



2013 SENATE BILL 73

March 13, 2013 – Introduced by Senators MOULTON, L. TAYLOR, LAZICH, GUDEx, HARSDFORF, LEIBHAM, SHILLING and LASSA, cosponsored by Representatives MURTHA, TRANEL, T. LARSON, WRIGHT, BIES, HONADEL, BERNIER, KAUFERT, A. OTT, DOYLE, RINGHAND, KOLSTE, PETERSEN, ENDSLEY, SPIROS, LEMAHIEU, KAHL, PETRYK, BROOKS, STONE, OHNSTAD and NERISON. Referred to Committee on Agriculture, Small Business, and Tourism.

1 **AN ACT to amend** 71.05 (6) (a) 15., 71.05 (6) (b) 47. b., 71.21 (4) (a), 71.26 (2) (a)
2 4., 71.34 (1k) (g), 71.45 (2) (a) 10. and 77.92 (4); and **to create** 71.07 (8s), 71.10
3 (4) (cf), 71.28 (8s), 71.30 (3) (cf), 71.47 (8s), 71.49 (1) (cf) and 73.155 of the
4 statutes; **relating to:** an income and franchise tax credit for workplace
5 wellness programs, granting rule-making authority, and requiring the exercise
6 of rule-making authority.

Analysis by the Legislative Reference Bureau

This bill creates an income and franchise tax credit for workplace wellness programs. The amount of the credit is equal to 30 percent of the amount that an employer pays in the taxable year to provide a workplace wellness program to any of the employer's employees who are employed at a small business in this state. A workplace wellness program is a health or fitness program, as certified by the Department of Health Services, that is provided with health risk assessments.

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:

SENATE BILL 73**SECTION 1**

1 **SECTION 1.** 71.05 (6) (a) 15. of the statutes is amended to read:

2 71.05 **(6)** (a) 15. Except as provided under s. 71.07 (3p) (c) 5., the amount of the
3 credits computed under s. 71.07 (2dd), (2de), (2di), (2dj), (2dL), (2dm), (2dr), (2ds),
4 (2dx), (2dy), (3g), (3h), (3n), (3p), (3q), (3r), (3rm), (3rn), (3s), (3t), (3w), (5e), (5f), (5h),
5 (5i), (5j), (5k), (5r), (5rm), (6n), ~~and (8r),~~ and (8s) and not passed through by a
6 partnership, limited liability company, or tax-option corporation that has added that
7 amount to the partnership's, company's, or tax-option corporation's income under s.
8 71.21 (4) or 71.34 (1k) (g).

9 **SECTION 2.** 71.05 (6) (b) 47. b. of the statutes is amended to read:

10 71.05 **(6)** (b) 47. b. With respect to partners and members of limited liability
11 companies, for taxable years beginning after December 31, 2010, for 2 consecutive
12 taxable years beginning with the taxable year in which the partnership's or limited
13 liability company's business locates to this state from another state or another
14 country and begins doing business in this state, as defined in s. 71.22 (1r), and subject
15 to the limitations provided under subd. 47. d. and e., the partner's or member's
16 distributive share of taxable income as calculated under section 703 of the Internal
17 Revenue Code; plus the items of income and gain under section 702 of the Internal
18 Revenue Code, including taxable state and municipal bond interest and excluding
19 nontaxable interest income or dividend income from federal government obligations;
20 minus the items of loss and deduction under section 702 of the Internal Revenue
21 Code, except items that are not deductible under s. 71.21; plus guaranteed payments
22 to partners under section 707 (c) of the Internal Revenue Code; plus the credits
23 claimed under s. 71.07 (2dd), (2de), (2di), (2dj), (2dL), (2dm), (2dr), (2ds), (2dx), (2dy),
24 (3g), (3h), (3n), (3p), (3q), (3r), (3rm), (3rn), (3s), (3t), (3w), (5e), (5f), (5g), (5h), (5i),
25 (5j), (5k), (5r), (5rm), ~~and (8r),~~ and (8s); and plus or minus, as appropriate,

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1 transitional adjustments, depreciation differences, and basis differences under s.
2 71.05 (13), (15), (16), (17), and (19), multiplied by the apportionment fraction
3 determined in s. 71.04 (4) and subject to s. 71.04 (7) or by separate accounting. No
4 amounts subtracted under this subd. 47. b. may be included in the modification
5 under par. (b) 9. or 9m.

