

1999 Assembly Bill 654

Date of enactment: **April 11, 2000**
Date of publication*: **April 25, 2000**

1999 WISCONSIN ACT 44

AN ACT *to repeal* 14.63 (3) (a) 1. and 3.; *to amend* 14.63 (title), 14.63 (1) (b), 14.63 (3) (title), 14.63 (4), 14.63 (5) (a), 14.63 (5) (b) (intro.) and 2., 14.63 (8), 14.63 (11) (b), 14.63 (13), 16.75 (2m) (a), 20.585 (2) (title), 20.585 (2) (a), 20.585 (2) (s) and 71.05 (6) (b) 23.; and *to create* 14.57, 14.63 (3) (c), 14.63 (11m), 14.64, 15.07 (1) (b) 2., 16.25, 20.585 (2) (am), 20.585 (2) (gm), 71.05 (6) (b) 28. h., 71.05 (6) (b) 31., 71.05 (6) (b) 32., 71.05 (6) (b) 33. and 815.18 (3) (p) of the statutes; **relating to:** the college tuition and expenses program, creating a college savings program board and college savings program, creating a tax deduction for certain amounts contributed to the college tuition and expenses program, creating a tax deduction for certain amounts contributed to the college savings program, exempting from taxation certain gains derived from contributions to the college savings program, granting rule-making authority and making appropriations.

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

SECTION 1. 14.57 of the statutes is created to read:

14.57 Same; attached boards. There is created a college savings program board that is attached to the office of the state treasurer under s. 15.03 and that consists of all of the following members:

- (1) The state treasurer or his or her designee.
- (2) The president of the board of regents of the University of Wisconsin System or his or her designee.
- (3) The president of the Wisconsin Association of Independent Colleges and Universities or his or her designee.
- (4) The chairperson of the investment board or his or her designee.
- (5) The president of the technical college system board or his or her designee.
- (6) Six other members, appointed for 4-year terms.

SECTION 1g. 14.63 (title) of the statutes, as affected by 1999 Wisconsin Act 9, is amended to read:

14.63 (title) College tuition prepayment and expenses program.

SECTION 1m. 14.63 (1) (b) of the statutes, as affected by 1999 Wisconsin Act 9, is amended to read:

14.63 (1) (b) "Institution of higher education" means ~~a public or private institution of higher education that is accredited by an accrediting association recognized by the state treasurer, and a proprietary school approved by the educational approval board under s. 45.54 an eligible educational institution, as defined under 26 USC 529.~~

SECTION 1r. 14.63 (3) (title) of the statutes, as affected by 1999 Wisconsin Act 9, is amended to read:

14.63 (3) (title) ~~TUITION-PREPAYMENT COLLEGE TUITION AND EXPENSES CONTRACTS.~~

SECTION 2. 14.63 (3) (a) 1. and 3. of the statutes, as affected by 1999 Wisconsin Act 9, are repealed.

SECTION 3. 14.63 (3) (c) of the statutes is created to read:

14.63 (3) (c) The state treasurer may charge a purchaser an enrollment fee.

* Section 991.11, WISCONSIN STATUTES 1997-98: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

SECTION 4m. 14.63 (4) of the statutes, as affected by 1999 Wisconsin Act 9, is amended to read:

14.63 (4) NUMBER OF TUITION UNITS PURCHASED. A person who enters into a contract under sub. (3) may purchase tuition units at any time and in any number, except that the total number of tuition units purchased on behalf of a single beneficiary may not exceed the number necessary to pay for 4 years of full-time attendance, including mandatory student fees, as a resident undergraduate at the institution within the University of Wisconsin System that has the highest resident undergraduate tuition, as determined by the state treasurer, in the anticipated academic years of their use cover tuition, fees and the costs of room and board, books, supplies and equipment required for enrollment or attendance of the beneficiary at an institution of higher education.

SECTION 5. 14.63 (5) (a) of the statutes, as affected by 1999 Wisconsin Act 9, is amended to read:

14.63 (5) (a) Except as provided in sub. (7m), if an individual named as beneficiary in a contract under sub. (3) attends an institution of higher education in the United States, each tuition unit purchased on his or her behalf entitles that beneficiary to apply toward the payment of tuition and mandatory student fees and the costs of room and board, books, supplies and equipment required for enrollment or attendance at the institution an amount equal to 1% of the anticipated weighted average tuition of bachelor's degree-granting institutions within the University of Wisconsin System for the year of attendance, as estimated under sub. (2) in the year in which the tuition unit was purchased.

