

First Regular Session
Seventy-third General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 21-0171.01 Pierce Lively x2059

HOUSE BILL 21-1210

HOUSE SPONSORSHIP

Larson,

SENATE SPONSORSHIP

Rankin,

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", which became law in December 2017, added distributions for elementary or secondary tuition expenses as qualified distributions from a qualified state tuition program

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.

(529 account), thereby allowing, on 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", which became law in December 2019, expands the qualified distributions from a 529 account to include repayment of qualified education loans and payments for registered apprenticeships.

The bill creates the foundational learning experience savings program (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;
- Anyone may contribute to the account, irrespective of their relationship to the account's designated beneficiary;
- An account owner may transfer money to the FLEX savings program accounts from a 529 account, if the total of all amounts transferred does not exceed \$10,000 and is less than or equal to the lowest balance in the 529 account at any point during the previous 2 years; and
- Money in the account can be transferred to a different 529 account.

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**

1 AUTHORITY SHALL ESTABLISH AND IMPLEMENT THE FOUNDATIONAL
2 LEARNING EXPERIENCE (FLEX) SAVINGS PROGRAM IN COLORADO TO
3 ALLOW FOR AN ACCOUNT OWNER TO SAVE FOR QUALIFIED ELEMENTARY OR
4 SECONDARY TUITION EXPENSES WITHOUT DISQUALIFYING THE ACCOUNT
5 OWNER FROM FEDERAL TAX BENEFITS UNDER SECTION 529 OF THE
6 INTERNAL REVENUE CODE.

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

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

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

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

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

24 (3) FOR PURPOSES OF IMPLEMENTING THE FLEX SAVINGS
25 PROGRAM, THE AUTHORITY MAY INVEST AMOUNTS ON DEPOSIT IN
26 ACCOUNTS ESTABLISHED PURSUANT TO THIS SECTION WITH OTHER
27 ACCOUNTS ESTABLISHED IN THIS PART 3 THAT ARE QUALIFIED ACCOUNTS

1 PURSUANT TO SECTION 529 OR 529A OF THE INTERNAL REVENUE CODE.

2 **SECTION 2.** In Colorado Revised Statutes, 23-3.1-302, **amend**
3 (4), (11), (12), and (13); and **add** (6.3), (6.5), and (11.7) as follows:

4 **23-3.1-302. Definitions.** As used in this part 3, unless the context
5 otherwise requires:

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

12 (6.3) "FLEX SAVINGS PROGRAM" MEANS THE FOUNDATIONAL
13 LEARNING EXPERIENCE SAVINGS PROGRAM CREATED IN SECTION
14 23-3.1-312.

15 (6.5) "FLEX SAVINGS PROGRAM ACCOUNT" MEANS AN INDIVIDUAL
16 TRUST ACCOUNT OR SAVINGS ACCOUNT ESTABLISHED PURSUANT TO
17 SECTION 23-3.1-312 (2)(c).

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

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

1 (12) "Qualified higher education expenses" has the same meaning
2 as that term is defined in section 529 of the internal revenue code; EXCEPT
3 THAT IT DOES NOT INCLUDE AMOUNTS PAID AS PRINCIPAL OR INTEREST ON
4 ANY QUALIFIED EDUCATION LOAN, AS DEFINED IN SECTION 221 (d) OF THE
5 INTERNAL REVENUE CODE, OF THE DESIGNATED BENEFICIARY OR A SIBLING
6 OF THE DESIGNATED BENEFICIARY.

7 (13) "Qualified withdrawal" means a withdrawal from an account,
8 to pay any qualified expenses of the designated beneficiary of the
9 account, a withdrawal made on account of the death or disability of the
10 designated beneficiary, or a withdrawal made on account of a scholarship,
11 but only if the withdrawal is made in accordance with section 529 or
12 529A of the internal revenue code, OR SECTION 23-3.1-306, whichever is
13 applicable.

