

Second Regular Session
Seventy-third General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 22-0410.01 Pierce Lively x2059

HOUSE BILL 22-1019

HOUSE SPONSORSHIP

Larson,

SENATE SPONSORSHIP

(None),

House Committees
Education

Senate Committees

A BILL FOR AN ACT

101 CONCERNING MODIFICATIONS TO QUALIFIED STATE TUITION
102 PROGRAMS, AND, IN CONNECTION THEREWITH, CREATING THE
103 FOUNDATIONAL LEARNING EXPERIENCE (FLEX) SAVINGS
104 PROGRAM.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The federal "Tax Cuts and Jobs Act of 2017" added distributions for elementary or secondary tuition expenses as qualified distributions from a qualified state tuition program (529 account), thereby allowing, on

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

the federal level, income tax-free distributions for elementary and secondary tuition expenses in addition to already authorized income tax-free distributions for higher education expenses. Similarly, the federal "Setting Every Community Up for Retirement Enhancement Act of 2019" expanded the qualified distributions from a 529 account to include repayment of qualified education loans and payments for registered apprenticeships.

For the purpose of allowing Coloradans to take advantage of these federal tax benefits, the bill creates the foundational learning experience (FLEX) savings program.

The bill also specifies that distributions from FLEX savings program accounts are not counted as federal or state taxable income and that contributions to FLEX savings program accounts for qualified elementary or secondary tuition expenses may not be deducted from state taxable income.

The accounts created under the FLEX savings program are defined by the following characteristics:

- Account owners may only use distributions from the accounts for qualified elementary or secondary tuition expenses; and
- Anyone may contribute to the account irrespective of their relationship to the account's designated beneficiary.

The bill also allows for expenses for fees, books, supplies, and equipment required for the participation of a designated beneficiary in certain apprenticeship programs to be treated as "qualified higher education expenses" and subtracted from federal taxable income. The bill clarifies that "qualified higher education expenses" does not include repayment of qualified education loans.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **add** 23-3.1-312 as
3 follows:

4 **23-3.1-312. Foundational learning experience (FLEX) savings**
5 **program - establishment - authority - powers - duties.** (1) THE
6 AUTHORITY SHALL ESTABLISH AND IMPLEMENT THE FOUNDATIONAL
7 LEARNING EXPERIENCE (FLEX) SAVINGS PROGRAM IN COLORADO TO
8 ALLOW AN ACCOUNT OWNER TO SAVE FOR QUALIFIED ELEMENTARY OR
9 SECONDARY TUITION EXPENSES WITHOUT DISQUALIFYING THE ACCOUNT

1 OWNER FROM FEDERAL TAX BENEFITS UNDER SECTION 529 OF THE
2 INTERNAL REVENUE CODE.

3 (2) IN ADDITION TO ANY OTHER POWERS AND DUTIES SPECIFICALLY
4 GRANTED TO THE AUTHORITY IN THIS PART 3 AND IN PART 2 OF THIS
5 ARTICLE 3.1, AS APPLICABLE TO THE FLEX SAVINGS PROGRAM, THE
6 AUTHORITY SHALL:

7 (a) ADOPT ANY GUIDELINES AND PROCEDURES THAT ARE
8 NECESSARY TO ADMINISTER THE FLEX SAVINGS PROGRAM;

9 (b) DEVELOP AND IMPLEMENT A DISTRIBUTION SYSTEM FOR
10 QUALIFIED ELEMENTARY OR SECONDARY TUITION EXPENSES THAT ARE
11 PAID, AT LEAST IN PART, BY TUITION PAYMENTS FROM A FLEX SAVINGS
12 PROGRAM ACCOUNT;

13 (c) OPERATE THE FLEX SAVINGS PROGRAM THROUGH THE USE OF
14 ACCOUNTS PURSUANT TO SECTION 23-3.1-306 AS THEY APPLY TO THE
15 FLEX SAVINGS PROGRAM; AND

16 (d) IMPLEMENT THE FLEX SAVINGS PROGRAM THROUGH THE USE
17 OF ONE OR MORE FINANCIAL INSTITUTIONS TO ACT AS MANAGERS
18 PURSUANT TO SECTION 23-3.1-305 AS THEY APPLY TO THE FLEX SAVINGS
19 PROGRAM.