SECTION 6. 14.63 (5) (b) (intro.) and 2. of the statutes, as affected by 1999 Wisconsin Act 9, are amended to read:

14.63 (5) (b) (intro.) Upon request by the beneficiary, the state treasurer shall pay to the institution or beneficiary, whichever is appropriate, in each semester of attendance the lesser of the following:

2. An amount equal to the sum of the institution's tuition and mandatory student fees and the costs described in par. (a) for that semester.

SECTION 7. 14.63 (8) of the statutes, as affected by 1999 Wisconsin Act 9, is amended to read:

14.63 (8) EXEMPTION FROM GARNISHMENT, ATTACHMENT AND EXECUTION. Moneys deposited in the tuition trust fund and a beneficiary's right to the payment of tuition and mandatory student fees and the costs described in sub. (5) (a) under this section are not subject to garnishment, attachment, execution or any other process of law.

SECTION 8. 14.63 (11) (b) of the statutes, as affected by 1999 Wisconsin Act 9, is amended to read:

14.63 (11) (b) The requirements to pay tuition and mandatory student fees and the costs of room and board, books, supplies and equipment under sub. (5) and to

make refunds under sub. (7) are subject to the availability of sufficient assets in the tuition trust fund.

SECTION 8m. 14.63 (11m) of the statutes is created to read:

14.63 (11m) FINANCIAL AID CALCULATIONS. The value of tuition units shall not be included in the calculation of a beneficiary's eligibility for state financial aid for higher education if the beneficiary notifies the higher educational aids board and the institution of higher education that the beneficiary is planning to attend that he or she is a beneficiary of a contract under this section and the contract owner agrees to release to the higher educational aids board and the institution of higher education information necessary for the calculation under this subsection.

SECTION 8r. 14.63 (13) of the statutes, as affected by 1999 Wisconsin Act 9, is amended to read:

14.63 (13) PROGRAM TERMINATION. If the state treasurer determines that the program under this section is financially infeasible, the state treasurer shall discontinue entering into tuition prepayment contracts under sub. (3) and discontinue selling tuition units under sub. (4).

SECTION 9. 14.64 of the statutes is created to read:

14.64 College savings program. (1) DEFINITIONS. In this section:

(a) "Account owner" means an individual who establishes a college savings account under this section.

(b) "Board" means the college savings program board.

(2) DUTIES OF THE BOARD. The board shall do all of the following:

(a) Except as provided in s. 16.25, establish and administer a college savings program that allows an individual, trust, legal guardian or entity described under 26 USC 529 (e) (1) (C) to establish a college savings account to cover tuition, fees and the costs of room and board, books, supplies and equipment required for the enrollment or attendance of a beneficiary at an eligible educational institution, as defined under 26 USC 529.

(b) Ensure that the college savings program meets the requirements of a qualified state tuition plan under 26 USC 529.

(c) Invest the contributions to college savings accounts and pay distributions to beneficiaries and eligible educational institutions.

(d) Provide to each account owner, and to persons who are interested in establishing a college savings account, information about current and estimated future higher education costs, levels of participation in the college savings program that will help achieve educational funding objectives and availability of and access to financial aid.

(e) Promulgate rules to implement and administer this section, including rules that determine whether a

withdrawal from a college savings account is a qualified or nonqualified withdrawal, as defined under 26 USC 529, and that impose more than a de minimis penalty, as defined under 26 USC 529, for nonqualified withdrawals.

(f) Seek rulings and guidance from the U.S. department of the treasury, the internal revenue service and the securities and exchange commission to ensure the proper implementation and administration of the college savings program.

(g) Ensure that if the department of administration changes vendors, the balances of college savings accounts are promptly transferred into investment instruments as similar to the original investment instruments as possible.

(h) Keep personal and financial information pertaining to an account owner or a beneficiary closed to the public, except that the board may release to the appropriate state agency information necessary in determining a beneficiary's eligibility for state financial aid for higher education.

