2013 Senate Bill 389 (LRB -3508)

An Act to amend 16.641 (7) (title), 16.641 (7) (a), 71.05 (6) (b) 32. (intro.) and 71.05 (6) (b) 32. a.; and to create 71.05 (6) (a) 26. of the statutes; relating to: indexing for inflation of, and making other changes to, the college savings plan income tax deduction. (FE)

2013

11-04.	S.	Introduced by Senators **Darling**, **Schultz**, **Petrowski**, **Harsdorf**, **Lassa**, **Moulton** and **Farrow**; cosponsored by Representatives **Nygren**, **Brooks**, **Endsley**, **Kapenga**, **Kaufert**, **Knodl**, **Kooyenga**, **LeMahieu**, **Marklein**, **Murphy**, **Ohnstad**, **Strachota** and **Thiesfeldt**.	454
11-04.	S.	Read first time and referred to Committee on Workforce Development, Forestry, Mining, and Revenue	454
11-06.	S.	Fiscal estimate received	
11-07.	S.	Public hearing held	
11-26.	S.	Fiscal estimate received	

2014

01-10.	S.	Senate Amendment 1 offered by Senator Darling **(LRB a1292)**	558
01-15.	S.	Executive action taken	
01-16.	S.	Report adoption of Senate Amendment 1 recommended by Committee on Workforce Development, Forestry, Mining, and Revenue, Ayes 5, Noes 0	579
01-16.	S.	Report passage as amended recommended by Committee on Workforce Development, Forestry, Mining, and Revenue, Ayes 5, Noes 0	579
01-16.	S.	Available for scheduling	
01-16.	S.	Referred to Joint Committee on Finance by Committee on Senate Organization pursuant to Senate Rule 41 (1)(e), Ayes 5, Noes 0	578
01-16.	S.	Withdrawn from joint committee on Finance and made Available for Scheduling by committee on Senate Organization, pursuant to Senate Rule 41 (1)(e), Ayes 5, Noes 0	578
01-16.	S.	Placed on calendar 1-22-2014 pursuant to Senate Rule 18(1)	578
01-22.	S.	Read a second time	591
01-22.	S.	Senate Amendment 1 **adopted**	591
01-22.	S.	Ordered to a third reading	591
01-22.	S.	Rules suspended	591
01-22.	S.	Read a third time and **passed**, Ayes 32, Noes 0	591
01-22.	S.	Ordered immediately messaged	592
01-22.	A.	Received from Senate	553
01-30.	A.	Read first time and referred to committee on Rules	568
02-11.	A.	Placed on calendar 2-13-2014 by Committee on Rules	
02-13.	A.	Read a second time	
02-13.	A.	Ordered to a third reading	
02-13.	A.	Rules suspended	
02-13.	A.	Read a third time and **concurred in**	
02-13.	A.	Ordered immediately messaged	
02-14.	S.	Received from Assembly concurred in	

MB

2013
ENROLLED BILL

13en S B- 389

ADOPTED DOCUMENTS:

☒ Orig ☐ Engr __ SubAmdt __ 13-3508/1

Amendments to above (if none, write "NONE"): SA1 – a1292/4

Corrections – show date (if none, write "NONE"): None

Topic Rel

2-17-14
Date

Enrolling Drafter

[rev: 1/9/13 2013enroll(fm)]

State of Wisconsin
2013 – 2014 LEGISLATURE

LRB-3508/1
MES:wlj:jm

2013 SENATE BILL 389

November 4, 2013 – Introduced by Senators DARLING, SCHULTZ, PETROWSKI, HARSDORF, LASSA, MOULTON and FARROW, cosponsored by Representatives NYGREN, BROOKS, ENDSLEY, KAPENGA, KAUFERT, KNODL, KOOYENGA, LEMAHIEU, MARKLEIN, MURPHY, OHNSTAD, STRACHOTA and THIESFELDT. Referred to Committee on Workforce Development, Forestry, Mining, and Revenue.

AN ACT *to amend* 16.641 (7) (title), 16.641 (7) (a), 71.05 (6) (b) 32. (intro.) and 71.05 (6) (b) 32. a.; and *to create* 71.05 (6) (a) 26. of the statutes; **relating to:** indexing for inflation of, and making other changes to, the college savings plan income tax deduction.

Analysis by the Legislative Reference Bureau

Under current law, there is a college tuition and expenses program, commonly referred to as "EdVest I," under which a contributor may purchase "tuition units" that can be used to pay qualified educational costs in behalf of a beneficiary. The purchase of the units is limited to parents, grandparents, great–grandparents, aunts, uncles, legal guardians, trusts created in behalf of a beneficiary, or individuals purchasing units for their own use. Contributions made to an account set up under the program, up to a limit of $3,000 each year for each beneficiary, may be deducted from a contributor's income in the calculation of his or her income taxes if the beneficiary of the account is one of the following: the claimant; the claimant's child; the claimant's grandchild; the claimant's great–grandchild; or the claimant's niece or nephew.

