesota Statutes, chapter 16A; proposing coding for new law as Minnesota Statutes, chapter 256N.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. **[16A.726] LONG-TERM CARE BENEFITS TRUST FUND.**

(a) A long-term care benefits trust fund is created in the state treasury. The fund is a direct appropriated special revenue fund. The commissioner shall deposit to the credit of the fund all money collected as long-term care taxes under section 290.06, subdivision 2g, amounts received as provided in section 256N.05, subdivision 5, and any money appropriated to the fund.

(b) Expenditures from the fund shall be made solely for the purpose of making benefit payments under section 256N.03, the cost of administration, and repaying the appropriation from the general fund. Costs for the administration of the program shall be paid from money in the long-term care benefits fund as follows: (1) up to four percent of the total monthly deposit into the fund to cover general administrative expenses; and (2) up to four percent of the total amount of claims paid out from the fund may be used to pay for administrative expenses related to claims processing.

(c) Notwithstanding any law to the contrary, money in the fund shall not be transferred to another fund at any time or used for any purpose other than that authorized by chapter 256N.

(d) The fund shall repay the general fund appropriation for startup and actuarial costs over a five-year period beginning July 1, 2011.

EFFECTIVE DATE. This section is effective July 1, 2009.

Sec. 2. **[256N.01] DEFINITIONS.**

Subdivision 1. **Applicability.** For purposes of this chapter, the following definitions apply.

Subd. 2. **Activities of daily living.** "Activities of daily living" means bathing, continence, dressing, eating, toileting, and transferring.

Subd. 3. **Board.** "Board" means the board established under section 256N.05 to administer the long-term care financing program.

Subd. 4. **Long-term care services.** "Long-term care services" means a broad range of supportive services needed by individuals with physical or mental impairments who have lost or never acquired the ability to function independently. Long-term care services include, but are not limited to: home health care, adult day care, assisted living, nursing facility, hospice, personal care assistant, private duty nursing, medical supplies and equipment, home modifications, and respite care.

Subd. 5. **Program.** "Program" means the long-term care financing program established by this chapter.

EFFECTIVE DATE. This section is effective July 1, 2009.

Sec. 3. **[256N.03] LONG-TERM CARE FINANCING PROGRAM.**

Subdivision 1. **Establishment.** The long-term care financing program is established to provide a universal and affordable system of providing for long-term care. The program shall be administered by the long-term care financing program board established under section 256N.05.

Subd. 2. **Eligibility.** To be eligible for payment of defined benefits under this program, an individual must be vested as provided under subdivision 3 and have written certification from a licensed physician that the individual requires one or more long-term care services for the period of time during which the individual receives benefits under the program. The written certification must also specify that the individual: (1) is unable to perform, without substantial assistance from another individual, at least two activities of daily living for a period of at least 90 days due to a loss of functional capacity; or (2) requires substantial supervision to protect the individual from threats to health and safety

to self or others due to a severe cognitive impairment such as Alzheimer's disease or dementia. The written certification must be submitted to and approved by the board.

Subd. 3. Vesting. (a) Any individual who has paid the long-term care income tax under section 290.06, subdivision 2g, for ten years is fully vested to receive the defined benefit provided under subdivision 4, but shall continue to be subject to the long-term care income tax.

(b) An individual shall earn one-tenth of the defined benefit under subdivision 4 for each consecutive 12-month period that the individual pays the income tax under section 290.06, subdivision 2g. An individual shall be allowed 12 consecutive months of nonpayment of the income tax without penalty, provided that after the 12 consecutive months of nonpayment, the individual shall forfeit one-tenth of the defined benefit amount for each year of nonpayment.

(c) If an individual dies before January 1, 2014, the estate or heirs, as appropriate, of that individual may make a claim for reimbursement of the income taxes paid under section 290.06, subdivision 2g, and voluntary payments made under section 256N.05, subdivision 5, by the individual.

Subd. 4. Defined benefit. (a) Payment of a defined benefit for long-term care services shall begin January 1, 2014. The defined benefit shall be the daily amount specified in subdivision 5 up to a cumulative period of 365 days.