6 **SECTION 3.** 71.07 (8s) of the statutes is created to read:

7 71.07 (8s) WORKPLACE WELLNESS PROGRAM CREDIT. (a) *Definitions.* In this
8 subsection:

- 9 1. "Claimant" means a person who files a claim under this subsection.
- 10 2. "Health risk assessment" means a computer-based health-promotion tool
11 consisting of a questionnaire; a biometric health screening to measure vital health
12 statistics, including blood pressure, cholesterol, glucose, weight, and height; a
13 formula for estimating health risks; an advice database; and a means to generate
14 reports.
- 15 3. "Small business" means a business that has 50 or fewer employees.
- 16 4. "Workplace wellness program" means a health or fitness program certified
17 under s. 73.155 (3), and includes health risk assessments and one or more of the
18 following programs or services:
 - 19 a. Chronic disease prevention.
 - 20 b. Weight management.
 - 21 c. Stress management.
 - 22 d. Worker injury prevention programs.
 - 23 e. Health screenings.
 - 24 f. Nutrition education.
 - 25 g. Health or fitness incentive programs.

SENATE BILL 73**SECTION 3**

1 h. Vaccinations.

2 i. Employee physical examinations.

3 (b) *Filing claims.* Subject to the limitations provided in this subsection and s.
4 73.155, a claimant may claim as a credit against the taxes imposed under s. 71.02,
5 up to the amount of those taxes, in each taxable year for 3 years, an amount that is
6 equal to 30 percent of the amount that the claimant paid in the taxable year to
7 provide a workplace wellness program to any of the claimant's employees who are
8 employed at a small business in this state, not including any amount paid to acquire,
9 construct, rehabilitate, remodel, or repair real property.

10 (c) *Limitations.* 1. Except as provided in s. 73.155 (2), the maximum amount
11 of the credits that may be claimed by all claimants under this subsection and ss. 71.28
12 (8s) and 71.47 (8s) in any fiscal year is \$3,000,000.

13 2. No person may claim a credit under this subsection for a workplace wellness
14 program in existence before the effective date of this subdivision [LRB inserts
15 date].

16 3. Partnerships, limited liability companies, and tax-option corporations may
17 not claim the credit under this subsection, but the eligibility for, and the amount of,
18 the credit are based on their payment of amounts under par. (b). A partnership,
19 limited liability company, or tax-option corporation shall compute the amount of
20 credit that each of its partners, members, or shareholders may claim and shall
21 provide that information to each of them. Partners, members of limited liability
22 companies, and shareholders of tax-option corporations may claim the credit in
23 proportion to their ownership interests.

24 (d) *Administration.* 1. Section 71.28 (4) (e), (g), and (h), as it applies to the
25 credit under s. 71.28 (4), applies to the credit under this subsection.

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1 2. If a credit computed under this subsection is not entirely offset against
2 Wisconsin income or franchise taxes otherwise due, the unused balance may be
3 carried forward and credited against Wisconsin income or franchise taxes otherwise
4 due for the following 5 taxable years to the extent not offset by these taxes otherwise
5 due in all intervening years between the year in which the expense was incurred and
6 the year in which the carry-forward credit is claimed.

7 **SECTION 4.** 71.10 (4) (cf) of the statutes is created to read:

8 71.10 (4) (cf) Workplace wellness program credit under s. 71.07 (8s).

