

**Second Regular Session
Seventy-third General Assembly
STATE OF COLORADO**

REVISED

*This Version Includes All Amendments Adopted
on Second Reading in the Second House*

LLS NO. 22-0940.01 Pierce Lively x2059

HOUSE BILL 22-1320

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A BILL FOR AN ACT

101 **CONCERNING THE ACHIEVING A BETTER LIFE EXPERIENCE (ABLE)**
102 **SAVINGS PROGRAM FOR INDIVIDUALS WITH DISABILITIES, AND,**
103 **IN CONNECTION THEREWITH, MODIFYING WHO MAY CREATE AND**
104 **CONTROL AN ABLE PROGRAM ACCOUNT, PREVENTING THE**
105 **STATE FROM FILING CERTAIN CLAIMS AGAINST AN ABLE**
106 **PROGRAM ACCOUNT UPON THE DEATH OF THE DESIGNATED**
107 **BENEFICIARY, AND ALLOWING CONTRIBUTIONS TO AN ABLE**
108 **PROGRAM ACCOUNT THAT ARE WITHDRAWN FOR QUALIFIED**
109 **DISABILITY EXPENSES TO BE DEDUCTED FROM A TAXPAYER'S**
110 **FEDERAL TAXABLE INCOME FOR PURPOSES OF DETERMINING**
111 **THE TAXPAYER'S STATE TAXABLE INCOME, AND MAKING AN**
112 **APPROPRIATION.**

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.

SENATE
2nd Reading Unamended
May 3, 2022

HOUSE
3rd Reading Unamended
April 25, 2022

HOUSE
Amended 2nd Reading
April 22, 2022

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 collegeinvest authority administers the achieving a better life experience (ABLE) savings program. Individuals who were declared disabled, as defined under federal law, before reaching 26 years of age are eligible to open an ABLE savings account. ABLE savings accounts under section 529A of the internal revenue code are modeled after section 529 college savings accounts, but, unlike those accounts, ABLE savings accounts may be used to save for many expenses related to an individual's disability without disqualifying the individual for certain federal benefits.

The bill modifies the administration and operation of these accounts in 2 ways. First, the bill allows a person other than the individual with a disability to open an ABLE savings account for the individual and to have signature authority over that account. Second, the bill prohibits the state from filing a claim against the ABLE savings account upon the account owner's death for outstanding payments due for qualified disability expenses.

The bill also modifies the tax benefits associated with an ABLE savings account. Under the bill, a taxpayer may deduct from their federal taxable income for purposes of calculating their state taxable income certain contributions made to an ABLE savings account. Further, the bill ensures that a taxpayer does not encounter tax recapture of any deductions claimed for these contributions when distributions are made from an ABLE savings account for qualified disability expenses.

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

2 **SECTION 1.** In Colorado Revised Statutes, 23-3.1-306, **add** (18)
3 as follows:

4 **23-3.1-306. Accounts - contributions - withdrawals - penalties**
5 **- statements.** (18) (a) IN THE CASE OF AN ABLE SAVINGS PROGRAM
6 ACCOUNT, A PERSON OTHER THAN THE ACCOUNT OWNER MAY ESTABLISH
7 AN ACCOUNT AND HAVE SIGNATURE AUTHORITY OVER AN ACCOUNT ON
8 BEHALF OF THE ACCOUNT OWNER IN ACCORDANCE WITH SECTION 529A OF

1 THE INTERNAL REVENUE CODE AND THE REGULATIONS PROMULGATED
2 UNDER THAT SECTION.

3 (b) THE AUTHORITY SHALL ADOPT ANY GUIDELINES AND
4 PROCEDURES THAT ARE NECESSARY TO ALLOW A PERSON OTHER THAN THE
5 ACCOUNT OWNER TO ESTABLISH AN ABLE SAVINGS PROGRAM ACCOUNT
6 AND HAVE SIGNATURE AUTHORITY OVER SUCH AN ACCOUNT IN
7 ACCORDANCE WITH THIS SUBSECTION (18).

