



State of Wisconsin  
2021 - 2022 LEGISLATURE

LRB-5348/1  
MIM & ARG:klm

## 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.

1     **AN ACT to amend** 20.515 (1) (a), chapter 40 (title), 40.08 (8) (a) (intro.), 48.94 (1),  
2           69.14 (1) (a) and 175.46 (5) (a); and **to create** 16.705 (1b) (e), 16.71 (5t), 20.515  
3           (2), 25.14 (1) (a) 20., 25.17 (1) (zk), 25.17 (2) (h), 25.90, subchapter X of chapter  
4           40 [precedes 40.96], 40.96 and 73.03 (77) of the statutes; **relating to:** creating  
5           a 401Kids savings program and the 401Kids savings program trust fund;  
6           granting rule-making authority; and making an appropriation.

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### *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

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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

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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:*

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

2           16.705 **(1b)** (e) The department of employee trust funds under s. 40.96 (7).

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

4           16.71 **(5t)** The department shall delegate authority to the department of  
5 employee trust funds to enter into vendor contracts under s. 40.96 (8).

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

**2021-22            2022-23**

8           **20.515 (2) 401Kids savings program**

9           (2)    401KIDS SAVINGS PROGRAM

10          (a)    Administrative expenses; initial

11            expenses	GPR	B	\$1,000,000	\$1,000,000
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12          (r)    Administrative expenses;

13            401Kids savings program trust

14            fund	SEG	B	-0-	-0-
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15          **SECTION 4.** 20.515 (1) (a) of the statutes is amended to read:

**ASSEMBLY BILL 974****SECTION 4**

1           20.515 (1) (a) *Annuity supplements and payments.* A sum sufficient to pay the  
2 benefits authorized under ss. 40.02 (17) (d) 2. and 40.27 (1), (1m) and (3) in excess  
3 of the amounts payable under other provisions of ch. 40, except subch. X, and to  
4 reimburse any amounts expended under par. (w) for the costs of administering the  
5 benefits provided under ss. 40.02 (17) (d) 2. and 40.27 (1), (1m) and (3).

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

7           **20.515 (2) 401Kids savings program.** (a) *Administrative expenses; initial*  
8 *expenses.* Biennially, the amounts in the schedule for the administrative expenses  
9 of the 401Kids savings program established under s. 40.96, including for the initial  
10 establishment of the 401Kids savings program and the expenses of promoting the  
11 program and establishing accounts.

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

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

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

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

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1 savings accounts, for the purpose of funding 401Kids savings accounts under s. 40.96  
2 (4) (d) 2.

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

4 25.14 (1) (a) 20. The 401Kids savings program trust fund.

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

6 25.17 (1) (zk) 401Kids savings program trust fund (s. 25.90), but subject to sub.  
7 (2) (h);

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

9 25.17 (2) (h) Invest the moneys belonging to the 401Kids savings program trust  
10 fund in a manner consistent with the guidelines established under s. 40.96 (2) (b),  
11 unless the moneys are under the management and control of a vendor selected under  
12 s. 40.96 (8).

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

14 **25.90 401Kids savings program trust fund.** There is established a separate  
15 nonlapsible trust fund designated as the 401Kids savings program trust fund,  
16 consisting of all revenue from enrollment fees for and contributions to 401Kids  
17 savings accounts established under s. 40.96, from distributions and fees paid by the  
18 vendor under s. 40.96 (8), fees paid by account owners under s. 40.96 (11), and from  
19 repayments under s. 40.96 (6) (c) and (d).

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

21 **CHAPTER 40**

22 **PUBLIC EMPLOYEE TRUST FUND**

23 **AND 401KIDS SAVINGS PROGRAM**

24 **SECTION 11.** 40.08 (8) (a) (intro.) of the statutes is amended to read:



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1           2. Any cost incurred by an account beneficiary in connection with the account  
2 beneficiary purchasing the account beneficiary's first home, including mortgage  
3 payments, a down payment, or closing costs.

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

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

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

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

12           (b) Establish investment guidelines for contributions to and the earnings on  
13 401Kids savings accounts established under this section.

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

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

20           (e) Conduct public outreach and fundraising to generate donations for the  
21 401Kids savings program.

22           (f) Develop a plan that allows the department, after the program under this  
23 section is fully operational, to devote revenues generated under the program to fund  
24 the establishment of future 401Kids savings accounts under sub. (4).

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1           **(3) PROHIBITION ON USE OF TRUST FUND MONEYS.** The department may not expend  
2 any moneys from the public employee trust fund for its activities under this  
3 subchapter.

