Senate Study Bill 3205 - Introduced

SENATE FILE _____
BY (PROPOSED COMMITTEE ON WAYS AND MEANS BILL BY CHAIRPERSON BOLKCOM)

A BILL FOR

An Act providing for the creation of first-time homebuyer savings accounts in Iowa, including related individual income tax exemptions, making penalties applicable, and including effective date and applicability provisions.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. NEW SECTION. **12I.1 Short title.**

This chapter may be cited as the *"Iowa First-time Homebuyer Savings Account Act"*.

Sec. 2. NEW SECTION. **12I.2 Definitions.**

As used in this chapter, unless the context otherwise requires:

1. *"Account administrator"* means one of the following:

a. A state or federally chartered bank, savings and loan association, credit union, or trust company in this state.

b. A certified public accountant or licensed public accountant, as those terms are defined in section 542.3.

c. An account holder.

2. *"Account holder"* means a first-time homebuyer who is a resident of this state and who establishes, either individually or jointly with the resident's spouse who is also a first-time homebuyer, a first-time homebuyer savings account. A person ceases to be an account holder following the purchase of a principal residence after the establishment of a first-time homebuyer savings account.

3. *"Business day"* means a day other than a Saturday, Sunday, or federal holiday.

4. *"Eligible costs"* means the down payment and allowable closing costs for the purchase of a principal residence in Iowa which principal residence is purchased after the establishment of the first-time homebuyer savings account.

5. *"First-time homebuyer"* means an individual who has never owned or purchased under contract for deed, either individually or jointly, a single-family, owner-occupied residence, including but not limited to a manufactured or mobile home that is assessed and taxed as real estate or taxed under chapter 435 or taxed under other similar law of another state, or a condominium unit.

6. *"First-time homebuyer savings account"* means an account established with a state or federally chartered bank, savings and loan association, credit union, or trust company in this

state to finance the purchase of a principal residence in this state.

7. *"Principal residence"* means a single-family, owner-occupied residence in the state that will be the principal place of residence of the account holder, whether owned or purchased under contract for deed by the account holder, individually or jointly. *"Principal residence"* includes but is not limited to a manufactured home or mobile home that is assessed and taxed as real estate or taxed under chapter 435, and a condominium unit.

8. *"Resident"* means the same as defined in section 422.4.

Sec. 3. NEW SECTION. **12I.3 First-time homebuyer savings account.**

1. *Establishment.*

a. A first-time homebuyer who is a resident of this state may establish, either individually or jointly with the resident's spouse who is also a first-time homebuyer, a first-time homebuyer savings account to finance the purchase of a principal residence. Married taxpayers electing to file separate tax returns or separately on a combined tax return shall not establish or maintain a joint first-time homebuyer savings account.

b. The account holder who establishes the first-time homebuyer savings account, individually or jointly, is the owner of the account.

c. A first-time homebuyer savings account shall be an interest-bearing savings account.

d. A financial institution shall not be responsible for the use or application of funds within a first-time homebuyer savings account solely because the account is held at that financial institution.

2. *Use by account holder.*

a. The account holder shall use the money in the first-time homebuyer savings account for eligible costs related to the purchase of a principal residence within ten years following the year in which the account is first established.

b. An account holder shall not contribute to a first-time homebuyer savings account for a period exceeding ten years.

c. There is no limitation on the amount of contributions that may be made to or retained in a first-time homebuyer savings account.

3. *Administration.*

a. An account administrator shall administer the first-time homebuyer savings account and has a fiduciary duty to the person for whose benefit the account is administered.

b. Within thirty days after an account administrator begins administering a first-time homebuyer savings account, the account administrator shall notify, in writing, each account holder on whose behalf the account administrator administers the account of the date of the last business day of the calendar year.

c. (1) An account administrator shall use funds held in a first-time homebuyer savings account only for the purpose of making withdrawals at the request of the account holder and for paying the expenses of administering the account.

(2) If the account holder is subject to the withdrawal penalty in section 422.7, subsection 57, paragraph *"c"*, subparagraph (1), the account administrator shall withhold the amount of the penalty from the amounts withdrawn and shall remit the amount to the department of revenue in the same manner as provided in section 422.16, subsection 2.