Also, under current law, there is a college savings program, commonly referred to as "EdVest II," under which anyone may open an account for a prospective student, regardless of the contributor's relationship to the beneficiary. Individuals may open accounts for themselves, and a prospective student may be the beneficiary of more than one college savings account. Contributions made to an account set up under this program, up to a limit of $3,000 each year for each beneficiary, may be deducted from a contributor's income in the calculation of his or her income taxes if the beneficiary of the account is one of the following: the claimant; the claimant's child; the claimant's grandchild; the claimant's great–grandchild; or the claimant's niece or nephew.

An authorized contributor to an EdVest I or EdVest II account who is not the owner of the account may claim a tax deduction for his or her contribution, subject to the current law limitations, if the claimant is the parent, grandparent, great–grandparent, aunt, or uncle of the beneficiary.

Current law authorizes an income tax deduction for amounts contributed to both EdVest I and EdVest II by a divorced or legally separated parent of a child. The deduction may be claimed without regard to whether the child is his or her dependent. The total annual deduction under these two programs, per beneficiary, claimed by married parents who file jointly or separately, or by the divorced or legally separated parents of a child, may not exceed $3,000. The total annual deduction under these two programs, per beneficiary, claimed by a married person who files separately may not exceed $1,500 per claimant. The total annual deduction under these two programs, per beneficiary, claimed by a formerly married couple may not exceed a total of $3,000, or $1,500 per claimant, except that the former couple's divorce judgment may specify a different division of the $3,000 maximum that may be claimed by each former spouse.

For taxable years beginning after December 31, 2013, this bill indexes for inflation the maximum amount of contributions that may be deducted under EdVest I and EdVest II accounts.

With regard to an EdVest II account, the bill authorizes deductions, generally, that are made on or before April 15 of the taxable year after the taxable year to which the deduction relates. If someone contributes to an EdVest II account more than the maximum amount that may be deducted, the bill allows the taxpayer to carry forward the excess amount contributed to future taxable years. The bill also authorizes an owner or any other individual to claim a deduction for contributions to an EdVest II account that benefits any individual.

Under current law, a beneficiary's right to qualified withdrawals from an EdVest II account is not subject to garnishment, attachment, execution, or other process of law. Under this bill, an EdVest II account is not subject to garnishment, lien, levy, attachment, execution, or other process of law.

Under current law, the College Savings Program Board, which is part of the Department of Administration, is required to promulgate rules for, and administer, the EdVest II program, including rules to determine whether a withdrawal from such an account is a qualified or nonqualified withdrawal under the Internal Revenue Code (IRC), and impose more than a minimal penalty for nonqualified withdrawals.

Under this bill, an individual who receives certain distributions from an EdVest II account must add certain amounts to his or her federal adjusted gross income (FAGI) for the year in which he or she receives the distribution. If the distribution results in the recipient of the distribution being penalized under the IRC, the amounts that must be added to FAGI are any amounts that were not used for a qualified higher education expense to the extent that such amounts were previously claimed as a deduction from FAGI. Also under the bill, an amount in an EdVest II account that is distributed to an owner and rolled over into a qualified tuition program of another state must be added to FAGI, to the extent that such amount was previously claimed as a deduction from FAGI.

Because this bill relates to an exemption from state or local taxes, it may be referred to the Joint Survey Committee on Tax Exemptions for a report to be printed as an appendix to the bill.

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:

INS. SA1-1

INS. SA1-2

SECTION 1. 16.641 (7) (title) of the statutes is amended to read:

16.641 **(7)** (title) EXEMPTION FROM GARNISHMENT, <u>LIEN, LEVY,</u> ATTACHMENT AND EXECUTION; SECURITY FOR LOAN.

SECTION 2. 16.641 (7) (a) of the statutes is amended to read:

16.641 **(7)** (a) ~~A beneficiary's right to qualified withdrawals~~ <u>An account established</u> under this section is not subject to garnishment, <u>lien, levy,</u> attachment, execution or other process of law.

SECTION 3. 71.05 (6) (a) 26. of the statutes is created to read:

71.05 **(6)** (a) 26. For the taxable year in which a distribution is received, all of the following amounts distributed from a college savings account, as described in s. 16.641:

a. To the extent that the receipt of such amounts by the owner or beneficiary of the account results in a penalty as provided in 26 USC 529 (c) (6), any amount that was not used for qualified higher education expenses, as that term is defined in 26 USC 529 (e) (3), to the extent that the amount was previously claimed as a deduction under par. (b) 32.

