

# State of Wisconsin



2021 Assembly Bill 1027

Date of enactment: April 8, 2022  
Date of publication\*: April 9, 2022

## 2021 WISCONSIN ACT 245

AN ACT to repeal 40.08 (1m) (f) 3.; to renumber 40.86 (1), 40.86 (2), 40.86 (3) and 40.86 (4); to amend 40.02 (48r), 40.05 (4) (ah) 3., 40.05 (4) (ah) 4., 40.08 (1m) (f) 1., 40.08 (1m) (f) 2., 40.08 (8) (a) 2., 40.08 (8) (a) 2m., 40.23 (4) (c), 40.23 (4) (e) 2., 40.24 (7) (a) (intro.), 40.24 (7) (b), 40.285 (2) (b) 1. a. to d., 40.285 (2) (b) 4. (intro.) and 40.63 (10); and to create 40.86 (1) (intro.) of the statutes; relating to: changes required by the federal SECURE Act; named survivors under the Wisconsin Retirement System; domestic relations orders executed by the Department of Employee Trust Funds; the purchase of other governmental service under the Wisconsin Retirement System; disability annuities under the Wisconsin Retirement System; employee-funded reimbursement accounts; references to the administrator of the Division of Personnel Management; and abandoned accounts (suggested as remedial legislation by the Department of Employee Trust Funds).

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

LAW REVISION COMMITTEE PREFATORY NOTE: This bill is a remedial legislation proposal, requested by the Department of Employee Trust Funds and introduced by the Law Revision Committee under s. 13.83 (1) (c) 4. and 5., stats. After careful consideration of the various provisions of the bill, the Law Revision Committee has determined that this bill makes changes to statutes or session laws that the Law Revision Committee determined to be in need of revision.

**SECTION 1.** 40.02 (48r) of the statutes is amended to read:

40.02 (48r) "Required beginning date" means the later of April 1 of the calendar year following the calendar year in which a participant attains the age of ~~70.5~~ years set under section 401 (a) (9) of the Internal Revenue Code or April 1 of the calendar year following the calendar year in which a participating employee retires.

NOTE: SECTIONS 1, 9, and 10 bring state law into compliance with federal law changes to the required minimum distributions beginning age made by the Setting Every Community Up for Retirement Enhancement (SECURE) Act of 2019. These SECTIONS replace specified ages with a reference to the

ages set under the relevant Internal Revenue Code section, so that future federal changes will be automatically reflected in state law.

**SECTION 2.** 40.05 (4) (ah) 3. of the statutes is amended to read:

40.05 (4) (ah) 3. A craft employee shall pay 100 percent of health insurance premiums, unless otherwise determined by the ~~director~~ administrator of the division of personnel management in the department of administration.

**SECTION 3.** 40.05 (4) (ah) 4. of the statutes is amended to read:

40.05 (4) (ah) 4. Annually, the ~~director~~ administrator of the division of personnel management in the department of administration shall determine the amount of contributions, if any, that the state must contribute into an employee's health savings account under s. 40.515 and the amount that employees are required to pay for health insurance premiums for a high-deductible health plan under s. 40.515.

\* Section 991.11, WISCONSIN STATUTES: 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."

NOTE: SECTIONS 2 and 3 align the statutes with changes made under 2015 Wisconsin Act 55, which eliminated the Office of State Employment Relations and created the Division of Personnel Management.

**SECTION 4.** 40.08 (1m) (f) 1. of the statutes is amended to read:

40.08 (1m) (f) 1. ~~Subject to subd. 3., if~~ If the participant is not an annuitant on the decree date, an amount equal to the total of the alternate payee share distributed under par. (e), including creditable service, shall be subtracted from the participant's account.

NOTE: SECTIONS 4 and 5 delete cross-references to the statute in SECTION 6.

**SECTION 5.** 40.08 (1m) (f) 2. of the statutes is amended to read:

40.08 (1m) (f) 2. ~~Subject to subd. 3., if~~ If the participant is an annuitant on the decree date, the annuity shall be recomputed using the total value of the participant's account determined under par. (b) reduced by the total of the alternate payee share transferred under par. (e) 1., in accordance with the actuarial tables in effect and using the participant's age on the decree date. The decree date shall be the effective date of recomputation. If the optional annuity form before division of the participant's account under par. (b) was not a joint and survivor annuity with the alternate payee as the named survivor, the same annuity option with no change in the remaining guarantee period, if any, shall be continued upon recomputation to the participant. The present value of the alternate payee's share of the annuity after division shall be paid to the alternate payee as a straight life annuity based on the age of the alternate payee on the decree date. The alternate payee's annuity shall have the same remaining guarantee period, if any, as the participant's annuity. If the optional annuity form before division of the participant's account under par. (b) was a joint and survivor annuity with the alternate payee as the named survivor, the present value of the annuity after division shall be paid to both the participant and the alternate payee as a straight life annuity based upon their respective ages on the decree date. If the participant's account is reestablished under s. 40.63 (10) after the decree date, the amounts and creditable service reestablished shall be reduced by an amount equal to the percentage of the alternate payee share computed under this subdivision.