(3) ACCOUNT OWNERS; BENEFICIARIES; CONTRIBUTIONS; TERMINATION OF SAVINGS ACCOUNTS. (a) An account owner may do all of the following:

1. Contribute to a college savings account
2. Select a beneficiary of a college savings account.
3. Change the beneficiary of a college savings account to a family member, as defined under 26 USC 529, of the previous beneficiary.
4. Transfer all or a portion of a college savings account to another college savings account whose beneficiary is a member of the family.
5. Designate a person other than the beneficiary as a person to whom funds may be paid from a college savings account.
6. Receive distributions from a college savings account if no other person is designated.

(b) An individual may be the beneficiary of more than one college savings account, and an account owner may be the beneficiary of a college savings account that the account owner has established.

(c) The board shall establish a minimum initial contribution to a college savings account that may be waived if the account owner agrees to contribute to a college savings account through a payroll deduction or automatic deposit plan. The board shall ensure that any such plan permits the adjustment of scheduled deposits because of a change in the account owner's economic circumstances or a beneficiary's educational plans.

(d) An account owner under this section may terminate his or her college savings account if any of the following occurs:

1. The beneficiary dies or is permanently disabled.
2. The beneficiary graduates from high school but is unable to gain admission to an institution of higher education after a good faith effort.

3. The beneficiary attended an institution of higher education but involuntarily failed to complete the program in which he or she was enrolled.

4. The beneficiary is at least 18 years old and one of the following applies:

- a. The beneficiary has not graduated from high school.
- b. The beneficiary has decided not to attend an institution of higher education.
- c. The beneficiary attended an institution of higher education but voluntarily withdrew without completing the program in which he or she was enrolled.

5. Other circumstances determined by the board to be grounds for termination.

(e) The board shall terminate a college savings account if any portion of the college savings account balance remains unused 10 years after the anticipated academic year of the beneficiary's initial enrollment in an eligible educational institution.

(4) CONTRACTS WITH PROFESSIONALS. The board may enter into a contract for the services of accountants, attorneys, consultants and other professionals to assist in the administration and evaluation of the college savings program.

(5) REPORT. Annually, the board shall submit a report to the governor, and to the appropriate standing committees of the legislature under s. 13.172 (3), on the performance of the college savings program, including any recommended changes to the program.

(6) CONSTRUCTION. Nothing in this section guarantees an individual's admission to, retention by or graduation from any institution of higher education; a rate of interest or return on a college savings account; or the payment of principal, interest or return on a college savings account.

(7) EXEMPTION FROM GARNISHMENT, ATTACHMENT AND EXECUTION; SECURITY FOR LOAN. (a) A beneficiary's right to qualified withdrawals under this section is not subject to garnishment, attachment, execution or other process of law.

(b) No interest in a college savings account may be pledged as security for a loan.

(8) FINANCIAL AID CALCULATIONS. The balance of a college savings account shall not be included in the calculation of a beneficiary's eligibility for state financial aid for higher education if the beneficiary notifies the higher educational aids board and the eligible educational institution that the beneficiary is planning to attend that he or she is a beneficiary of a college savings account and if the account owner agrees to release to the higher educational aids board and the eligible educational institution information necessary for the calculation under this subsection.

SECTION 10. 15.07 (1) (b) 2. of the statutes is created to read:

15.07 (1) (b) 2. College savings program board.

SECTION 11. 16.25 of the statutes is created to read:

16.25 College savings program vendor. (1) The department shall determine the factors to be considered in selecting a vendor of the program under s. 14.64, which shall include:

- (a) The person's ability to satisfy record-keeping and reporting requirements.
(b) The fees, if any, that the person proposes to charge account owners.
(c) The person's plan for promoting the college savings program and the investment that the person is willing to make to promote the program.
(d) The minimum initial contribution or minimum contributions that the person will require.
(e) The ability and willingness of the person to accept electronic contributions.
(f) The ability of the person to augment the college savings program with additional, beneficial services related to the program.

(2) The department shall solicit competitive sealed proposals under s. 16.75 (2m) from nongovernmental persons to serve as vendor of the college savings program. The department shall select the vendor based upon factors determined by the department under sub. (1).

(3) The contract between the department and the ven-

dor shall ensure all of the following:

- (a) That the vendor reimburses the state for all administrative costs that the state incurs for the college savings program.
(b) That a firm of certified public accountants selected by the vendor annually audits the college savings program and provides a copy of the audit to the college savings program board.
(c) That each account owner receives a quarterly statement that identifies the contributions to the college savings account during the preceding quarter, the total contributions to and the value of the college savings account through the end of the preceding quarter and any distributions made during the preceding quarter.
(d) That the vendor communicate to the beneficiary and account owner the requirements of s. 14.64 (8).

