



State of Wisconsin  
2011 – 2012 LEGISLATURE

September 2011 Special Session



LRB-3081/1

JK:wlj:rs

## ASSEMBLY BILL 5

October 11, 2011 – Introduced by COMMITTEE ON ASSEMBLY ORGANIZATION, by request of Governor Scott Walker, Representative Murtha, Senators Moulton and Lassa. Referred to Committee on Health.

1 AN ACT *to amend* 71.05 (6) (a) 15., 71.21 (4), 71.26 (2) (a) 4., 71.34 (1k) (g), 71.45  
2 (2) (a) 10. and 77.92 (4); and *to create* 71.07 (8s), 71.10 (4) (cf), 71.28 (8s), 71.30  
3 (3) (cf), 71.47 (8s), 71.49 (1) (cf) and 73.16 of the statutes; **relating to:** an income  
4 and franchise tax credit for workplace wellness programs, granting  
5 rule-making authority, and requiring the exercise of rule-making authority.

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### *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 in this state. A workplace wellness program is a health or fitness program, as defined by administrative rule by the Department of Revenue, 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.

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

6 SECTION 1. 71.05 (6) (a) 15. of the statutes, as affected by 2011 Wisconsin Act  
7 32, is amended to read:

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

7           **SECTION 2.** 71.07 (8s) of the statutes is created to read:

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

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

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

16           3. "Workplace wellness program" means a health or fitness program certified  
17           under s. 73.16 (3), and includes health risk assessments and one or more of the  
18           following programs or services:

19           a. Smoking cessation.

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.

1 h. Vaccinations.

2 i. Employee physical examinations.

3 (b) *Filing claims.* Subject to the limitations provided in this subsection and s.  
4 73.16, a claimant may claim as a credit against the taxes imposed under s. 71.02, up  
5 to the amount of those taxes, in each taxable year for 3 years, an amount that is equal  
6 to 30 percent of the amount that the claimant paid in the taxable year to provide a  
7 workplace wellness program to any of the claimant's employees who are employed  
8 in this state, not including any amount paid to acquire, construct, rehabilitate,  
9 remodel, or repair real property.

10 (c) *Limitations.* 1. Except as provided in s. 73.16 (2), the maximum amount  
11 of the credits that may be claimed under this subsection and ss. 71.28 (8s) and 71.47  
12 (8s) in any taxable year is \$2,500,000 for all claimants who employ 50 or fewer  
13 employees in the taxable year and \$2,500,000 for all claimants who employ more  
14 than 50 employees in the taxable year.

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

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

25 **SECTION 3.** 71.10 (4) (cf) of the statutes is created to read:

1           71.10 **(4)** (cf) Workplace wellness program credit under s. 71.07 (8s).

2           **SECTION 4.** 71.21 (4) of the statutes, as affected by 2011 Wisconsin Act 32, is  
3 amended to read:

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

8           **SECTION 5.** 71.26 (2) (a) 4. of the statutes, as affected by 2011 Wisconsin Act 32,  
9 is amended to read:

10           71.26 **(2)** (a) 4. Plus the amount of the credit computed under s. 71.28 (1dd),  
11 (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), (1dy), (3g), (3h), (3n), (3p), (3q), (3r),  
12 (3rm), (3rn), (3t), (3w), (5e), (5f), (5g), (5h), (5i), (5j), (5k), (5n), (5r), (5rm), (8r), (8s),  
13 and (9s) and not passed through by a partnership, limited liability company, or  
14 tax-option corporation that has added that amount to the partnership's, limited  
15 liability company's, or tax-option corporation's income under s. 71.21 (4) or 71.34 (1k)  
16 (g).

17           **SECTION 6.** 71.28 (8s) of the statutes is created to read:

18           71.28 **(8s)** WORKPLACE WELLNESS PROGRAM CREDIT. (a) *Definitions.* In this  
19 subsection:

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

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

1           3. “Workplace wellness program” means a health or fitness program certified  
2           under s. 73.16 (3), and includes health risk assessments and one or more of the  
3           following programs or services:

- 4           a. Smoking cessation.
- 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           73.16, a claimant may claim as a credit against the taxes imposed under s. 71.23, up  
15           to the amount of those taxes, in each taxable year for 3 years, an amount that is equal  
16           to 30 percent of the amount that the claimant paid in the taxable year to provide a  
17           workplace wellness program to any of the claimant’s employees who are employed  
18           in this state, not including any amount paid to acquire, construct, rehabilitate,  
19           remodel, or repair real property.

20           (c) *Limitations.* 1. Except as provided in s. 73.16 (2), the maximum amount  
21           of the credits that may be claimed under this subsection and ss. 71.07 (8s) and 71.47  
22           (8s) in any taxable year is \$2,500,000 for all claimants who employ 50 or fewer  
23           employees in the taxable year and \$2,500,000 for all claimants who employ more  
24           than 50 employees in the taxable year.

1           2. 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.* Subsection (4) (e) to (h), as it applies to the credit under  
10 sub. (4), applies to the credit under this subsection.

11           **SECTION 7.** 71.30 (3) (cf) of the statutes is created to read:

12           71.30 **(3)** (cf) Workplace wellness program credit under s. 71.28 (8s).

13           **SECTION 8.** 71.34 (1k) (g) of the statutes, as affected by 2011 Wisconsin Act 32,  
14 is amended to read:

15           71.34 **(1k)** (g) An addition shall be made for credits computed by a tax–option  
16 corporation under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), (1dy),  
17 (3), (3g), (3h), (3n), (3p), (3q), (3r), (3rm), (3rn), (3t), (3w), (5e), (5f), (5g), (5h), (5i), (5j),  
18 (5k), (5n), (5r), (5rm), ~~and (8r), and (8s)~~ and passed through to shareholders.