(3) Notwithstanding section 422.16, subsection 4, an account administrator shall not be held personally, individually, or corporately liable for the failure to withhold and remit a withdrawal penalty from a withdrawal made at the request of the account holder for which the account administrator relied in good faith on documentation submitted by the account holder of eligible costs paid or owed by the account holder in the calendar year. The burden of proving that a withdrawal from a first-time homebuyer savings account

was made for eligible costs is upon the account holder and not upon the account administrator.

d. Within thirty days of being furnished proof of death of the account holder, the account administrator shall distribute any amount remaining in the first-time homebuyer savings account to the estate of the account holder or to a transfer on death or pay on death beneficiary of the account properly designated by the account holder with the financial institution at which the first-time homebuyer savings account is held.

e. In the case of an account administrator who is also the account holder, all of the following apply:

(1) Notice by the account administrator to the account holder under paragraph *"b"* is not required.

(2) The account administrator shall not use funds held in a first-time homebuyer savings account to pay expenses of administering the account, except that a service fee may be charged to the account by the financial institution where the account is held.

(3) Documentation regarding the segregation of funds in a first-time homebuyer savings account from other funds and documentation regarding eligible costs for the purchase of a principal residence shall be maintained by the account administrator.

(4) The account administrator shall file reports with the department of revenue as reasonably required by the department of revenue.

(5) Paragraph *"c"*, subparagraph (3), shall not apply. The account administrator is required to remit the withdrawal penalty in section 422.7, subsection 57, paragraph *"c"*, subparagraph (1), if assessed, to the department of revenue in the same manner as provided in section 422.16, subsection 2.

4. *Penalties.* A person who knowingly prepares or causes to be prepared a false claim, statement, or billing to justify the withdrawal of money from a first-time homebuyer savings account is guilty of a serious misdemeanor for each violation.

Sec. 4. NEW SECTION. **12I.4 Tax considerations.**

The state income tax treatment of a first-time homebuyer savings account shall be as provided in section 422.7, subsection 57.

Sec. 5. NEW SECTION. **12I.5 Rules.**

The department of revenue and the treasurer of state shall each adopt rules to jointly implement and administer this chapter.

Sec. 6. Section 422.7, Code 2014, is amended by adding the following new subsection:

NEW SUBSECTION. 57. *a.* Subtract the amount of contributions made by an account holder to the account holder's first-time homebuyer savings account during the tax year, not to exceed three thousand dollars per individual per tax year, or six thousand dollars per tax year for a married couple who have a joint first-time homebuyer savings account and file a joint return. An amount of contributions made during a tax year in excess of three thousand dollars, or six thousand dollars, as applicable, may be subtracted by an account holder in a subsequent tax year, provided the total exemption under this paragraph for the subsequent tax year does not exceed three thousand dollars, or six thousand dollars, as applicable. This paragraph shall not apply to an account holder more than ten years after the account holder first establishes a first-time homebuyer savings account.

b. Subtract, to the extent included, income from interest and earnings received from an account holder's first-time homebuyer savings account. This paragraph shall not apply to any interest and earnings received by an account holder more than ten years after the account holder first establishes a first-time homebuyer savings account.

c. (1) Add, to the extent previously subtracted under paragraph *"a"*, the amount resulting from a withdrawal made from a first-time homebuyer savings account for purposes other than the payment of eligible costs of the account holder. If the withdrawal is made on a day other than the last business day of the calendar year, such withdrawal shall also be assessed a penalty in an amount equal to ten percent of the amount of the withdrawal. The penalty shall not apply to withdrawals made on account of the death of the account holder.

(2) For purposes of this paragraph *"c"*, any amount remaining in a first-time homebuyer savings account of an account holder on the day after the purchase of a principal residence or the last business day of the tenth calendar year following the calendar year in which the account holder first establishes a first-time homebuyer savings account, whichever occurs first, shall be considered a withdrawal under subparagraph (1).

(3) For purposes of this paragraph *"c"*, the following shall not be considered a withdrawal under subparagraph (1):

(a) Any amount transferred between different first-time homebuyer savings accounts of the same account holder by a person other than the account holder.

(b) Any amounts withdrawn or otherwise transferred from a first-time homebuyer savings account pursuant to an order in bankruptcy.

d. For purposes of this subsection, *"account holder"*, *"business day"*, *"eligible costs"*, and *"first-time homebuyer savings account"* all mean the same as defined in section 12I.2.

Sec. 7. EFFECTIVE DATE. This Act takes effect January 1, 2015.

Sec. 8. APPLICABILITY. This Act applies to tax years beginning on or after January 1, 2015.

EXPLANATION

The inclusion of this explanation does not constitute agreement with the explanation's substance by the members of the general assembly.