SECTION 12. 16.75 (2m) (a) of the statutes is amended to read:

16.75 (2m) (a) If Except as otherwise required by law, if the secretary or his or her designee determines that the use of competitive sealed bidding is not practicable or not advantageous to this state, the department may solicit competitive sealed proposals. Each request for competitive sealed proposals shall state the relative importance of price and other evaluation factors.

SECTION 12m. 20.005 (3) (schedule) of the statutes: at the appropriate place, insert the following amounts for the purposes indicated:

Table with 4 columns: Description, GPR, A, 1999-00, 2000-01. Row 1: 20.585 Treasurer, state. Row 2: (2) COLLEGE TUITION AND EXPENSES AND COLLEGE SAVINGS PROGRAMS. Row 3: (am) Administrative expenses for college savings program; general fund. Values: GPR A, -0-, 75,000.

SECTION 13dg. 20.585 (2) (title) of the statutes, as affected by 1999 Wisconsin Act 9, is amended to read:

20.585 (2) (title) COLLEGE TUITION PREPAYMENT PROGRAM AND EXPENSES AND COLLEGE SAVINGS PROGRAMS.

SECTION 13dm. 20.585 (2) (a) of the statutes is amended to read:

20.585 (2) (a) Administrative expenses; general fund. The amounts in the schedule for the administrative expenses of the college tuition prepayment and expenses program under s. 14.63, including the expense of promoting the program.

SECTION 13dp. 20.585 (2) (am) of the statutes is created to read:

20.585 (2) (am) Administrative expenses for college savings program; general fund. The amounts in the schedule for the administrative expenses of the college savings program under s. 14.64, including the expense of promoting the program.

SECTION 13dq. 20.585 (2) (gm) of the statutes is created to read:

20.585 (2) (gm) General program operations; reimbursement. All moneys received from the vendor of the college savings program under s. 16.25 (3) (a) for general programs operations.

SECTION 13dr. 20.585 (2) (s) of the statutes is amended to read:

20.585 (2) (s) Administrative expenses; tuition trust fund. From the tuition trust fund, the amounts in the schedule for the administrative expenses of the college tuition prepayment and expenses program under s. 14.63, including the expense of promoting the program.

SECTION 13g. 71.05 (6) (b) 23. of the statutes, as affected by 1999 Wisconsin Act 9, is amended to read:

71.05 (6) (b) 23. Any increase in value of a tuition unit that is purchased under a tuition contract under s. 14.63, except that the subtraction under this subdivision may not be claimed by any individual who received a refund under s. 14.63 (7) (a) 2., 3. or 4.

SECTION 13h. 71.05 (6) (b) 28. h. of the statutes is created to read:

71.05 (6) (b) 28. h. No modification may be claimed under this subdivision for an amount paid for tuition expenses, as described under this subdivision, if the source of the payment is an amount withdrawn from a college savings account, as described in s. 14.64 or from a college tuition and expenses program, as described in s. 14.63, and if the claimant has claimed a deduction under subd. 32. or 33. that relates to such an amount.

SECTION 13j. 71.05 (6) (b) 31. of the statutes is created to read:

71.05 (6) (b) 31. Any increase in value of a college savings account, as described in s. 14.64, except that the subtraction under this subdivision may not be claimed by any individual who has made a nonqualified withdrawal, as described in s. 14.64 (2) (e).

SECTION 13m. 71.05 (6) (b) 32. of the statutes is created to read:

71.05 (6) (b) 32. An amount paid into a college savings account, as described in s. 14.64, if the beneficiary of the account either is the claimant or is the claimant's child and the claimant's dependent who is claimed under section 151 (c) of the Internal Revenue Code, calculated as follows:

a. An amount equal to not more than \$3,000 per beneficiary for each year to which the claim relates.

b. For an individual who is a nonresident or part-year resident of this state, multiply the amount calculated under subd. 32. a. by a fraction the numerator of which is the individual's wages, salary, tips, unearned income and net earnings from a trade or business that are taxable by this state and the denominator of which is the individual's total wages, salary, tips, unearned income and net earnings from a trade or business. In this subd. 32. b., for married persons filing separately "wages, salary, tips, unearned income and net earnings from a trade or business" means the separate wages, salary, tips, unearned income and net earnings from a trade or business of each spouse, and for married persons filing jointly "wages, salary, tips, unearned income and net earnings from a trade or business" means the total wages, salary, tips, unearned income and net earnings from a trade or business of both spouses.

c. Reduce the amount calculated under subd. 32. a. or b. to the individual's aggregate wages, salary, tips, unearned income and net earnings from a trade or business that are taxable by this state.