9 **SECTION 5.** 71.21 (4) (a) of the statutes is amended to read:

10 71.21 (4) (a) The amount of the credits computed by a partnership under s.
11 71.07 (2dd), (2de), (2di), (2dj), (2dL), (2dm), (2ds), (2dx), (2dy), (3g), (3h), (3n), (3p),
12 (3q), (3r), (3rm), (3rn), (3s), (3t), (3w), (5e), (5f), (5g), (5h), (5i), (5j), (5k), (5r), (5rm),
13 (6n), ~~and (8r), and (8s)~~ and passed through to partners shall be added to the
14 partnership's income.

15 **SECTION 6.** 71.26 (2) (a) 4. of the statutes is amended to read:

16 71.26 (2) (a) 4. Plus the amount of the credit computed under s. 71.28 (1dd),
17 (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), (1dy), (3g), (3h), (3n), (3p), (3q), (3r),
18 (3rm), (3rn), (3t), (3w), (5e), (5f), (5g), (5h), (5i), (5j), (5k), (5r), (5rm), (6n), (8r), ~~(8s),~~
19 and (9s) and not passed through by a partnership, limited liability company, or
20 tax-option corporation that has added that amount to the partnership's, limited
21 liability company's, or tax-option corporation's income under s. 71.21 (4) or 71.34 (1k)
22 (g).

23 **SECTION 7.** 71.28 (8s) of the statutes is created to read:

24 71.28 (8s) WORKPLACE WELLNESS PROGRAM CREDIT. (a) *Definitions.* In this
25 subsection:

SENATE BILL 73**SECTION 7**

1 1. “Claimant” means a person who files a claim under this subsection.

2 2. “Health risk assessment” means a computer-based health-promotion tool
3 consisting of a questionnaire; a biometric health screening to measure vital health
4 statistics, including blood pressure, cholesterol, glucose, weight, and height; a
5 formula for estimating health risks; an advice database; and a means to generate
6 reports.

7 3. “Small business” means a business that has 50 or fewer employees.

8 4. “Workplace wellness program” means a health or fitness program certified
9 under s. 73.155 (3), and includes health risk assessments and one or more of the
10 following programs or services:

- 11 a. Chronic disease prevention.
- 12 b. Weight management.
- 13 c. Stress management.
- 14 d. Worker injury prevention programs.
- 15 e. Health screenings.
- 16 f. Nutrition education.
- 17 g. Health or fitness incentive programs.
- 18 h. Vaccinations.
- 19 i. Employee physical examinations.

20 (b) *Filing claims.* Subject to the limitations provided in this subsection and s.
21 73.155, a claimant may claim as a credit against the taxes imposed under s. 71.23,
22 up to the amount of those taxes, in each taxable year for 3 years, an amount that is
23 equal to 30 percent of the amount that the claimant paid in the taxable year to
24 provide a workplace wellness program to any of the claimant’s employees who are

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1 employed at a small business in this state, not including any amount paid to acquire,
2 construct, rehabilitate, remodel, or repair real property.

3 (c) *Limitations.* 1. Except as provided in s. 73.155 (2), the maximum amount
4 of the credits that may be claimed by all claimants under this subsection and ss. 71.07
5 (8s) and 71.47 (8s) in any fiscal year is \$3,000,000.

6 2. No person may claim a credit under this subsection for a workplace wellness
7 program in existence before the effective date of this subdivision [LRB inserts
8 date].

9 3. Partnerships, limited liability companies, and tax-option corporations may
10 not claim the credit under this subsection, but the eligibility for, and the amount of,
11 the credit are based on their payment of amounts under par. (b). A partnership,
12 limited liability company, or tax-option corporation shall compute the amount of
13 credit that each of its partners, members, or shareholders may claim and shall
14 provide that information to each of them. Partners, members of limited liability
15 companies, and shareholders of tax-option corporations may claim the credit in
16 proportion to their ownership interests.