(b) The defined benefit shall begin after the thirtieth day following the date of the approval by the board of the written certification submitted under subdivision 2. The board shall pay the defined benefit to a vested individual who is the recipient of a long-term care service, or to the legal representative of the recipient in the name of the recipient, as a reimbursement for long-term care service expenditures. The amount of the defined benefit shall not vary with the income of a recipient.

(c) The defined benefit is primary to private insurance and medical assistance benefits. An individual shall not receive a defined benefit while the individual is receiving Medicare benefits for long-term care, but may be eligible for a defined benefit under subdivision 2 once Medicare long-term care benefits are exhausted.

(d) Once an individual begins receiving a defined benefit, that individual is no longer subject to the long-term care income tax imposed under section 290.06, subdivision 2g.

Subd. 5. Level of defined benefit. The defined benefit amount for the period January 1, 2014, to December 31, 2014, for persons who are fully vested under subdivision 3, paragraph (a), is the amount per day determined by the board of the long-term care financing program under section 256N.05, or the appropriate proportion of this amount for individuals who are partially vested under subdivision 3, paragraph (b). The board shall

adjust the defined benefit amount for future years to reflect changes in the cost of long-term care services. The board shall also adjust the defined benefit amount, based upon actuarial analyses, to ensure that the long-term care benefits trust fund retains a positive balance.

EFFECTIVE DATE. This section is effective July 1, 2009.

Sec. 4. [256N.05] BOARD OF THE LONG-TERM CARE FINANCING PROGRAM.

Subdivision 1. Composition. (a) The board of the long-term care financing program shall consist of six members appointed by the governor. The members of the board shall have experience in accounting, business, finance, law, or other similar fields, and experience equivalent to five years as an officer or manager of a viable business or organization involved with insurance management, portfolio management, health care management, or a similar field. The composition of the board shall represent a diversity of relevant experience.

(b) The board shall elect a chair from among themselves.

Subd. 2. Governance. The board is governed by section 15.0575, except that members shall be compensated only for expenses.

Subd. 3. Duties of the board. (a) The board shall:

(1) establish and administer the long-term care financing program;

(2) have and maintain a fiduciary obligation for the program;

(3) set and adjust long-term care income tax contribution levels and defined benefit amounts, based upon the result of actuarial analyses required by section 256N.07;

(4) establish procedures to prevent fraud and abuse in claims for and payment of defined benefits; and

(5) carry out other duties assigned by this chapter.

Subd. 4. Staff and administrative support; contracting. (a) The board shall be housed within and receive staff and administrative support from the Department of Human Services. The board may hire an executive director and other staff necessary to perform assigned duties.

(b) The board shall contract with a qualified entity to prepare the annual actuarial report required under section 256N.07 and to conduct other actuarial analyses as needed.

(c) The board may:

(1) contract with a qualified entity to administer the program or to process claims for benefit payments; or

(2) contract with a qualified entity to assume the risk of underwriting loss under the program at a capitated rate of payment to the entity.

Subd. 5. **Voluntary payment of long-term care income tax.** The board shall establish a procedure to allow individuals exempted from the long-term care income tax under section 290.06, subdivision 2g, due to insufficient income to voluntarily pay the long-term care income tax and thereby be eligible for vesting for the defined benefit.

Subd. 6. **Rules.** The board shall adopt rules necessary to implement this chapter.

EFFECTIVE DATE. This section is effective the day after final enactment.

Sec. 5. **[256N.07] ANNUAL ACTUARIAL REPORT.**

Subdivision 1. **Required report.** The board of the long-term care financing program shall require an annual actuarial report and actuarial opinion to be prepared, as defined by the Actuarial Standards Board of the American Academy of Actuaries. The report and opinion shall be prepared by a member of the American Academy of Actuaries who is a fellow of the Society of Actuaries, certifying that the program is in actuarial balance and providing the information required in subdivisions 2 and 3. The report must be submitted to the board, the governor, and the legislature, in compliance with sections 3.195 and 3.197, by January 15 of each year, beginning January 15, 2009. Costs of the actuarial report are an administrative expense for purposes of section 16A.726.

