2021 ASSEMBLY BILL 974

February 10, 2022 - Introduced by Representatives MACCO, GOYKE, ANDRACA, ARMSTRONG, CABRAL-GUEVARA, CONSIDINE, DRAKE, HAYWOOD, HEBL, HINTZ, HORLACHER, KITCHENS, MCGUIRE, MOORE OMOKUNDE, OHNSTAD, POPE, SINICKI, SNODGRASS, SPREITZER, STEFFEN, STUBBS, THIESFELDT, VRUWINK and SHANKLAND, cosponsored by Senators RINGHAND, AGARD, JOHNSON, LARSON, PFAFF, ROYS and SMITH. Referred to Committee on Ways and Means.

AN ACT to amend 20.515 (1) (a), chapter 40 (title), 40.08 (8) (a) (intro.), 48.94 (1), 69.14 (1) (a) and 175.46 (5) (a); and to create 16.705 (1b) (e), 16.71 (5t), 20.515 (2), 25.14 (1) (a) 20., 25.17 (1) (zk), 25.17 (2) (h), 25.90, subchapter X of chapter 40 [precedes 40.96], 40.96 and 73.03 (77) of the statutes; relating to: creating a 401Kids savings program and the 401Kids savings program trust fund; granting rule-making authority; and making an appropriation.

Analysis by the Legislative Reference Bureau

401Kids savings program

This bill creates the 401Kids Savings Program and requires the Department of Employee Trust Funds (ETF) to establish and administer the program or to select a vendor to administer the program.

The bill provides several ways of establishing a 401Kids savings account. First, the bill requires the state registrar to submit to ETF a copy of the record of birth for each child born in Wisconsin on or after the effective date of the bill and requires ETF to establish a 401Kids savings account for the child, with the child designated as the account beneficiary and each parent identified in the record of birth designated as an account owner. Second, the bill requires each court order granting an adoption of a minor in Wisconsin on or after the effective date of the bill to be submitted to ETF and requires ETF to establish a 401Kids savings account for the child, with the child...
designated as the account beneficiary and each parent identified in the court order designated as an account owner. Third, any other person may establish a 401Kids savings account by making application for the account, designating an individual who is a minor as the account beneficiary, and making an initial contribution to the account. If ETF establishes a 401Kids savings account based on the receipt of a birth record or adoption order for the account beneficiary, ETF must deposit $25 into the account. When an account beneficiary reaches 18 years of age, the account beneficiary becomes the only account owner.

Under the bill, after ETF establishes the account, the account beneficiary, account owner, or any person authorized by the account beneficiary or account owner may contribute to the account. Distributions from an account may be used only to pay for a “qualified expense,” which is defined as any of the following: 1) any cost incurred by an account beneficiary in connection with the account beneficiary attending an institution of higher education or receiving any postsecondary training; 2) any cost incurred by an account beneficiary in connection with the account beneficiary purchasing the account beneficiary’s first home; 3) a medical emergency of the account beneficiary; or 4) any cost incurred by an account beneficiary during the account beneficiary’s retirement relating to housing, food, clothing, health care, transportation, or other household needs. The department may terminate an account under certain circumstances, including if the account balance is $0, the account beneficiary dies, or there has been no activity on the account for a period of 10 years. If the department terminates an account, the department must distribute the account balance to the account owner or the account owner’s estate. If the department contributed to an account, the account owner must repay the full amount of all state contributions if the account beneficiary is not a resident of this state at the time of any distribution from the account.

The bill imposes certain duties on ETF, including establishing investment guidelines for 401Kids savings accounts. The bill also requires the department to conduct public outreach and fundraising to generate donations for the 401Kids savings program. The department must develop a plan that allows the department, after the program is fully operational, to devote revenues generated under the program to fund the establishment of future accounts. The bill also authorizes the department to enter into contracts for professional services to assist in administering and evaluating the program. The department may promulgate rules to implement and administer the program. Also under the bill, the department may charge reasonable fees to account owners to repay the general fund for costs related to establishing the program.

The bill allows ETF to select a vendor to administer the program using a competitive proposal process. If ETF elects to contract with a vendor, the contract between ETF and the vendor must require the vendor to reimburse the state for the state’s administrative costs for the program; select an accounting firm to annually audit the program; and provide a quarterly account statement to each account owner.

The bill also creates a segregated fund designated the 401Kids savings program trust fund, which consists of revenue from account enrollment fees and account contributions, revenue from distributions and fees paid by the vendor, account owner
repayments of board contributions, and fees for repayment to the general fund for initial costs to establish the program. This trust fund is managed by the State of Wisconsin Investment Board but is subject to guidelines established by the board. However, SWIB's investment management duty excludes any funds under the management and control of a vendor selected by ETF.