20 (3) FOR PURPOSES OF IMPLEMENTING THE FLEX SAVINGS
21 PROGRAM, THE AUTHORITY MAY INVEST AMOUNTS ON DEPOSIT IN
22 ACCOUNTS ESTABLISHED PURSUANT TO THIS SECTION WITH OTHER
23 ACCOUNTS ESTABLISHED IN THIS PART 3 THAT ARE QUALIFIED ACCOUNTS
24 PURSUANT TO SECTION 529 OR 529A OF THE INTERNAL REVENUE CODE.

25 **SECTION 2.** In Colorado Revised Statutes, 23-3.1-302, **amend**
26 (4), (11), (12), and (13); and **add** (6.3), (6.5), and (11.7) as follows:

27 **23-3.1-302. Definitions.** As used in this part 3, unless the context

1 otherwise requires:

2 (4) "Designated beneficiary" or "beneficiary" means, with respect
3 to an account, the person designated at the time the account is opened, or
4 the person who replaces a designated beneficiary, as the person whose
5 qualified higher education expenses, ~~or~~ qualified disability expenses, OR
6 QUALIFIED ELEMENTARY OR SECONDARY TUITION EXPENSES are expected
7 to be paid from the account.

8 (6.3) "FLEX SAVINGS PROGRAM" MEANS THE FOUNDATIONAL
9 LEARNING EXPERIENCE SAVINGS PROGRAM CREATED IN SECTION
10 23-3.1-312.

11 (6.5) "FLEX SAVINGS PROGRAM ACCOUNT" MEANS AN INDIVIDUAL
12 TRUST ACCOUNT OR SAVINGS ACCOUNT ESTABLISHED PURSUANT TO
13 SECTION 23-3.1-312 (2)(c).

14 (11) "Program" means the college savings program, ~~or~~ the ABLE
15 savings program, OR THE FLEX SAVINGS PROGRAM established pursuant
16 to this part 3, as applicable.

17 (11.7) "QUALIFIED ELEMENTARY OR SECONDARY TUITION
18 EXPENSES" MEANS EXPENSES FOR TUITION IN CONNECTION WITH
19 ENROLLMENT OR ATTENDANCE AT AN ELEMENTARY OR SECONDARY
20 EDUCATIONAL INSTITUTION THAT ARE INCLUDED IN ANY REFERENCE TO
21 QUALIFIED HIGHER EDUCATION EXPENSES IN SECTION 529 OF THE
22 INTERNAL REVENUE CODE BY OPERATION OF SECTION 529 (c)(7) OF THE
23 INTERNAL REVENUE CODE.

24 (12) "Qualified higher education expenses" has the same meaning
25 as that term is defined in section 529 of the internal revenue code; EXCEPT
26 THAT IT DOES NOT INCLUDE AMOUNTS PAID AS PRINCIPAL OR INTEREST ON
27 ANY QUALIFIED EDUCATION LOAN, AS DEFINED IN SECTION 221 (d)(1) OF

1 THE INTERNAL REVENUE CODE, OF THE DESIGNATED BENEFICIARY OR A
2 SIBLING OF THE DESIGNATED BENEFICIARY.

3 (13) "Qualified withdrawal" means a withdrawal from an account,
4 to pay any qualified expenses of the designated beneficiary of the
5 account, a withdrawal made on account of the death or disability of the
6 designated beneficiary, or a withdrawal made on account of a scholarship,
7 but only if the withdrawal is made in accordance with section 529 or
8 529A of the internal revenue code OR SECTION 23-3.1-306, whichever is
9 applicable.

10 **SECTION 3.** In Colorado Revised Statutes, 23-3.1-304, **amend**
11 (1)(a) as follows:

12 **23-3.1-304. Authority - purpose - powers - duties.** (1) In
13 addition to any other powers or duties specifically granted to the authority
14 in part 2 of this article 3.1 and in this part 3, the authority shall, as
15 applicable to the respective program:

16 (a) Develop and implement the college savings program, **and** the
17 ABLE savings program, AND THE FLEX SAVINGS PROGRAM in a manner
18 consistent with this part 3 and with sections 529 and 529A of the internal
19 revenue code, whichever is applicable, through the adoption of guidelines
20 and procedures;

21 **SECTION 4.** In Colorado Revised Statutes, 23-3.1-306, **add** (18)
22 as follows:

23 **23-3.1-306. Accounts - contributions - withdrawals - penalties**
24 **- statements.** (18) A FLEX SAVINGS PROGRAM ACCOUNT OWNER SHALL
25 DIRECT THE AUTHORITY TO ISSUE TUITION PAYMENTS NOT TO EXCEED THE
26 LIMIT UNDER SECTION 529 OF THE INTERNAL REVENUE CODE PER
27 DESIGNATED BENEFICIARY PER YEAR FOR QUALIFIED ELEMENTARY OR

1 SECONDARY TUITION EXPENSES. ANY AND ALL WITHDRAWALS SENT
2 DIRECTLY TO THE ACCOUNT OWNER WILL BE CONSIDERED UNQUALIFIED
3 AND SUBJECT TO PENALTY. FLEX SAVINGS PROGRAM ACCOUNT OWNERS
4 MAY ONLY WITHDRAW OR TRANSFER ALL OR PART OF THE BALANCE OF A
5 FLEX SAVINGS PROGRAM ACCOUNT IN ACCORDANCE WITH THIS
6 SUBSECTION (18).

7 **SECTION 5.** In Colorado Revised Statutes, 23-3.1-307, **amend**
8 (1)(d) as follows:

9 **23-3.1-307. Limitations.** (1) Nothing in this part 3 shall be
10 construed to:

11 (d) Guarantee that amounts saved pursuant to the program will be
12 sufficient to cover the qualified higher education expenses, ~~or~~ qualified
13 disability EXPENSES, OR QUALIFIED ELEMENTARY OR SECONDARY TUITION
14 expenses of a designated beneficiary, as applicable.

15 **SECTION 6.** In Colorado Revised Statutes, 23-3.1-307.5, **amend**
16 (1) and (2) introductory portion as follows:

17 **23-3.1-307.5. Confidentiality of records.** (1) Except as
18 otherwise provided in this section or pursuant to federal law, all data,
19 information, and records relating to the college savings program, ~~and~~ the
20 ABLE savings program, AND THE FLEX SAVINGS PROGRAM are public
21 records and are subject to inspection pursuant to ~~the provisions of~~ part 2
22 of article 72 of title 24. ~~C.R.S.~~

23 (2) The following data, information, and records relating to the
24 college savings program, ~~and~~ the ABLE savings program, AND THE FLEX
25 SAVINGS PROGRAM shall be kept confidential by the authority, and the
26 authority shall deny the right of access to or inspection of such data,
27 information, and records except as provided in subsection (3) of this

1 section:

2 **SECTION 7.** In Colorado Revised Statutes, **amend** 23-3.1-308
3 as follows:

4 **23-3.1-308. Residency.** Both Colorado resident and nonresident
5 account owners and designated beneficiaries are eligible to participate in
6 and benefit from the college savings program. Only Colorado resident
7 account owners and beneficiaries, and account owners and beneficiaries
8 who are residents in any state ~~which~~ THAT contracts with the authority
9 under section 23-3.1-311 OR 23-3.1-312 are eligible to participate in and
10 benefit from the ABLE savings program AND THE FLEX SAVINGS
11 PROGRAM, unless otherwise provided under section 529A of the internal
12 revenue code.

13 **SECTION 8.** In Colorado Revised Statutes, 23-3.1-309, **add** (3)
14 as follows:

15 **23-3.1-309. Tax exemption.** (3) TO THE EXTENT THAT
16 DISTRIBUTIONS FROM A FLEX SAVINGS PROGRAM ACCOUNT ESTABLISHED
17 PURSUANT TO THIS PART 3 TO A DESIGNATED BENEFICIARY FOR QUALIFIED
18 ELEMENTARY OR SECONDARY TUITION EXPENSES ARE EXCLUDED FROM
19 TAXABLE INCOME PURSUANT TO SECTION 529 OF THE INTERNAL REVENUE
20 CODE, OR ANY SUCCESSOR PROVISION, SUCH DISTRIBUTIONS ARE ALSO
21 EXCLUDED FROM STATE TAXABLE INCOME.

