

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBa1292/1dn
MES:jld:jf

November 26, 2013

Senator Darling:

This amendment contains 3 of the 4 requested items. I'm not sure the 4th item is necessary so I did not include it in this version of the amendment. One of the requested changes is the following:

CHANGE 1

“1. There is an inconsistency between sec. 16.641(3)(a)1 and the amended sec. 71.05(6)(b)32.(intro.) Section 16.641(3)(a)1 provides that the owner of the account may authorize a parent, grandparent, great-grandparent, aunt, or uncle of the beneficiary to contribute to the account. Section 71.05(6)(b)32,(intro.) provides that any other individual may contribute to a college savings account. What is the intent? Is the intent that anyone other than a parent, grandparent, great-grandparent, aunt, or uncle must open a separate account for a beneficiary, and an owner can authorize only a parent, grandparent, great-grandparent, aunt, or uncle to contribute to the account set up by the owner. If the intent is that an owner can authorize anyone to contribute to the account set up by the owner, then sec. 16.641(3)(a)1 should be amended accordingly.”

Section 16.641 (3) (a) 1. authorizes an account owner to contribute to an account or to authorize certain listed individuals to contribute to an account. Amended s. 71.05 (6) (b) 32. (intro.) authorizes an owner or any other individual who pays into an account to deduct that amount, or a portion of that amount, from his or her federal AGI as specified in the statute. The clear implication is that, if an individual may claim a deduction for amounts deposited into an account, the individual may certainly contribute to the account without the owner's authorization.

I don't see the provisions as being inconsistent. Nothing in s. 16.641 (3) limits the individuals who may contribute to an account; it merely lists who an owner may authorize to contribute, but the statute does not say that only authorized individuals may contribute, and amended s. 71.05 (6) (b) 32. (intro.) implicitly authorizes any individual to contribute to such an account, so I don't really see the need for this amendment.

As for suggested change 4:

“CHANGE 4

Set effective date to 6/1/14.”

The initial applicability provision is unaffected by this request, so changing the effective date from the day after publication (the default for all bills), to 6/1/14 has no legal effect on s. 71.05 (6) (a) 26. and (b) 32. (intro.) and a.; is that your intent? Please let me know if you have any questions about any of the issues raised in this drafter's note.

Marc E. Shovers
Managing Attorney
Phone: (608) 266-0129
E-mail: marc.shovers@legis.wisconsin.gov