19           **SECTION 9.** 71.45 (2) (a) 10. of the statutes, as affected by 2011 Wisconsin Act  
20 32, is amended to read:

21           71.45 **(2)** (a) 10. By adding to federal taxable income the amount of credit  
22 computed under s. 71.47 (1dd) to (1dy), (3g), (3h), (3n), (3p), (3q), (3r), (3rm), (3rn),  
23 (3w), (5e), (5f), (5g), (5h), (5i), (5j), (5k), (5n), (5r), (5rm), (8r), ~~(8s)~~, and (9s) and not  
24 passed through by a partnership, limited liability company, or tax–option  
25 corporation that has added that amount to the partnership’s, limited liability

1 company's, or tax-option corporation's income under s. 71.21 (4) or 71.34 (1k) (g) and  
2 the amount of credit computed under s. 71.47 (1), (3), (3t), (4), (4m), and (5).

3 **SECTION 10.** 71.47 (8s) of the statutes is created to read:

4 71.47 (8s) WORKPLACE WELLNESS PROGRAM CREDIT. (a) *Definitions.* In this  
5 subsection:

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

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

12 3. "Workplace wellness program" means a health or fitness program certified  
13 under s. 73.16 (3), and includes health risk assessments and one or more of the  
14 following programs or services:

15 a. Smoking cessation.

16 b. Weight management.

17 c. Stress management.

18 d. Worker injury prevention programs.

19 e. Health screenings.

20 f. Nutrition education.

21 g. Health or fitness incentive programs.

22 h. Vaccinations.

23 i. Employee physical examinations.

24 (b) *Filing claims.* Subject to the limitations provided in this subsection and s.  
25 73.16, a claimant may claim as a credit against the taxes imposed under s. 71.43, up

1 to the amount of those taxes, in each taxable year for 3 years, an amount that is equal  
2 to 30 percent of the amount that the claimant paid in the taxable year to provide a  
3 workplace wellness program to any of the claimant's employees who are employed  
4 in this state, not including any amount paid to acquire, construct, rehabilitate,  
5 remodel, or repair real property.

6 (c) *Limitations.* 1. Except as provided in s. 73.16 (2), the maximum amount  
7 of the credits that may be claimed under this subsection and ss. 71.07 (8s) and 71.28  
8 (8s) in any taxable year is \$2,500,000 for all claimants who employ 50 or fewer  
9 employees in the taxable year and \$2,500,000 for all claimants who employ more  
10 than 50 employees in the taxable year.

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

19 (d) *Administration.* Section 71.28 (4) (e) to (h), as it applies to the credit under  
20 s. 71.28 (4), applies to the credit under this subsection.

21 **SECTION 11.** 71.49 (1) (cf) of the statutes is created to read:

22 71.49 (1) (cf) Workplace wellness program credit under s. 71.47 (8s).

23 **SECTION 12.** 73.16 of the statutes is created to read:

24 **73.16 Workplace wellness programs. (1)** The department of revenue and  
25 the department of health services shall implement a program to certify workplace



1 wellness programs developed by a business or independent provider as described  
2 under ss. 71.07 (8s), 71.28 (8s), and 71.47 (8s).

3 **(2)** If the department of health services certifies a workplace wellness program  
4 under sub. (1), the department of revenue shall determine the amount of workplace  
5 wellness program credits to allocate to the business providing the workplace  
6 wellness program. The total amount of workplace wellness program credits  
7 allocated to businesses in any year may not exceed \$5,000,000. In any year, the  
8 department of revenue may not allocate more than \$2,500,000 in credits to  
9 businesses with more than 50 employees, and may not allocate more than \$2,500,000  
10 in credits to businesses with 50 or fewer employees, except that the department may  
11 increase the allocation to businesses with 50 or fewer employees by the amount of  
12 any credits the department is not able to allocate to businesses with 50 or more  
13 employees.

14 **(3)** The department of revenue and the department of health services shall  
15 promulgate rules to administer this section.

16 **SECTION 13.** 77.92 (4) of the statutes, as affected by 2011 Wisconsin Act 32, is  
17 amended to read:

18 77.92 **(4)** “Net business income,” with respect to a partnership, means taxable  
19 income as calculated under section 703 of the Internal Revenue Code; plus the items  
20 of income and gain under section 702 of the Internal Revenue Code, including taxable  
21 state and municipal bond interest and excluding nontaxable interest income or  
22 dividend income from federal government obligations; minus the items of loss and  
23 deduction under section 702 of the Internal Revenue Code, except items that are not  
24 deductible under s. 71.21; plus guaranteed payments to partners under section 707  
25 (c) of the Internal Revenue Code; plus the credits claimed under s. 71.07 (2dd), (2de),

1 (2di), (2dj), (2dL), (2dm), (2dr), (2ds), (2dx), (2dy), (3g), (3h), (3n), (3p), (3q), (3r),  
2 (3rm), (3rn), (3s), (3t), (3w), (5e), (5f), (5g), (5h), (5i), (5j), (5k), (5n), (5r), (5rm), and  
3 (8r), and (8s); and plus or minus, as appropriate, transitional adjustments,  
4 depreciation differences, and basis differences under s. 71.05 (13), (15), (16), (17), and  
5 (19); but excluding income, gain, loss, and deductions from farming. “Net business  
6 income,” with respect to a natural person, estate, or trust, means profit from a trade  
7 or business for federal income tax purposes and includes net income derived as an  
8 employee as defined in section 3121 (d) (3) of the Internal Revenue Code.

9 **SECTION 14. Initial applicability.**

10 (1) This act first applies to taxable years beginning on January 1, 2012.

11 (END)