8 **SECTION 2.** In Colorado Revised Statutes, 23-3.1-311, **add** (5)
9 as follows:

10 **23-3.1-311. Achieving a better life experience (ABLE) savings**
11 **program - establishment - authority - powers - duties.** (5) UPON THE
12 DEATH OF AN ABLE SAVINGS PROGRAM DESIGNATED BENEFICIARY, THE
13 STATE SHALL NOT FILE A CLAIM AGAINST THE DECEASED DESIGNATED
14 BENEFICIARY'S ABLE SAVINGS PROGRAM ACCOUNT AS AUTHORIZED IN
15 SECTION 529A (f) OF THE INTERNAL REVENUE CODE, UNLESS THE FILING
16 OF SUCH A CLAIM IS REQUIRED TO MAINTAIN QUALIFIED ABLE SAVINGS
17 PROGRAM STATUS UNDER SECTION 529A OF THE INTERNAL REVENUE
18 CODE.

19 **SECTION 3.** In Colorado Revised Statutes, 39-22-104, **amend**
20 (4)(i)(I), (4)(i)(II)(B), and (4)(i)(IV); and **add** (4)(i)(III.5) and (4)(i)(IV.5)
21 as follows:

22 **39-22-104. Income tax imposed on individuals, estates, and**
23 **trusts - single rate - report - legislative declaration - definitions -**
24 **repeal.** (4) There shall be subtracted from federal taxable income:

25 (i) (I) (A) For income tax years commencing on or after January
26 1, 1998, an amount equal to the portion attributable to interest and other
27 income of a distribution under a qualified state tuition program that is

1 distributed for the purpose of meeting qualified higher education
2 expenses of a designated beneficiary, to the extent such amount is
3 included in federal taxable income;

4 (B) BEFORE JANUARY 1, 2026, AN AMOUNT EQUAL TO THE
5 PORTION ATTRIBUTABLE TO INTEREST AND OTHER INCOME OF A
6 DISTRIBUTION UNDER A QUALIFIED ABLE PROGRAM THAT IS DISTRIBUTED
7 FOR THE PURPOSE OF MEETING QUALIFIED DISABILITY EXPENSES OF A
8 DESIGNATED BENEFICIARY, TO THE EXTENT SUCH AMOUNT IS INCLUDED IN
9 FEDERAL TAXABLE INCOME;

10 (C) SUBSECTION (4)(i)(I)(B) IS REPEALED JANUARY 1, 2030.

11 (II) (B) Except as provided in subsection (4)(i)(II)(C) of this
12 section, for income tax years commencing on or after January 1, 2022, an
13 amount equal to all payments or contributions, not to exceed twenty
14 thousand dollars per taxpayer per beneficiary for a taxpayer who files a
15 single return, or thirty thousand dollars per taxpayer per beneficiary for
16 taxpayers who file a joint return, made during the taxable year under an
17 advance payment contract, to a savings trust account, or otherwise in
18 connection with a qualified state tuition program established by
19 collegeinvest created in section 23-3.1-203, or to a qualified state tuition
20 program that is affiliated with an educational institution in the state and
21 that is established and maintained pursuant to section 529 of the internal
22 revenue code or any successor section, OR, BEFORE JANUARY 1, 2026, IN
23 CONNECTION WITH A QUALIFIED ABLE PROGRAM. Notwithstanding
24 subsection (4)(i)(III)(D) of this section, collegeinvest may treat a change
25 in beneficiary as a nonqualifying distribution if the change was made for
26 the purpose of evading the limit in this subsection (4)(i)(II)(B).