17 (d) *Administration.* 1. Subsection (4) (e), (g), and (h), as it applies to the credit
18 under sub. (4), applies to the credit under this subsection.

19 2. If a credit computed under this subsection is not entirely offset against
20 Wisconsin income or franchise taxes otherwise due, the unused balance may be
21 carried forward and credited against Wisconsin income or franchise taxes otherwise
22 due for the following 5 taxable years to the extent not offset by these taxes otherwise
23 due in all intervening years between the year in which the expense was incurred and
24 the year in which the carry-forward credit is claimed.

25 **SECTION 8.** 71.30 (3) (cf) of the statutes is created to read:

SENATE BILL 73**SECTION 8**

1 71.30 (3) (cf) Workplace wellness program credit under s. 71.28 (8s).

2 **SECTION 9.** 71.34 (1k) (g) of the statutes is amended to read:

3 71.34 (1k) (g) An addition shall be made for credits computed by a tax-option
4 corporation under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), (1dy),
5 (3), (3g), (3h), (3n), (3p), (3q), (3r), (3rm), (3rn), (3t), (3w), (5e), (5f), (5g), (5h), (5i), (5j),
6 (5k), (5r), (5rm), (6n), and (8r), and (8s) and passed through to shareholders.

7 **SECTION 10.** 71.45 (2) (a) 10. of the statutes is amended to read:

8 71.45 (2) (a) 10. By adding to federal taxable income the amount of credit
9 computed under s. 71.47 (1dd) to (1dy), (3g), (3h), (3n), (3p), (3q), (3r), (3rm), (3rn),
10 (3w), (5e), (5f), (5g), (5h), (5i), (5j), (5k), (5r), (5rm), (6n), (8r), (8s), and (9s) and not
11 passed through by a partnership, limited liability company, or tax-option
12 corporation that has added that amount to the partnership's, limited liability
13 company's, or tax-option corporation's income under s. 71.21 (4) or 71.34 (1k) (g) and
14 the amount of credit computed under s. 71.47 (1), (3), (3t), (4), (4m), and (5).

15 **SECTION 11.** 71.47 (8s) of the statutes is created to read:

16 71.47 (8s) WORKPLACE WELLNESS PROGRAM CREDIT. (a) *Definitions.* In this
17 subsection:

18 1. "Claimant" means a person who files a claim under this subsection.

19 2. "Health risk assessment" means a computer-based health-promotion tool
20 consisting of a questionnaire; a biometric health screening to measure vital health
21 statistics, including blood pressure, cholesterol, glucose, weight, and height; a
22 formula for estimating health risks; an advice database; and a means to generate
23 reports.

24 3. "Small business" means a business that has 50 or fewer employees.

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1 4. “Workplace wellness program” means a health or fitness program certified
2 under s. 73.155 (3), and includes health risk assessments and one or more of the
3 following programs or services:

- 4 a. Chronic disease prevention.
- 5 b. Weight management.
- 6 c. Stress management.
- 7 d. Worker injury prevention programs.
- 8 e. Health screenings.
- 9 f. Nutrition education.
- 10 g. Health or fitness incentive programs.
- 11 h. Vaccinations.
- 12 i. Employee physical examinations.

13 (b) *Filing claims.* Subject to the limitations provided in this subsection and s.
14 73.155, a claimant may claim as a credit against the taxes imposed under s. 71.43,
15 up to the amount of those taxes, in each taxable year for 3 years, an amount that is
16 equal to 30 percent of the amount that the claimant paid in the taxable year to
17 provide a workplace wellness program to any of the claimant’s employees who are
18 employed at a small business in this state, not including any amount paid to acquire,
19 construct, rehabilitate, remodel, or repair real property.

20 (c) *Limitations.* 1. Except as provided in s. 73.155 (2), the maximum amount
21 of the credits that may be claimed by all claimants under this subsection and ss. 71.07
22 (8s) and 71.28 (8s) in any fiscal year is \$3,000,000.