**SECTION 6.** 40.08 (1m) (f) 3. of the statutes is repealed.

NOTE: SECTION 6 repeals an obsolete statute relating to the division of Wisconsin Retirement System benefits for any participant whose marriage is terminated by a court during the period that begins on January 1, 1982, and ends on April 27, 1990, and for whom the Department of Employee Trust Funds receives a qualified domestic relations order after May 2, 1998.

**SECTION 7.** 40.08 (8) (a) 2. of the statutes is amended to read:

40.08 (8) (a) 2. If an estate that is determined by the department to be a beneficiary is never opened or is

closed prior to the payment of benefits payable under this chapter as a result of the death of the participant and the estate is not opened or reopened within 6 months after the department notifies the estate that a benefit is payable, the benefit shall be considered irrevocably abandoned and shall be transferred to the employer accumulation reserve, unless the estate was the designated beneficiary under s. 40.02 (8) (a) 1.

NOTE: SECTIONS 7 and 8 clarify how the Department of Employee Trust Funds must treat abandoned benefits from the account of a deceased individual if a probate estate is never opened for that individual.

**SECTION 8.** 40.08 (8) (a) 2m. of the statutes is amended to read:

40.08 (8) (a) 2m. If the estate was the designated beneficiary under s. 40.02 (8) (a) 1. and the estate is never opened or is closed prior to the payment of benefits payable under this chapter as a result of death of the participant and the estate is not opened or reopened within 6 months after the department notifies the estate that a benefit is payable, the department shall pay the benefit to a beneficiary as determined under s. 40.02 (8) (a) 2. If the department is unable to locate any such beneficiary within 6 months, all such beneficiaries shall be presumed to have predeceased the participant and the benefit shall be considered irrevocably abandoned and shall be transferred to the employer accumulation reserve.

**SECTION 9.** 40.23 (4) (c) of the statutes is amended to read:

40.23 (4) (c) If a participant during the calendar year ~~in which before the year he or she attains 69.5 years the age set under section 401 (a) (9) of the Internal Revenue Code,~~ or the alternate payee during the calendar year ~~before the year~~ in which the participant attains ~~69.5 years the age set under section 401 (a) (9) of the Internal Revenue Code,~~ does not apply before December 31 in that year for a distribution of the amount that is credited to the account of a participant under the Wisconsin retirement system, the department shall begin, effective the following January 1, an automatic distribution to the participant or alternate payee in the form of an annuity specified under s. 40.24 (1) (c) or as determined by the department by rule. If the department makes an automatic distribution under this paragraph, the beneficiary designation filed with the department before the date on which the department begins the automatic distribution is no longer applicable under ss. 40.71 and 40.73. Unless the participant or alternate payee files a subsequent beneficiary designation with the department after the date on which the department begins the automatic distribution, the department shall pay any death benefit as provided under s. 40.02 (8) (a) 2.

**SECTION 10.** 40.23 (4) (e) 2. of the statutes is amended to read:

40.23 (4) (e) 2. Subject to section 401 (a) (9) of the Internal Revenue Code, if the spouse or domestic partner

files a subsequent beneficiary designation with the department, the payment of the distribution may be deferred until the January 1 of the year in which the participant would have attained the age of ~~70.5 years~~ set under section 401 (a) (9) of the Internal Revenue Code.

**SECTION 11.** 40.24 (7) (a) (intro.) of the statutes is amended to read:

40.24 (7) (a) (intro.) Any participant who has been married to the same spouse, or in a domestic partnership with the same domestic partner, for at least one year immediately preceding the participant's annuity effective date shall elect the annuity option under sub. (1) (d), the annuity option under sub. (1) (e), if the reduced annuity under sub. (1) (e) is payable in an optional life form provided under sub. (1) (d), or an annuity option in a form provided by rule, if the annuity is payable for life with monthly payments of at least 75 percent of the amount of the annuity to be continued to the ~~beneficiary named survivor~~, for life, upon the death of the participant, and the participant shall designate the spouse or domestic partner as the ~~beneficiary named survivor~~, unless the participant's application for a retirement annuity in a different optional annuity form is signed by both the participant and the participant's spouse or domestic partner or unless the participant establishes to the satisfaction of the department that, by reason of absence or other inability, the spouse's or domestic partner's signature may not be obtained. This subsection does not apply to any of the following:

**SECTION 12.** 40.24 (7) (b) of the statutes is amended to read:

40.24 (7) (b) In administering this subsection, the secretary may require the participant to provide the department with a certification of the participant's marital or domestic partnership status and of the validity of the spouse's or domestic partner's signature. If a participant is exempted from the requirements under par. (a) on the basis of a certification which the department or a court subsequently determines to be invalid, the liability of the fund and the department shall be limited to a conversion of annuity options at the time the certification is determined to be invalid. The conversion shall be from the present value of the annuity in the optional form originally elected by the participant to an annuity with the same present value but in the optional form under sub. (1) (d) and with monthly payments of 100 percent of the amount of the annuity paid to the annuitant to be continued to the spouse or domestic partner ~~beneficiary named survivor~~.