27 (III.5) NO SUBTRACTION IS ALLOWED PURSUANT TO THIS

1 SUBSECTION (4)(i) TO THE EXTENT THAT SUCH PAYMENTS OR
2 CONTRIBUTIONS ARE EXCLUDED FROM THE TAXPAYER'S FEDERAL TAXABLE
3 INCOME FOR THE TAXABLE YEAR. BEFORE JANUARY 1, 2026, ANY
4 SUBTRACTION TAKEN UNDER THIS SUBSECTION (4)(i) IS ADDED TO THE
5 ACCOUNT HOLDER'S TAXABLE INCOME IN THE TAXABLE YEAR OR YEARS IN
6 WHICH ANY DISTRIBUTION, REFUND, OR ANY OTHER WITHDRAWAL IS MADE
7 PURSUANT TO AN ADVANCE PAYMENT CONTRACT, FROM A SAVINGS TRUST
8 ACCOUNT, OR OTHERWISE IN CONNECTION WITH A QUALIFIED ABLE
9 PROGRAM FOR ANY REASON OTHER THAN:

10 (A) TO PAY QUALIFIED DISABILITY EXPENSES;

11 (B) AS A RESULT OF THE BENEFICIARY'S DEATH OR DISABILITY; OR

12 (C) AS A RESULT OF A CHANGE IN DESIGNATED BENEFICIARY, IF
13 THE CHANGE COMPLIES WITH SECTION 529A (c)(1)(C)(ii) OF THE INTERNAL
14 REVENUE CODE.

15 (D) THIS SUBSECTION (4)(i)(III.5) IS REPEALED, EFFECTIVE
16 JANUARY 1, 2030.

17 (IV) As used in this paragraph (i), ~~"designated beneficiary" means~~
18 ~~a designated beneficiary as defined in section 529 (e)(1) of the internal~~
19 ~~revenue code, "qualified state tuition program" means a qualified state~~
20 ~~tuition program as defined in section 529 (b) of the internal revenue code,~~
21 ~~and "qualified higher education expenses" means qualified higher~~
22 ~~education expenses as defined in section 529 (e)(3) of the internal~~
23 ~~revenue code~~ SUBSECTION (4)(i), UNLESS THE CONTEXT OTHERWISE
24 REQUIRES:

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

27 (B) "QUALIFIED ABLE PROGRAM", BEFORE JANUARY 1, 2026,

1 MEANS A QUALIFIED ABLE PROGRAM AS DEFINED IN SECTION 529A (b) OF
2 THE INTERNAL REVENUE CODE.

3 (C) "QUALIFIED DISABILITY EXPENSE", BEFORE JANUARY 1, 2026,
4 HAS THE SAME MEANING AS DEFINED IN SECTION 529A (e)(5) OF THE
5 INTERNAL REVENUE CODE.

6 (D) "QUALIFIED HIGHER EDUCATION EXPENSE" HAS THE SAME
7 MEANING AS DEFINED IN SECTION 529 (e)(3) OF THE INTERNAL REVENUE
8 CODE.

9 (E) "QUALIFIED STATE TUITION PROGRAM" MEANS A QUALIFIED
10 TUITION PROGRAM AS DEFINED IN SECTION 529 (b) OF THE INTERNAL
11 REVENUE CODE.

12 (IV.5) SUBSECTIONS (4)(i)(IV)(B) AND (4)(i)(IV)(C) OF THIS
13 SECTION AND THIS SUBSECTION (4)(i)(IV.5) ARE REPEALED, EFFECTIVE
14 JANUARY 1, 2030.

15 **SECTION 4. Appropriation.** (1) For the 2022-23 state fiscal
16 year, \$44,517 is appropriated to the department of revenue. This
17 appropriation is from the general fund. To implement this act, the
18 department may use this appropriation as follows:

19 (a) \$27,400 for use by the executive director's office for personal
20 services;

21 (b) \$9,000 for tax administration IT system (GenTax) support;

22 (c) \$7,560 for use by taxation services for personal services; and

23 (d) \$557 for use by taxation services for IDS print production.

24 **SECTION 5. Act subject to petition - effective date.** This act
25 takes effect January 1, 2023; except that, if a referendum petition is filed
26 pursuant to section 1 (3) of article V of the state constitution against this
27 act or an item, section, or part of this act within the ninety-day period

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