The bill directs the Department of Revenue to establish a program under which taxpayers may direct that a portion of their tax refund be contributed to a 401Kids savings account.

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:

SECTION 1. 16.705 (1b) (e) of the statutes is created to read:

16.705 (1b) (e) The department of employee trust funds under s. 40.96 (7).

SECTION 2. 16.71 (5t) of the statutes is created to read:

16.71 (5t) The department shall delegate authority to the department of employee trust funds to enter into vendor contracts under s. 40.96 (8).

SECTION 3. 20.005 (3) (schedule) of the statutes: at the appropriate place, insert the following amounts for the purposes indicated:

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<th>2021-22</th>
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<tr>
<td>20.515 (2) 401Kids savings program</td>
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<td>(a) Administrative expenses; initial expenses</td>
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<td>(r) Administrative expenses; 401Kids savings program trust fund</td>
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SECTION 4. 20.515 (1) (a) of the statutes is amended to read:
20.515 (1) (a) **Annuity supplements and payments.** A sum sufficient to pay the benefits authorized under ss. 40.02 (17) (d) 2. and 40.27 (1), (1m) and (3) in excess of the amounts payable under other provisions of ch. 40, except subch. X, and to reimburse any amounts expended under par. (w) for the costs of administering the benefits provided under ss. 40.02 (17) (d) 2. and 40.27 (1), (1m) and (3).

**SECTION 5.** 20.515 (2) of the statutes is created to read:

20.515 (2) **401Kids savings program.** (a) **Administrative expenses; initial expenses.** Biennially, the amounts in the schedule for the administrative expenses of the 401Kids savings program established under s. 40.96, including for the initial establishment of the 401Kids savings program and the expenses of promoting the program and establishing accounts.

(j) **Gifts, grants, and donations.** All moneys received from gifts, grants, and donations to carry out the purposes for which made.

(q) **Payment of distributions.** From the 401Kids savings program trust fund, a sum sufficient for the payment of distributions under s. 40.96, including distributions upon account termination.

(r) **Administrative expenses; 401Kids savings program trust fund.** Biennially, from the 401Kids savings program trust fund, the amounts in the schedule for the administrative expenses of the 401Kids savings program established under s. 40.96, including the expense of promoting the program, and all moneys transferred to the fund under s. 40.96 (11) for repayment of the amounts appropriated under par. (a).

(t) **Vendor fees.** From the 401Kids savings program trust fund, all moneys received as repayments under s. 40.96 (6) (c) or (d), and all moneys received as fees from the vendor under s. 40.96 (8) (c) 1. that are designated for funding 401Kids...
savings accounts, for the purpose of funding 401Kids savings accounts under s. 40.96 (4) (d) 2.

**SECTION 6.** 25.14 (1) (a) 20. of the statutes is created to read:

25.14 (1) (a) 20. The 401Kids savings program trust fund.

**SECTION 7.** 25.17 (1) (zk) of the statutes is created to read:

25.17 (1) (zk) 401Kids savings program trust fund (s. 25.90), but subject to sub. (2) (h);

**SECTION 8.** 25.17 (2) (h) of the statutes is created to read:

25.17 (2) (h) Invest the moneys belonging to the 401Kids savings program trust fund in a manner consistent with the guidelines established under s. 40.96 (2) (b), unless the moneys are under the management and control of a vendor selected under s. 40.96 (8).

**SECTION 9.** 25.90 of the statutes is created to read:

25.90 **401Kids savings program trust fund.** There is established a separate nonlapsible trust fund designated as the 401Kids savings program trust fund, consisting of all revenue from enrollment fees for and contributions to 401Kids savings accounts established under s. 40.96, from distributions and fees paid by the vendor under s. 40.96 (8), fees paid by account owners under s. 40.96 (11), and from repayments under s. 40.96 (6) (c) and (d).

**SECTION 10.** Chapter 40 (title) of the statutes is amended to read:

**CHAPTER 40**

**PUBLIC EMPLOYEE TRUST FUND**

**AND 401KIDS SAVINGS PROGRAM**

**SECTION 11.** 40.08 (8) (a) (intro.) of the statutes is amended to read:
40.08 (8) (a) (intro.) Benefits Except as provided in s. 40.96, benefits provided under this chapter shall be considered abandoned as follows:

**SECTION 12.** Subchapter X of chapter 40 [precedes 40.96] of the statutes is created to read:

**CHAPTER 40**

**SUBCHAPTER X**

**401KIDS SAVINGS PROGRAM**

**SECTION 13.** 40.96 of the statutes is created to read:

**40.96 401Kids savings program.** (1) **Definitions.** In this section:

(a) “Account beneficiary” means an individual for whom the department establishes a 401Kids savings account under sub. (4) (a), (b), or (c).