4           **(4) ESTABLISHING ACCOUNTS; ACCOUNT CONTRIBUTIONS BY DEPARTMENT.** (a) For  
5 each record of birth submitted to the department under s. 69.14 (1) (a), the  
6 department shall establish a 401Kids savings account under this section for the  
7 child, with the child designated as the account beneficiary and each parent identified  
8 in the record of birth designated as an account owner.

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

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

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

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

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

23           2. If the requirements under subd. 1. are satisfied, and a 401Kids savings  
24 account has not already been created for the account beneficiary under par. (a) or (b),



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1 the department shall establish a 401Kids savings account, designating the person  
2 who established the account as the account owner.

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

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

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

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

15 **(5) CONTRIBUTIONS TO ACCOUNTS; QUALIFIED EXPENSES.** (a) An account  
16 beneficiary, an account owner, or any other individual authorized by an account  
17 beneficiary or account owner may contribute to a 401Kids savings account  
18 established under this section. The contribution may be made directly or as provided  
19 in the program established under s. 73.03 (77).

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

23 **(6) ACCOUNT TERMINATION; RETURN OF OFFICE CONTRIBUTION.** (a) The department  
24 may terminate an account established under this section if any of the following  
25 occurs:

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- 1           1. The account balance is \$0.
- 2           2. The account beneficiary dies.
- 3           3. There has been no activity on the account for a period of 10 years.
- 4           4. Other circumstances determined by the department to be grounds for
- 5           termination occur.

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

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

20          **(7) CONTRACTS WITH PROFESSIONALS.** The department may enter into contracts  
21          for the services of accountants, attorneys, consultants, or other professionals to  
22          assist in the administration and evaluation of the 401Kids savings program  
23          established under this section.

24          **(8) VENDOR.** (a) The department may, in lieu of administering the program,  
25          select a vendor to administer the program. The department shall determine the

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1 factors to be considered in selecting an entity to be a vendor of the program under  
2 this section. Those factors shall include all of the following:

3 1. The entity's ability to satisfy record-keeping and reporting requirements.

4 2. The fees, if any, that the entity proposes to charge in connection with  
5 accounts established under this section.

6 3. The entity's plan for promoting the program and the investment that the  
7 entity is willing to make to promote the program.

8 4. The ability of the entity to augment the program with additional beneficial  
9 services related to the program.

10 (b) If the department elects to have a vendor administer the program, the  
11 department shall solicit competitive sealed proposals using the process under s.  
12 16.75 (2m) from nongovernmental entities to serve as vendor of the program under  
13 this section and shall select the vendor on the basis of factors determined by the  
14 department under par. (a).

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

18 1. Reimburse the state for all administrative costs that the state incurs for the  
19 program.

20 2. Select a firm of certified public accountants, cause that firm to annually audit  
21 the program, and provide a copy of each audit to the department.

22 3. Provide a quarterly statement to each account owner that identifies the  
23 contributions to the account during the preceding quarter, the total contributions to  
24 and the value of the account through the end of the preceding quarter, and any  
25 distributions made from the account during the preceding quarter.

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1           **(9) RULES.** The department may promulgate rules to implement and  
2 administer this section.

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

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

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

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

20           48.94 **(1)** After entry of the order granting the adoption, the clerk of the court  
21 shall promptly mail a copy thereof to the state bureau of vital records and the  
22 department of employee trust funds and shall furnish to the state bureau of vital  
23 records any additional data needed for the new birth record. Whenever the parents  
24 by adoption, or the adopting parent and a birth parent who is the spouse of the  
25 adopting parent, request, that the birth record for the person adopted be not

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1 changed, then the court shall so order. In such event no new birth record shall be filed  
2 by the state registrar, notwithstanding the provisions of s. 69.15 (2) or any other law  
3 of this state.

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

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

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

10 73.03 (77) To implement a program under which, beginning with taxable years  
11 beginning on January 1, 2022, a person described in s. 40.96 (5) (a) may direct that  
12 any amount of the individual's tax refund under ch. 71 be contributed to a 401Kids  
13 savings account established under s. 40.96 (4).

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

15 175.46 (5) (a) Except as provided in par. (b), any agreement under this section  
16 shall provide that any Wisconsin law enforcement officer, acting under the  
17 agreement in another state, shall continue to be covered by his or her employing  
18 agency for purposes of worker's compensation, unemployment insurance, benefits  
19 under ch. 40, except subch. X, and civil liability and any officer of another state acting  
20 in Wisconsin under the agreement shall continue to be covered for worker's  
21 compensation, unemployment insurance, disability and other employee benefits and  
22 civil liability purposes by his or her employing agency in his or her home state. Any  
23 Wisconsin officer acting within an adjoining state, under the agreement, is  
24 considered while so acting to be in the ordinary course of his or her employment with  
25 his or her employing Wisconsin law enforcement agency.

