



2011 SENATE BILL 164

August 11, 2011 – Introduced by Senators MOULTON, LASSA, HOPPER, KAPANKE, LAZICH, LEIBHAM, SCHULTZ and ZIPPERER, cosponsored by Representatives MURTHA, NYGREN, BIES, BROOKS, DOYLE, HONADEL, JACQUE, JORGENSEN, KAUFERT, KESTELL, KUGLITSCH, T. LARSON, LEMAHIEU, LITJENS, NERISON, A. OTT, PETERSEN, PETROWSKI, PETRYK, PRIDEMORE, RIPP, SINICKI, SPANBAUER, STASKUNAS, STONE, STRACHOTA, THIESFELDT, TRANEL, VAN ROY and ZEPNICK. Referred to Committee on Public Health, Human Services, and Revenue.

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 73.15 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.

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.

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:

SENATE BILL 164**SECTION 1**

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. 73.15 (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.

SENATE BILL 164

1 h. Vaccinations.

2 i. Employee physical examinations.

3 (b) *Filing claims.* Subject to the limitations provided in this subsection and s.
4 73.15, 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. 73.15 (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:

SENATE BILL 164**SECTION 3**

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 ...
3 (Assembly Bill 40), is 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.

SENATE BILL 164

1 3. “Workplace wellness program” means a health or fitness program certified
2 under s. 73.15 (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 73.15, 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. 73.15 (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.

SENATE BILL 164**SECTION 6**

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

SENATE BILL 164

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. 73.15 (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 73.15, a claimant may claim as a credit against the taxes imposed under s. 71.43, up

SENATE BILL 164**SECTION 10**

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. 73.15 (2), the maximum amount
7 of the credits that may be claimed under this subsection and ss. 71.07 (5i) and 71.28
8 (5i) 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.** 73.15 of the statutes is created to read:

24 **73.15 Workplace wellness programs. (1)** The department of revenue and
25 the department of health services shall implement a program to certify workplace

SENATE BILL 164

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),

SENATE BILL 164**SECTION 13**

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)