(b) “Account owner” means the following:

1. If the account beneficiary is less than 18 years of age, any individual designated by the department as an account owner in establishing a 401Kids savings account under sub. (4) (a), (b), or (c).

2. If the account beneficiary is at least 18 years of age, the account beneficiary.

(c) “Dependent” means a dependent as defined under section 152 of the Internal Revenue Code.

(d) “Qualified expense” means any of the following:

1. Any cost incurred by an account beneficiary in connection with the account beneficiary attending an institution of higher education or receiving any postsecondary training, including expenses for tuition, fees, books, supplies, equipment, food, or housing.
2. Any cost incurred by an account beneficiary in connection with the account beneficiary purchasing the account beneficiary’s first home, including mortgage payments, a down payment, or closing costs.

3. Any cost incurred by an account beneficiary related to a medical emergency of the account beneficiary.

4. Any cost incurred by an account beneficiary during the account beneficiary’s retirement relating to housing, food, clothing, health care, transportation, or other household needs.

(2) DUTIES OF THE DEPARTMENT. The department shall do all of the following:

(a) Except as provided under sub. (8), establish and administer a 401Kids savings program as described in this section.

(b) Establish investment guidelines for contributions to and the earnings on 401Kids savings accounts established under this section.

(c) Pay distributions from 401Kids savings accounts established under this section.

(d) Ensure that, if the department changes vendors under sub. (8), the balances of 401Kids savings accounts established under this section are promptly transferred into investment instruments as similar to the original investment instruments as possible.

(e) Conduct public outreach and fundraising to generate donations for the 401Kids savings program.

(f) Develop a plan that allows the department, after the program under this section is fully operational, to devote revenues generated under the program to fund the establishment of future 401Kids savings accounts under sub. (4).
(3) Prohibition on use of trust fund moneys. The department may not expend any moneys from the public employee trust fund for its activities under this subchapter.

(4) Establishing accounts; account contributions by department. (a) For each record of birth submitted to the department under s. 69.14 (1) (a), the department shall establish a 401Kids savings account under this section for the child, with the child designated as the account beneficiary and each parent identified in the record of birth designated as an account owner.

(b) For each court order granting an adoption of a minor submitted to the department under s. 48.94 (1), the department shall establish a 401Kids savings account under this section for the child, with the child designated as the account beneficiary and each parent identified in the court order designated as an account owner, if the department has not already established an account for the child under par. (a).

(c) 1. Any person may establish a 401Kids savings account under this section by doing all of the following:

a. Making application for the account, in the form and manner prescribed by the department, and providing all information required by the department for opening the account.

b. Designating an individual who is a minor as the account beneficiary.

c. Making an initial contribution to the account that is at least the minimum amount established by the department.

2. If the requirements under subd. 1. are satisfied, and a 401Kids savings account has not already been created for the account beneficiary under par. (a) or (b),
the department shall establish a 401Kids savings account, designating the person
who established the account as the account owner.

(d) Upon the department establishing an account under par. (a) or (b), the
department shall promptly do all of the following:

1. Provide written notice of the account to each parent designated as an account
owner.

2. From the appropriation under s. 20.515 (1) (a) or (t), deposit $25 into the
account.

(e) If the department receives a court order granting an adoption of a minor and
does not establish an account under par. (b) because the department has already
established an account for the child under par. (a), the department shall update the
account owner designation for the child's account to designate each parent identified
in the court order as an account owner and to remove each parent identified in the
record of birth as an account owner.

(5) Contributions to accounts; qualified expenses. (a) An account
beneficiary, an account owner, or any other individual authorized by an account
beneficiary or account owner may contribute to a 401Kids savings account
established under this section. The contribution may be made directly or as provided
in the program established under s. 73.03 (77).

(b) Distributions from an account established under this section may be made
only to an account owner. An account owner may use moneys distributed from the
account only to pay for qualified expenses.

(6) Account termination; return of office contribution. (a) The department
may terminate an account established under this section if any of the following
occurs:
1. The account balance is $0.

2. The account beneficiary dies.

3. There has been no activity on the account for a period of 10 years.

4. Other circumstances determined by the department to be grounds for termination occur.

(b) Upon the termination of an account under par. (a), the department shall distribute any amount remaining in the account to the account owner or the account owner’s estate. The department shall mail notice of the account termination to the last-known address of the account owner. If the department determines that an account is subject to termination under par. (a) 2., 3., or 4. and cannot with reasonable efforts locate the account owner within one year after making that determination, any amount remaining in the account is presumed abandoned under s. 177.13.

(c) If the department contributed to an account as provided in sub. (4) (d) 2., and the account beneficiary is not a resident of this state at the time of any distribution from the 401Kids savings account, the account owner shall repay to the department all contributions received under sub. (4) (d) 2. These payments shall be deposited into the 401Kids savings program trust fund and credited to the appropriation under s. 20.515 (1) (t).