Subd. 2. **Report requirements; initial report.** The first annual actuarial report required to be submitted under this section must include:

(1) the current and projected numbers of individuals who would be subject to paying the long-term care income tax, aggregated by taxpayer status and age;

(2) the current and projected numbers of individuals presently receiving long-term care services, aggregated by taxpayer status and age;

(3) the current and projected costs of long-term care services provided to individuals in Minnesota;

(4) a recommended initial defined benefit payment amount necessary to provide adequate long-term care services in Minnesota over the short range (ten years);

(5) a recommended initial long-term care tax rate sufficient to fund payment of defined benefits over the short range (ten years);

(6) an estimate of the expected future income to and disbursements to be made from the long-term care benefits trust fund during each of the next ten fiscal years;

(7) recommendations for program administration necessary to ensure that the program remains actuarially sound;

(8) a statement of actuarial assumptions and methods used to project costs and a detailed explanation of any change in actuarial assumptions or methods; and

(9) the results of short-range and long-range actuarial sensitivity analyses.

Subd. 3. **Report requirements; ongoing annual report.** The annual actuarial report submitted by January 15, 2010, and following years must include:

(1) the current and projected number of individuals paying the long-term care income tax, aggregated by taxpayer status and age;

(2) the current and projected number of individuals receiving the defined benefit, aggregated by taxpayer status and age;

(3) the current value of accumulated assets of the long-term care financing program;

(4) the current and projected costs of long-term care services provided to individuals in Minnesota;

(5) recommendations for adjustments to the defined benefit payment amount to reflect changes in the cost of long-term care services;

(6) estimates of the amount of long-term care income tax payments necessary to fund defined benefit payments and to keep the long-term care benefits trust fund actuarially sound over the short-range (ten years) and long-range (75 years);

(7) an estimate of the expected future income to and disbursements to be made from the long-term care benefits trust fund during each of the next ten fiscal years;

(8) recommendations for any changes in the level of long-term care income tax payments, the amount or duration of the defined benefit, or in program administration necessary to ensure that the program remains actuarially sound;

(9) a statement of actuarial assumptions and methods used to determine costs and a detailed explanation of any change in actuarial assumptions or methods; and

(10) the results of short-range and long-range actuarial sensitivity analyses.

EFFECTIVE DATE. This section is effective the day after final enactment.

Sec. 6. Minnesota Statutes 2008, section 270B.14, is amended by adding a subdivision to read:

Subd. 20. **Long-term care tax.** (a) The commissioner may disclose return information related to the long-term care income tax under section 290.06, subdivision 2g, as provided in this subdivision.

(b) The commissioner and the board of the long-term care program established under section 256N.05 shall agree upon the data items to be maintained on each taxpayer necessary to determine eligibility for benefits and to calculate and pay benefits, as well as any other data necessary to administer the program established under section 256N.03. The commissioner and the board shall agree upon the format and manner for storing and transmitting the data. The commissioner shall annually transmit this data to the board within four months after the due date for the returns, including extensions.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 7. Minnesota Statutes 2008, section 290.01, subdivision 19b, is amended to read:

Subd. 19b. **Subtractions from federal taxable income.** For individuals, estates, and trusts, there shall be subtracted from federal taxable income:

(1) net interest income on obligations of any authority, commission, or instrumentality of the United States to the extent includable in taxable income for federal income tax purposes but exempt from state income tax under the laws of the United States;

(2) if included in federal taxable income, the amount of any overpayment of income tax to Minnesota or to any other state, for any previous taxable year, whether the amount is received as a refund or as a credit to another taxable year's income tax liability;