INS. SA1-3

b. Any amount rolled over by an owner into another state's qualified tuition program, as described in 26 USC 529 (c) (3) (C) (i), to the extent that the amount was previously claimed as a deduction under par. (b) 32.

SECTION 4. 71.05 (6) (b) 32. (intro.) of the statutes is amended to read:

71.05 **(6)** (b) 32. (intro.) An amount paid into a college savings account, as described in s. 16.641, & INS. SA 1-4 on or before the 15th day of the 4th month beginning after the close of a taxpayer's taxable year to which this subtraction relates, subject to any applicable extension under s. 71.03 (7), by the owner of the account or by ~~a parent, grandparent, great–grandparent, aunt, or uncle of the beneficiary, if the~~ any other individual, for the benefit of any beneficiary of ~~the~~ an account ~~is one of the following: the claimant; the claimant's child; the claimant's grandchild; the claimant's great–grandchild; or the claimant's niece or nephew;~~, calculated as follows:

SECTION 5. 71.05 (6) (b) 32. a. of the statutes is amended to read:

71.05 **(6)** (b) 32. a. ~~An~~ Except as otherwise provided in this subdivision, an amount equal to not more than $3,000 per beneficiary, by each contributor, or $1,500 by each contributor who is married and files separately, to an account for each year to which the claim relates, except that the total amount for which a deduction may be claimed under this subdivision and under subd. 33., per beneficiary by any claimant may not exceed $3,000 each year, or $1,500 each year by any claimant who is married and files separately. In the case of a married couple, the total deduction under this subdivision and under subd. 33., per beneficiary by the married couple may not exceed $3,000 each year. In the case of divorced parents, the total deduction under this subdivision and under subd. 33., per beneficiary by the formerly married couple, may not exceed $3,000, and the maximum amount that may be deducted by each former spouse is $1,500, unless the divorce judgment specifies a different division of the $3,000 maximum that may be claimed by each former spouse. For taxable years beginning after December 31, 2013, the dollar amounts in this subd. 32. a., and the dollar amounts in subd. 33. a., shall be increased each year by a percentage equal to the percentage change between the U.S. consumer price index for all urban consumers, U.S. city average, for the month of October of the previous year and the U.S. consumer price index for all urban consumers, U.S. city average, for the month of October 2011, as determined by the federal department of labor, except that the adjustment may occur only if the resulting amount is greater than the corresponding amount that was calculated for the previous year. Each amount that is revised under this subd. 32. a. and under subd. 33. a. shall be rounded to the nearest multiple of $10 if the revised amount is not a multiple of $10 or, if the revised amount is a multiple of $5, such an amount shall be increased to the next higher multiple of $10. The department of revenue shall annually adjust the changes in dollar amounts required under this subd. 32. a. and incorporate the changes into the income tax forms and instructions. Any amount that is paid into an account under this subdivision that exceeds the maximum amount that may be subtracted under this subdivision may be carried forward to the next taxable year, and thereafter, subject to the limitations in this subdivision.

INS. SA1-7

INS. SA1-8

SECTION 6. Initial applicability.

(1) The treatment of section 71.05 (6) (a) 26. and (b) 32. (intro.) and a. of the statutes first applies to taxable years beginning on January 1, 2014.

INS. SA1-9

(END)

State of Wisconsin
2013 – 2014 LEGISLATURE

LRBa1292/4
MES:jld:jf

SENATE AMENDMENT 1,

TO SENATE BILL 389

January 10, 2014 – Offered by Senator DARLING.

At the locations indicated, amend the bill as follows:

SA1-1

1. Page 3, line 1: before that line insert:

"**SECTION 1e.** 16.641 (3) (a) 1. of the statutes is amended to read:

16.641 **(3)** (a) 1. Contribute to a college savings account or authorize ~~a parent, grandparent, great-grandparent, aunt, or uncle of the beneficiary~~ any other person to contribute to the account.".

SA1-2

2. Page 3, line 1: delete "**SECTION 1**" and substitute "**SECTION 1m**".

SA1-3

3. Page 3, line 15: delete lines 15 and 16 and substitute "USC 529 (e) (3), and was contributed to the account after December 31, 2013.".

SA1-4

4. Page 4, line 6: delete "on" and substitute "in the taxable year in which the contribution is made or on".

5. Page 4, line 7: delete "subject to any".

6. Page 4, line 8: delete "applicable extension under s. 71.03 (7),". SA1-7

7. Page 5, line 5: on lines 5 and 7, delete "October" and substitute "August".

8. Page 5, line 7: delete "2011" and substitute "2012". SA1-8

9. Page 5, line 21: after that line insert:

"SECTION 7m. **Effective dates.** This act takes effect on the day after publication, except as follows:

(1) The treatment of section 71.05 (6) (a) 26. of the statutes takes effect on June 1, 2014.". SA1-9

(END)