SECTION 13p. 71.05 (6) (b) 33. of the statutes is created to read:

71.05 (6) (b) 33. An amount paid into a college tuition and expenses program, as described in s. 14.63, if the beneficiary of the account either is the claimant or is the claimant's child and the claimant's dependent who is claimed under section 151 (c) of the Internal Revenue Code, calculated as follows:

a. An amount equal to not more than \$3,000 per beneficiary for each year to which the claim relates.

b. For an individual who is a nonresident or part-year resident of this state, multiply the amount calculated under subd. 33. a. by a fraction the numerator of which is the individual's wages, salary, tips, unearned income and net earnings from a trade or business that are taxable by this state and the denominator of which is the individual's total wages, salary, tips, unearned income and net earnings from a trade or business. In this subd. 33. b., for married persons filing separately "wages, salary, tips, unearned income and net earnings from a trade or business" means the separate wages, salary, tips, unearned income and net earnings from a trade or business of each spouse, and for married persons filing jointly "wages, salary, tips, unearned income and net earnings from a trade or business" means the total wages, salary, tips, unearned income and net earnings from a trade or business of both spouses.

c. Reduce the amount calculated under subd. 33. a. or b. to the individual's aggregate wages, salary, tips, unearned income and net earnings from a trade or business that are taxable by this state.

SECTION 14. 815.18 (3) (p) of the statutes is created to read:

815.18 (3) (p) *College savings accounts.* An interest in a college savings account under s. 14.64.

SECTION 15. Nonstatutory provisions.

(1) (a) Notwithstanding section 15.07 (1) (b) 2. of the statutes, as created by this act, the governor may provisionally appoint initial members of the college savings program board under section 14.57 of the statutes, as created by this act. Those provisional appointments are in force until the governor withdraws them or the senate acts upon them, and if the senate confirms them, they continue for the remainder of the unexpired terms, if any, of the members and until successors are chosen and qualify. A provisional appointee may exercise all the powers and duties of board membership to which the person is appointed during the time in which the appointee qualifies.

(b) A provisional appointment under paragraph (a) that the governor withdraws lapses upon withdrawal and creates a vacancy for the provisional appointment of another initial member of the college savings program board. A provisional appointment that the governor makes under paragraph (a) and that the senate rejects lapses upon rejection and creates a vacancy for nomination and appointment under section 15.07 (1) (b) 2. of the statutes, as created by this act, of another initial board member.

(2) Notwithstanding the length of the terms specified in section 14.57 (6) of the statutes, as created by this act, the initial terms of 3 of the members appointed under section 14.57 (6) of the statutes, as created by this act, expire on May 1, 2003, and the initial terms of 3 of the members expire on May 1, 2005.

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SECTION 15m. Initial applicability.

(1) The treatment of section 71.05 (6) (b) 23., 28. h., 31., 32. and 33. of the statutes first applies to taxable years beginning on January 1 of the year in which this subsection takes effect, except that if this subsection takes effect after July 31 the treatment of section 71.05 (6) (b) 28. h., 31. and 32. of the statutes first applies to taxable years beginning on January 1 of the year following the year in which this subsection takes effect.

SECTION 16. Effective dates. This act takes effect on

the first day of the 10th month following publication, except as follows:

(1) The treatment of sections 14.57, 15.07 (1) (b) 2. and 20.585 (2) (am) of the statutes and SECTION 15 of this act take effect the day after publication.

(2) The treatment of sections 14.63 (title), (3) (title), (a) 1. and 3. and (c), (4), (5) (a) and (b) (intro.) and 2., (11) (b), (11m) and (13), 14.64 (8) and 20.585 (2) (a) and (s) of the statutes takes effect on the first day of the 4th month following publication.