(3) the amount paid to others, less the amount used to claim the credit allowed under section 290.0674, not to exceed \$1,625 for each qualifying child in grades kindergarten to 6 and \$2,500 for each qualifying child in grades 7 to 12, for tuition, textbooks, and transportation of each qualifying child in attending an elementary or secondary school situated in Minnesota, North Dakota, South Dakota, Iowa, or Wisconsin, wherein a resident of this state may legally fulfill the state's compulsory attendance laws, which is not operated for profit, and which adheres to the provisions of the Civil Rights Act of 1964 and chapter 363A. For the purposes of this clause, "tuition" includes fees or tuition as defined in section 290.0674, subdivision 1, clause (1). As used in this clause, "textbooks" includes books and other instructional materials and equipment purchased or leased for use in elementary and secondary schools in teaching only those subjects legally and commonly taught in public elementary and secondary schools in this state. Equipment expenses qualifying for deduction includes expenses as defined and limited in section 290.0674, subdivision 1, clause (3). "Textbooks" does not include instructional books and materials used in the teaching of religious tenets, doctrines, or worship, the purpose of which is to instill such tenets, doctrines, or worship, nor does it include books or materials for, or transportation to, extracurricular activities including sporting events, musical or dramatic events, speech activities, driver's education, or similar programs. For purposes of the subtraction provided by this clause, "qualifying child" has the meaning given in section 32(c)(3) of the Internal Revenue Code;

(4) income as provided under section 290.0802;

(5) to the extent included in federal adjusted gross income, income realized on disposition of property exempt from tax under section 290.491;

(6) to the extent not deducted or not deductible pursuant to section 408(d)(8)(E) of the Internal Revenue Code in determining federal taxable income by an individual

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who does not itemize deductions for federal income tax purposes for the taxable year, an amount equal to 50 percent of the excess of charitable contributions over \$500 allowable as a deduction for the taxable year under section 170(a) of the Internal Revenue Code and under the provisions of Public Law 109-1;

(7) for taxable years beginning before January 1, 2008, the amount of the federal small ethanol producer credit allowed under section 40(a)(3) of the Internal Revenue Code which is included in gross income under section 87 of the Internal Revenue Code;

(8) for individuals who are allowed a federal foreign tax credit for taxes that do not qualify for a credit under section 290.06, subdivision 22, an amount equal to the carryover of subnational foreign taxes for the taxable year, but not to exceed the total subnational foreign taxes reported in claiming the foreign tax credit. For purposes of this clause, "federal foreign tax credit" means the credit allowed under section 27 of the Internal Revenue Code, and "carryover of subnational foreign taxes" equals the carryover allowed under section 904(c) of the Internal Revenue Code minus national level foreign taxes to the extent they exceed the federal foreign tax credit;

(9) in each of the five tax years immediately following the tax year in which an addition is required under subdivision 19a, clause (7), or 19c, clause (15), in the case of a shareholder of a corporation that is an S corporation, an amount equal to one-fifth of the delayed depreciation. For purposes of this clause, "delayed depreciation" means the amount of the addition made by the taxpayer under subdivision 19a, clause (7), or subdivision 19c, clause (15), in the case of a shareholder of an S corporation, minus the positive value of any net operating loss under section 172 of the Internal Revenue Code generated for the tax year of the addition. The resulting delayed depreciation cannot be less than zero;

(10) job opportunity building zone income as provided under section 469.316;

(11) to the extent included in federal taxable income, the amount of compensation paid to members of the Minnesota National Guard or other reserve components of the United States military for active service performed in Minnesota, excluding compensation for services performed under the Active Guard Reserve (AGR) program. For purposes of this clause, "active service" means (i) state active service as defined in section 190.05, subdivision 5a, clause (1); (ii) federally funded state active service as defined in section 190.05, subdivision 5b; or (iii) federal active service as defined in section 190.05, subdivision 5c, but "active service" excludes service performed in accordance with section 190.08, subdivision 3;

(12) to the extent included in federal taxable income, the amount of compensation paid to Minnesota residents who are members of the armed forces of the United States or

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United Nations for active duty performed outside Minnesota under United States Code, title 10, section 101(d); United States Code, title 32, section 101(12); or the authority of the United Nations;

(13) an amount, not to exceed \$10,000, equal to qualified expenses related to a qualified donor's donation, while living, of one or more of the qualified donor's organs to another person for human organ transplantation. For purposes of this clause, "organ" means all or part of an individual's liver, pancreas, kidney, intestine, lung, or bone marrow; "human organ transplantation" means the medical procedure by which transfer of a human organ is made from the body of one person to the body of another person; "qualified expenses" means unreimbursed expenses for both the individual and the qualified donor for (i) travel, (ii) lodging, and (iii) lost wages net of sick pay, except that such expenses may be subtracted under this clause only once; and "qualified donor" means the individual or the individual's dependent, as defined in section 152 of the Internal Revenue Code. An individual may claim the subtraction in this clause for each instance of organ donation for transplantation during the taxable year in which the qualified expenses occur;