This bill allows first-time homebuyers who are residents of Iowa to establish a first-time homebuyer savings account (account) with a state or federally chartered bank, savings and loan association, credit union, or trust company in this state to finance the purchase of a principal residence in this state.

"First-time homebuyer" and "principal residence" are defined in the bill. The account is required to be an interest-bearing savings account. The account may be established individually or jointly with the resident's spouse. However, married taxpayers electing to file separate tax returns or separately on a combined tax return shall not establish or maintain a joint account.

There is no limitation on the amount of contributions that may be made to or retained in a first-time homebuyer savings account. An account holder is required to use the funds in an account for eligible costs related to the purchase of a principal residence within 10 years following the year in which the account is first established.

"Eligible costs" are defined in the bill and include the down payment and allowable closing costs of a principal residence that was purchased after the establishment of the account. If the account holder withdraws funds for any purpose other than the payment of eligible costs, the account holder is subject to a penalty equal to 10 percent of the withdrawal, unless the withdrawal occurs on the last business day of the calendar year or was because of the death of the account holder. The penalty amounts are required to be withheld by the account administrator and remitted to the department of revenue in the same manner as Code section 422.16(2), relating to the withholding of income tax. A person ceases to be an account holder following the purchase of a principal residence after the establishment of an account.

Accounts are required to be administered by an account administrator who will have a fiduciary duty to the account holder. An account administrator may be a state or federally chartered bank, savings and loan association, credit union, or trust company in this state; a certified public accountant or licensed public accountant; or the account holder. The account administrator is required within 30 days of beginning account administration to notify the account holder, in writing, of the last business day of the calendar year. The account administrator shall use account funds only for the purpose of making withdrawals at the request of the account holder and for the payment of the expenses of administering the account. An account administrator shall not be held personally, individually, or corporately liable for the failure to withhold and remit a withdrawal penalty if the account administrator relied in good faith on documentation submitted by the account holder of eligible costs paid or owed by the account holder. The burden of proving that a withdrawal from an account was made for eligible costs is upon the account holder. Within 30 days of being furnished proof of death of the account holder, the account administrator shall distribute funds in an account to the estate of the account holder or to a transfer on death or pay on death beneficiary properly designated by the account holder with the financial institution where the account is held.

Special rules apply to an account administrator that is also the account holder. First, notice of the last business day of the calendar year is not required to be given. Second, administration expenses shall not be paid, except that a service fee may be charged to the account by the financial institution where the account is held. Third, documentation regarding the segregation of funds in the account from other funds and documentation regarding eligible costs shall be maintained by the account administrator. Fourth, the account holder is required to file reports as required by the department of revenue and to remit any assessed penalties in the same manner a third-party account holder would be required. An account administrator that is also the account holder may not rely on the good-faith exception to personal liability for failure to withhold and remit the penalty.

The bill provides for two individual income tax incentives relating to first-time homebuyer savings accounts. First, an account holder is allowed to subtract from the individual income tax the amount of contributions made during the year to the account holder's account, not to exceed $3,000 per individual, or $6,000 for a married couple with a joint account and filing a joint income tax return. If the account holder contributes more than that amount, the excess may be subtracted in a subsequent tax year provided the total exemption in any one tax year does not exceed $3,000 or $6,000, as applicable. Second, the bill exempts any interest or earnings received from an account holder's account. Both the contribution exemption and interest exemption only apply for the first 10 years after the account holder establishes an account.

The bill requires an account holder to add to net income the amount of withdrawal from an account that was made for purposes other than eligible costs of the account holder to the extent it was previously subtracted as a contribution. Any amount remaining in an account on the day after an account holder purchases a principal residence or on the last business day of the 10th calendar year following the calendar year the account holder first establishes an account, whichever occurs first, shall be considered a withdrawal that must be added to net income to the extent it was previously subtracted. However, amounts transferred between different accounts of the same account holder by a person other than the account holder or amounts withdrawn pursuant to an order in bankruptcy shall not be considered withdrawals that must be added to net income.

The bill makes it a serious misdemeanor to knowingly prepare or cause to be prepared a false claim, statement, or billing to justify the withdrawal of money from a first-time homebuyer savings account. A serious misdemeanor is punishable by confinement for no more than one year and a fine of at least $315 but not more than $1,875.

The bill requires the department of revenue and the treasurer of state to each adopt rules to jointly implement and administer the bill.

The bill takes effect January 1, 2015, and applies to tax years beginning on or after that date.