22 **SECTION 9.** In Colorado Revised Statutes, 39-22-104, **amend**
23 (4)(i)(II)(A), (4)(i)(II)(B), and (4)(i)(IV) as follows:

24 **39-22-104. Income tax imposed on individuals, estates, and**
25 **trusts - single rate - legislative declaration - definitions - repeal.**

26 (4) There shall be subtracted from federal taxable income:

27 (i) (II) (A) For income tax years commencing on or after January

1 1, 2001, but before January 1, 2022, an amount equal to all payments or
2 contributions made during the taxable year under an advance payment
3 contract, to a savings trust account, or otherwise in connection with a
4 qualified state tuition program established by collegeinvest created in
5 section 23-3.1-203, or to a qualified state tuition program that is affiliated
6 with an educational institution in the state and that is established and
7 maintained pursuant to section 529 of the internal revenue code or any
8 successor section, BUT NOT TO A FLEX SAVINGS PROGRAM ACCOUNT
9 CREATED PURSUANT TO SECTION 23-3.1-312 (2)(c);

10 (B) Except as provided in subsection (4)(i)(II)(C) of this section,
11 for income tax years commencing on or after January 1, 2022, an amount
12 equal to all payments or contributions, not to exceed twenty thousand
13 dollars per taxpayer per beneficiary for a taxpayer who files a single
14 return, or thirty thousand dollars per taxpayer per beneficiary for
15 taxpayers who file a joint return, made during the taxable year under an
16 advance payment contract, to a savings trust account, or otherwise in
17 connection with a qualified state tuition program established by
18 collegeinvest created in section 23-3.1-203, or to a qualified state tuition
19 program that is affiliated with an educational institution in the state and
20 that is established and maintained pursuant to section 529 of the internal
21 revenue code or any successor section, BUT NOT TO A FLEX SAVINGS
22 PROGRAM ACCOUNT CREATED PURSUANT TO SECTION 23-3.1-312 (2)(c).
23 Notwithstanding subsection (4)(i)(III)(D) of this section, collegeinvest
24 may treat a change in beneficiary as a nonqualifying distribution if the
25 change was made for the purpose of evading the limit in this subsection
26 (4)(i)(II)(B).

27 (IV) As used in this ~~paragraph (i), "designated beneficiary"~~,

1 ~~means a designated beneficiary as defined in section 529 (e)(1) of the~~
2 ~~internal revenue code, "qualified state tuition program", means a qualified~~
3 ~~state tuition program as defined in section 529 (b) of the internal revenue~~
4 ~~code, and "qualified higher education expenses" means qualified higher~~
5 ~~education expenses as defined in section 529 (c)(3) of the internal~~
6 ~~revenue code~~ SUBSECTION (4)(i), UNLESS THE CONTEXT OTHERWISE
7 REQUIRES:

8 (A) "DESIGNATED BENEFICIARY" HAS THE SAME MEANING AS
9 DEFINED IN SECTION 529 (e)(1) OF THE INTERNAL REVENUE CODE.

10 (B) "QUALIFIED HIGHER EDUCATION EXPENSE" HAS THE SAME
11 MEANING AS DEFINED IN SECTION 529 OF THE INTERNAL REVENUE CODE.

12 "QUALIFIED HIGHER EDUCATION EXPENSE" DOES NOT INCLUDE EXPENSES
13 FOR TUITION IN CONNECTION WITH ENROLLMENT OR ATTENDANCE AT AN
14 ELEMENTARY OR SECONDARY PUBLIC, PRIVATE, OR RELIGIOUS SCHOOL AS
15 INCLUDED BY SECTION 529 (c)(7) OF THE INTERNAL REVENUE CODE AND
16 DOES NOT INCLUDE AMOUNTS PAID AS PRINCIPAL OR INTEREST ON ANY
17 QUALIFIED EDUCATION LOAN OF THE DESIGNATED BENEFICIARY OR A
18 SIBLING OF THE DESIGNATED BENEFICIARY AS INCLUDED BY SECTION 529
19 (c)(9) OF THE INTERNAL REVENUE CODE.

20 (C) "QUALIFIED STATE TUITION PROGRAM" MEANS A QUALIFIED
21 TUITION PROGRAM AS DEFINED IN SECTION 529 (b) OF THE INTERNAL
22 REVENUE CODE.

23 **SECTION 10. Act subject to petition - effective date.** This act
24 takes effect January 1, 2023; except that, if a referendum petition is filed
25 pursuant to section 1 (3) of article V of the state constitution against this
26 act or an item, section, or part of this act within the ninety-day period
27 after final adjournment of the general assembly, then the act, item,

1 section, or part will not take effect unless approved by the people at the
2 general election to be held in November 2022 and, in such case, will take
3 effect January 1, 2023, or on the date of the official declaration of the
4 vote thereon by the governor, whichever is later.