23 2. No person may claim a credit under this subsection for a workplace wellness
24 program in existence before the effective date of this subdivision [LRB inserts
25 date].

SENATE BILL 73**SECTION 11**

1 3. Partnerships, limited liability companies, and tax-option corporations may
2 not claim the credit under this subsection, but the eligibility for, and the amount of,
3 the credit are based on their payment of amounts under par. (b). A partnership,
4 limited liability company, or tax-option corporation shall compute the amount of
5 credit that each of its partners, members, or shareholders may claim and shall
6 provide that information to each of them. Partners, members of limited liability
7 companies, and shareholders of tax-option corporations may claim the credit in
8 proportion to their ownership interests.

9 (d) *Administration.* 1. Section 71.28 (4) (e), (g), and (h), as it applies to the
10 credit under s. 71.28 (4), applies to the credit under this subsection.

11 2. If a credit computed under this subsection is not entirely offset against
12 Wisconsin income or franchise taxes otherwise due, the unused balance may be
13 carried forward and credited against Wisconsin income or franchise taxes otherwise
14 due for the following 5 taxable years to the extent not offset by these taxes otherwise
15 due in all intervening years between the year in which the expense was incurred and
16 the year in which the carry-forward credit is claimed.

17 **SECTION 12.** 71.49 (1) (cf) of the statutes is created to read:

18 71.49 (1) (cf) Workplace wellness program credit under s. 71.47 (8s).

19 **SECTION 13.** 73.155 of the statutes is created to read:

20 **73.155 Workplace wellness programs.** (1) In consultation with the
21 department of revenue, the department of health services shall certify workplace
22 wellness programs developed by a business or independent provider as described
23 under ss. 71.07 (8s), 71.28 (8s), and 71.47 (8s).

24 (2) If the department of health services certifies a workplace wellness program
25 under sub. (1), the department of revenue shall determine the amount of workplace

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1 wellness program credits to allocate to the business providing the workplace
2 wellness program. The total amount of workplace wellness program credits
3 allocated to businesses in any fiscal year may not exceed \$3,000,000.

4 (3) The department of revenue, in consultation with the department of health
5 services, shall promulgate rules to administer this section.

6 **SECTION 14.** 77.92 (4) of the statutes is amended to read:

7 77.92 (4) "Net business income," with respect to a partnership, means taxable
8 income as calculated under section 703 of the Internal Revenue Code; plus the items
9 of income and gain under section 702 of the Internal Revenue Code, including taxable
10 state and municipal bond interest and excluding nontaxable interest income or
11 dividend income from federal government obligations; minus the items of loss and
12 deduction under section 702 of the Internal Revenue Code, except items that are not
13 deductible under s. 71.21; plus guaranteed payments to partners under section 707
14 (c) of the Internal Revenue Code; plus the credits claimed under s. 71.07 (2dd), (2de),
15 (2di), (2dj), (2dL), (2dm), (2dr), (2ds), (2dx), (2dy), (3g), (3h), (3n), (3p), (3q), (3r),
16 (3rm), (3rn), (3s), (3t), (3w), (5e), (5f), (5g), (5h), (5i), (5j), (5k), (5n), (5r), (5rm), (6n),
17 and (8r), and (8s); and plus or minus, as appropriate, transitional adjustments,
18 depreciation differences, and basis differences under s. 71.05 (13), (15), (16), (17), and
19 (19); but excluding income, gain, loss, and deductions from farming. "Net business
20 income," with respect to a natural person, estate, or trust, means profit from a trade
21 or business for federal income tax purposes and includes net income derived as an
22 employee as defined in section 3121 (d) (3) of the Internal Revenue Code.

23 **SECTION 15. Initial applicability.**

24 (1) This act first applies to taxable years beginning on January 1, 2014.

25 (END)