14 **SECTION 3.** In Colorado Revised Statutes, 23-3.1-304, **amend**
15 (1) introductory portion and (1)(a) as follows:

16 **23-3.1-304. Authority - purpose - powers - duties.** (1) In
17 addition to any other powers or duties specifically granted to the authority
18 in part 2 of this ~~article~~ ARTICLE 3.1 and in this part 3, the authority shall,
19 as applicable to the respective program:

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

25 **SECTION 4.** In Colorado Revised Statutes, 23-3.1-306, **add** (18),
26 (19), (20), (21), and (22) as follows:

27 **23-3.1-306. Accounts - contributions - withdrawals - penalties**

1 **- statements.** (18) A FLEX SAVINGS PROGRAM ACCOUNT OWNER SHALL
2 DIRECT THE AUTHORITY TO ISSUE TUITION PAYMENTS NOT TO EXCEED THE
3 LIMIT UNDER SECTION 529 OF THE INTERNAL REVENUE CODE PER
4 DESIGNATED BENEFICIARY PER YEAR FOR QUALIFIED ELEMENTARY OR
5 SECONDARY TUITION EXPENSES. ANY AND ALL WITHDRAWALS SENT
6 DIRECTLY TO THE ACCOUNT OWNER WILL BE CONSIDERED UNQUALIFIED
7 AND SUBJECT TO PENALTY.

8 (19) FLEX SAVINGS PROGRAM ACCOUNT OWNERS MAY TRANSFER
9 OR ROLL OVER ALL OR PART OF THE BALANCE OF A COLLEGE SAVINGS
10 PROGRAM ACCOUNT ESTABLISHED PURSUANT TO THIS PART 3 TO A FLEX
11 SAVINGS PROGRAM ACCOUNT IF:

12 (a) THE TOTAL OF ALL AMOUNTS TRANSFERRED FROM A COLLEGE
13 SAVINGS PROGRAM ACCOUNT DOES NOT EXCEED TEN THOUSAND DOLLARS;
14 AND

15 (b) THE AMOUNT TRANSFERRED IS LESS THAN OR EQUAL TO THE
16 LOWEST BALANCE OF THE COLLEGE SAVINGS PROGRAM ACCOUNT AT ANY
17 POINT DURING THE PREVIOUS TWO YEARS.

18 (20) FLEX SAVINGS PROGRAM ACCOUNT OWNERS MAY TRANSFER
19 OR ROLL OVER ALL OR PART OF THE BALANCE OF A FLEX SAVINGS
20 PROGRAM ACCOUNT TO ANY COLLEGE SAVINGS PROGRAM ACCOUNT
21 ESTABLISHED PURSUANT TO THIS PART 3 AT ANY TIME.

22 (21) WITHDRAWALS OR TRANSFERS MADE IN ACCORDANCE WITH
23 SUBSECTIONS (19) AND (20) OF THIS SECTION ARE CONSIDERED QUALIFIED
24 WITHDRAWALS.

25 (22) FLEX SAVINGS PROGRAM ACCOUNT OWNERS MAY ONLY
26 WITHDRAW OR TRANSFER ALL OR PART OF THE BALANCE OF A FLEX
27 SAVINGS PROGRAM ACCOUNT IN ACCORDANCE WITH SUBSECTIONS (18),

1 (19), AND (20) OF THIS SECTION.

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

4 **23-3.1-307. Limitations.** (1) Nothing in this part 3 shall be
5 construed to:

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

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

12 **23-3.1-307.5. Confidentiality of records.** (1) Except as
13 otherwise provided in this section or pursuant to federal law, all data,
14 information, and records relating to the college savings program, ~~and~~ the
15 ABLE savings program, AND THE FLEX SAVINGS PROGRAM are public
16 records and are subject to inspection pursuant to ~~the provisions of~~ part 2
17 of article 72 of title 24. ~~C.R.S.~~

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

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

26 **23-3.1-308. Residency.** Both Colorado resident and nonresident
27 account owners and designated beneficiaries are eligible to participate in

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

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

10 **23-3.1-309. Tax exemption.** (3) TO THE EXTENT THAT
11 DISTRIBUTIONS FROM A FLEX SAVINGS PROGRAM ACCOUNT ESTABLISHED
12 PURSUANT TO THIS PART 3 TO A DESIGNATED BENEFICIARY FOR QUALIFIED
13 ELEMENTARY OR SECONDARY TUITION EXPENSES ARE EXCLUDED FROM
14 TAXABLE INCOME PURSUANT TO SECTION 529 OF THE INTERNAL REVENUE
15 CODE, OR ANY SUCCESSOR PROVISION, SUCH DISTRIBUTIONS ARE ALSO
16 EXCLUDED FROM STATE TAXABLE INCOME.