NOTE: SECTIONS 11 and 12 replace the term "beneficiary" with "named survivor" in statutes relating to annuity options for the Wisconsin Retirement System.

**SECTION 13.** 40.285 (2) (b) 1. a. to d. of the statutes are amended to read:

40.285 (2) (b) 1. a. The ~~participant participating employee~~ has at least 3 continuous years of creditable service at the time of application.

b. The number of years of creditable service applied for under this paragraph does not exceed the number of years of creditable service that the ~~participant participating employee~~ has at the date of application, excluding all creditable service purchased under this section or s. 40.02 (17) (b), 1981, 1983, 1985, 1987, 1989, 1991, 1993, 1995, 1997, 1999, and 2001 stats., s. 40.02 (17) (e), 1987, 1989, 1991, 1993, 1995, 1997, 1999, and 2001 stats., s. 40.02 (17) (i), 1989, 1991, 1993, 1995, 1997, 1999, and 2001 stats., s. 40.02 (17) (k), 1989, 1991, 1993, 1995, 1997, 1999, and 2001 stats., s. 40.25 (6), 1981, 1983, 1985, 1987, 1989, 1991, 1993, 1995, 1997, 1999, and 2001 stats., or s. 40.25 (7), 1991, 1993, 1995, 1997, 1999, and 2001 stats., less the number of years of creditable service previously purchased under this paragraph or s. 40.25 (7), 1991, 1993, 1995, 1997, 1999, and 2001 stats.

c. At the time of application, the ~~participant participating employee~~ furnishes evidence of such service that is acceptable to the department.

d. Except as provided in sub. (4) (b), at the time of application, the ~~participant participating employee~~ pays to the department a lump sum equal to the present value of the creditable service applied for under this paragraph, in accordance with rates actuarially determined to be sufficient to fund the cost of the increased benefits that will result from granting the creditable service under this paragraph. The department shall by rule establish different rates for different categories of ~~participants participating employees~~, based on factors recommended by the actuary.

**SECTION 14.** 40.285 (2) (b) 4. (intro.) of the statutes is amended to read:

40.285 (2) (b) 4. (intro.) A ~~participant participating employee~~ may not receive creditable service under this paragraph for service that is used for the purpose of establishing entitlement to, or the amount of, any other benefit to be paid by any federal, state, or local government entity, except for the following:

NOTE: SECTIONS 13 and 14 replace the term "participant" with "participating employee" in statutes relating to purchasing creditable service for purposes of the Wisconsin Retirement System.

**SECTION 15.** 40.63 (10) of the statutes is amended to read:

40.63 (10) Upon termination of an annuity in accordance with sub. (9), each participant whose annuity is so terminated shall, as of the beginning of the calendar month following termination, be credited with additional contributions equal to the then present value of the portion of the terminated annuity which was originally provided by the corresponding type of additional contribu-

tions. Except for additional contributions, the retirement account of the participant shall be reestablished as if the terminated annuity had never been effective, including crediting of interest ~~and of any contributions and creditable service earned during the period the annuity was in force.~~

NOTE: SECTION 15 clarifies that, under the Wisconsin Retirement System, an annuitant may not earn contributions and creditable service during a period in which the annuitant receives an annuity from the Wisconsin Retirement System based on the annuitant's own service as a participating employee.

**SECTION 16.** 40.86 (1) (intro.) of the statutes is created to read:

40.86 (1) (intro.) Expenses authorized under section 125 of the Internal Revenue Code, which may include any of the following:

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**SECTION 17.** 40.86 (1) of the statutes is renumbered 40.86 (1) (a).

**SECTION 18.** 40.86 (2) of the statutes is renumbered 40.86 (1) (b).

**SECTION 19.** 40.86 (3) of the statutes is renumbered 40.86 (1) (c).

**SECTION 20.** 40.86 (4) of the statutes is renumbered 40.86 (2m).

NOTE: SECTIONS 16 and 20 align statutory language with the Internal Revenue Code by distinguishing between expenses reimbursable under two different plan types. SECTIONS 16 to 19 address expenses authorized under section 125 plans, and SECTION 20 addresses expenses authorized under section 132 plans.