(14) in each of the five tax years immediately following the tax year in which an addition is required under subdivision 19a, clause (8), or 19c, clause (16), in the case of a shareholder of a corporation that is an S corporation, an amount equal to one-fifth of the addition made by the taxpayer under subdivision 19a, clause (8), or 19c, clause (16), in the case of a shareholder of a corporation that is an S corporation, minus the positive value of any net operating loss under section 172 of the Internal Revenue Code generated for the tax year of the addition. If the net operating loss exceeds the addition for the tax year, a subtraction is not allowed under this clause;

(15) to the extent included in federal taxable income, compensation paid to a service member as defined in United States Code, title 10, section 101(a)(5), for military service as defined in the Servicemembers Civil Relief Act, Public Law 108-189, section 101(2);

(16) international economic development zone income as provided under section 469.325; ~~and~~

(17) to the extent included in federal taxable income, the amount of national service educational awards received from the National Service Trust under United States Code, title 42, sections 12601 to 12604, for service in an approved Americorps National Service program; and

(18) to the extent included in federal taxable income, long-term care defined benefit payments under section 256N.03.

EFFECTIVE DATE. This section is effective for taxable years beginning after December 31, 2013.

Sec. 8. Minnesota Statutes 2008, section 290.06, is amended by adding a subdivision to read:

Subd. 2g. **Long-term care tax.** (a) In addition to the tax imposed under subdivision 2c, the tax under this subdivision applies to the following resident individuals, other than an individual receiving defined benefits under section 256N.03:

(1) unmarried individuals and married individuals filing separate returns, if the individual's gross income exceeds \$10,000 for the taxable year; and

(2) unmarried individuals qualifying as heads of household as defined in section 2(b) of the Internal Revenue Code and married couples filing a joint return, if the filer's gross income exceeds \$17,000 for the taxable year.

(b) The liability for tax under this subdivision for each taxable year equals the amount determined by the board of the long-term care financing program under section 256N.05 for each individual, including both spouses for a married couple filing a joint return.

(c) For purposes of this subdivision, "gross income" means gross income as defined in section 61 of the Internal Revenue Code.

EFFECTIVE DATE. This section is effective for taxable years beginning after December 31, 2010.

Sec. 9. Minnesota Statutes 2008, section 290.62, is amended to read:

290.62 DISTRIBUTION OF REVENUES.

All revenues derived from the taxes, interest, penalties and charges under this chapter shall, notwithstanding any other provisions of law, be paid into the state treasury and credited to the general fund, and be distributed as follows:

(1) There shall, notwithstanding any other provision of the law, be paid from this general fund all refunds of taxes erroneously collected from taxpayers under this chapter as provided herein;

(2) There is hereby appropriated to the persons entitled to payment herein, from the fund or account in the state treasury to which the money was credited, an amount sufficient to make the refund and payment.

By the 15th day of the first month after the close of each calendar quarter, the commissioner shall certify to the commissioner of finance an estimate of the amount of the revenues, including interest and penalties, attributable to the tax imposed under section 290.06, subdivision 2g, collected during the calendar quarter. The commissioner may adjust the certified amount for collections in prior quarters as actual data or better estimates of the amounts become available. The commissioner of finance shall transfer

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11.1 this amount from the general fund to the long-term care benefits trust fund under section
11.2 16A.726 after receipt of certification from the commissioner.

11.3 **EFFECTIVE DATE.** This section is effective the day following final enactment,
11.4 for taxable years beginning after December 31, 2010.

11.5 Sec. 10. **APPROPRIATION.**

11.6 \$..... is appropriated from the general fund to the board of the long-term care
11.7 financing program for the biennium ending June 30, 2011, to be deposited into the
11.8 long-term care benefits trust fund and used for startup and actuarial costs related to
11.9 planning and preparing for implementation of the long-term care financing program.