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

19 **39-22-104. Income tax imposed on individuals, estates, and**
20 **trusts - single rate - legislative declaration - definitions - repeal.**

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

22 (i) (II) For income tax years commencing on or after January 1,
23 2001, an amount equal to all payments or contributions made during the
24 taxable year under an advance payment contract, to a savings trust
25 account, or otherwise in connection with a qualified state tuition program
26 established by collegeinvest created in section 23-3.1-203, ~~C.R.S.~~, or to
27 a qualified state tuition program that is affiliated with an educational

1 institution in the state and that is established and maintained pursuant to
2 section 529 of the internal revenue code or any successor section, BUT
3 NOT TO A FLEX SAVINGS PROGRAM ACCOUNT CREATED PURSUANT TO
4 SECTION 23-3.1-312 (2)(c);

5 (IV) As used in this paragraph (i), ~~"designated beneficiary",~~
6 ~~means a designated beneficiary as defined in section 529 (e)(1) of the~~
7 ~~internal revenue code, "qualified state tuition program", means a qualified~~
8 ~~state tuition program as defined in section 529 (b) of the internal revenue~~
9 ~~code, and "qualified higher education expenses" means qualified higher~~
10 ~~education expenses as defined in section 529 (e)(3) of the internal~~
11 ~~revenue code~~ SUBSECTION (4)(i), UNLESS THE CONTEXT OTHERWISE
12 REQUIRES:

13 (A) "DESIGNATED BENEFICIARY" HAS THE SAME MEANING AS THE
14 TERM "DESIGNATED BENEFICIARY" DEFINED IN SECTION 529 (e)(1) OF THE
15 INTERNAL REVENUE CODE.

16 (B) "QUALIFIED HIGHER EDUCATION EXPENSE" HAS THE SAME
17 MEANING AS THE TERM "QUALIFIED HIGHER EDUCATION EXPENSE"
18 DEFINED IN SECTION 529 (e)(3) OF THE INTERNAL REVENUE CODE.
19 "QUALIFIED HIGHER EDUCATION EXPENSE" DOES NOT INCLUDE EXPENSES
20 FOR TUITION IN CONNECTION WITH ENROLLMENT OR ATTENDANCE AT AN
21 ELEMENTARY OR SECONDARY PUBLIC, PRIVATE, OR RELIGIOUS SCHOOL AS
22 INCLUDED BY SECTION 529 (c)(7) OF THE INTERNAL REVENUE CODE AND
23 DOES NOT INCLUDE AMOUNTS PAID AS PRINCIPAL OR INTEREST ON ANY
24 QUALIFIED EDUCATION LOAN OF THE DESIGNATED BENEFICIARY OR A
25 SIBLING OF THE DESIGNATED BENEFICIARY AS INCLUDED BY SECTION 529
26 (c)(9) OF THE INTERNAL REVENUE CODE.

27 (C) "QUALIFIED STATE TUITION PROGRAM" MEANS A QUALIFIED

1 TUITION PROGRAM AS DEFINED IN SECTION 529 (b) OF THE INTERNAL
2 REVENUE CODE.

3 **SECTION 10. Act subject to petition - effective date.** This act
4 takes effect January 1, 2022; except that, if a referendum petition is filed
5 pursuant to section 1 (3) of article V of the state constitution against this
6 act or an item, section, or part of this act within the ninety-day period
7 after final adjournment of the general assembly, then the act, item,
8 section, or part will not take effect unless approved by the people at the
9 general election to be held in November 2022 and, in such case, will take
10 effect on the date of the official declaration of the vote thereon by the
11 governor.