(7) Contracts with Professionals. The department may enter into contracts for the services of accountants, attorneys, consultants, or other professionals to assist in the administration and evaluation of the 401Kids savings program established under this section.

(8) Vendor. (a) The department may, in lieu of administering the program,
factors to be considered in selecting an entity to be a vendor of the program under this section. Those factors shall include all of the following:

1. The entity’s ability to satisfy record-keeping and reporting requirements.
2. The fees, if any, that the entity proposes to charge in connection with accounts established under this section.
3. The entity’s plan for promoting the program and the investment that the entity is willing to make to promote the program.
4. The ability of the entity to augment the program with additional beneficial services related to the program.

(b) If the department elects to have a vendor administer the program, the department shall solicit competitive sealed proposals using the process under s. 16.75 (2m) from nongovernmental entities to serve as vendor of the program under this section and shall select the vendor on the basis of factors determined by the department under par. (a).

(c) If the department elects to have a vendor administer the program, the department shall, in the contract between the department and the vendor selected under par. (b), require the vendor to do all of the following:

1. Reimburse the state for all administrative costs that the state incurs for the program.
2. Select a firm of certified public accountants, cause that firm to annually audit the program, and provide a copy of each audit to the department.
3. Provide a quarterly statement to each account owner that identifies the contributions to the account during the preceding quarter, the total contributions to and the value of the account through the end of the preceding quarter, and any distributions made from the account during the preceding quarter.
(9) **RULES.** The department may promulgate rules to implement and administer this section.

(10) **FINANCIAL AID CALCULATIONS.** The balance of a 401Kids savings account may not be included in the calculation of the account beneficiary’s eligibility for state financial aid for higher education if the account beneficiary or account owner notifies the higher educational aids board and the institution of higher education that the account beneficiary is planning to attend that he or she is a beneficiary of a 401Kids savings account and provides necessary information relating to the account.

(11) **REPAYMENT OF GENERAL FUND.** (a) The department may charge reasonable fees to account owners to cover the costs of administering the program, and to repay the general fund for amounts transferred to the fund under s. 20.515 (2) (a) as provided in par. (b).

(b) A fee collected under par. (a) shall be deposited in the 401Kids savings program trust fund and credited to the appropriation account under s. 20.515 (2) (r). From that appropriation, the department shall transfer to the general fund an amount equal to the amount expended from the appropriation under s. 20.515 (2) (a) when the department determines that the balance in the fund is sufficient to make the transfer. The department may transfer that amount in installments.

**SECTION 14.** 48.94 (1) of the statutes is amended to read:

48.94 (1) After entry of the order granting the adoption, the clerk of the court shall promptly mail a copy thereof to the state bureau of vital records and the department of employee trust funds and shall furnish to the state bureau of vital records any additional data needed for the new birth record. Whenever the parents by adoption, or the adopting parent and a birth parent who is the spouse of the adopting parent, request, that the birth record for the person adopted be not
changed, then the court shall so order. In such event no new birth record shall be filed
by the state registrar, notwithstanding the provisions of s. 69.15 (2) or any other law
of this state.

SECTION 15. 69.14 (1) (a) of the statutes is amended to read:

69.14 (1) (a) Filing deadline. A record of birth for every birth that occurs in this
state shall be filed within 5 days after the birth with the state registrar, who shall
register the birth under this subchapter. The state registrar shall submit a copy of
the record of birth to the department of employee trust funds.

SECTION 16. 73.03 (77) of the statutes is created to read:

73.03 (77) To implement a program under which, beginning with taxable years
beginning on January 1, 2022, a person described in s. 40.96 (5) (a) may direct that
any amount of the individual’s tax refund under ch. 71 be contributed to a 401Kids
savings account established under s. 40.96 (4).

SECTION 17. 175.46 (5) (a) of the statutes is amended to read:

175.46 (5) (a) Except as provided in par. (b), any agreement under this section
shall provide that any Wisconsin law enforcement officer, acting under the
agreement in another state, shall continue to be covered by his or her employing
agency for purposes of worker’s compensation, unemployment insurance, benefits
under ch. 40, except subch. X, and civil liability and any officer of another state acting
in Wisconsin under the agreement shall continue to be covered for worker’s
compensation, unemployment insurance, disability and other employee benefits and
civil liability purposes by his or her employing agency in his or her home state. Any
Wisconsin officer acting within an adjoining state, under the agreement, is
considered while so acting to be in the ordinary course of his or her employment with
his or her employing Wisconsin law enforcement agency.
SECTION 18. Initial applicability.

(1) 401KIDS SAVINGS PROGRAM. The treatment of ss. 48.94 (1) and 69.14 (1) (a) first applies to children born or adopted on the effective date of this subsection.

(END)