

CHAPTER 151

EDUCATION - UNIVERSITIES AND COLLEGES

HOUSE BILL 99-1288

BY REPRESENTATIVES Dean, Lee, Plant, Scott, Smith, Stengel, Tapia, and Young;
also SENATORS Owen, Martinez, Matsunaka, Pascoe, Powers, Sullivant, and Tebedo.

AN ACT

CONCERNING THE CREATION OF A COLLEGE SAVINGS PROGRAM.

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

SECTION 1. Article 3.1 of title 23, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PART to read:

**PART 3
COLLEGE SAVINGS PROGRAM**

23-3.1-301. Legislative declaration. THE GENERAL ASSEMBLY HEREBY FINDS, DETERMINES, AND DECLARES THAT A CHOICE OF EDUCATION OPPORTUNITIES WILL BENEFIT THE RESIDENTS OF THE STATE OF COLORADO AND THAT THE ESTABLISHMENT OF A COLLEGE SAVINGS PROGRAM, TO BE ADMINISTERED BY THE COLORADO STUDENT OBLIGATION BOND AUTHORITY USING A PLAN DESIGNED BY THE DEPARTMENT OF THE TREASURY, WILL ENHANCE THE AVAILABILITY OF POSTSECONDARY EDUCATIONAL OPPORTUNITIES FOR RESIDENTS. IT IS THE INTENT OF THE GENERAL ASSEMBLY TO ACHIEVE THIS PURPOSE THROUGH A PUBLIC-PRIVATE PARTNERSHIP USING SELECTED FINANCIAL INSTITUTIONS TO SERVE AS ACCOUNT HOLDERS AND MANAGERS OF INDIVIDUAL COLLEGE SAVINGS ACCOUNTS.

23-3.1-302. Definitions. AS USED IN THIS PART 3, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "ACCOUNT" MEANS AN INDIVIDUAL TRUST ACCOUNT OR SAVINGS ACCOUNT ESTABLISHED PURSUANT TO THIS PART 3.

(2) "ACCOUNT OWNER" MEANS THE PERSON DESIGNATED AT THE TIME AN ACCOUNT

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

IS OPENED AS HAVING THE RIGHT TO WITHDRAW MONEYS FROM THE ACCOUNT BEFORE THE ACCOUNT IS DISBURSED TO OR FOR THE BENEFIT OF THE DESIGNATED BENEFICIARY.

(3) "AUTHORITY" MEANS THE COLORADO STUDENT OBLIGATION BOND AUTHORITY CREATED PURSUANT TO SECTION 23-3.1-203.

(4) "DESIGNATED BENEFICIARY" OR "BENEFICIARY" MEANS, WITH RESPECT TO AN ACCOUNT, THE PERSON DESIGNATED AT THE TIME THE ACCOUNT IS OPENED, OR THE PERSON WHO REPLACES A DESIGNATED BENEFICIARY, AS THE PERSON WHOSE EDUCATION EXPENSES ARE EXPECTED TO BE PAID FROM THE ACCOUNT.

(5) "ELIGIBLE EDUCATION INSTITUTION" HAS THE SAME MEANING AS THAT TERM IS DEFINED IN 26 U.S.C. SEC. 135 (c) (3).

(6) "FINANCIAL INSTITUTION" MEANS ANY STATE BANK, STATE TRUST COMPANY, INDUSTRIAL BANK, SAVINGS AND LOAN ASSOCIATION, CREDIT UNION CHARTERED BY THE STATE OF COLORADO, NATIONAL BANK, BROKER-DEALER, MUTUAL FUND, INSURANCE COMPANY, OR OTHER SIMILAR FINANCIAL ENTITY QUALIFIED TO DO BUSINESS IN THE STATE OF COLORADO.

(7) "INTERNAL REVENUE CODE" MEANS THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS AMENDED.

(8) "MANAGER" MEANS A FINANCIAL INSTITUTION UNDER CONTRACT WITH THE AUTHORITY TO SERVE AS ADMINISTRATOR OF THE PROGRAM AND RECIPIENT OF CONTRIBUTIONS ON BEHALF OF THE PROGRAM.

(9) "MEMBER OF THE FAMILY" HAS THE SAME MEANING AS THAT TERM IS DEFINED IN 26 U.S.C. SEC. 529 (e) (2).

(10) "NONQUALIFIED WITHDRAWAL" MEANS A WITHDRAWAL FROM AN ACCOUNT OTHER THAN A QUALIFIED WITHDRAWAL, A WITHDRAWAL MADE AS THE RESULT OF THE DEATH OR DISABILITY OF THE DESIGNATED BENEFICIARY OF AN ACCOUNT, A WITHDRAWAL MADE AS A RESULT OF THE BENEFICIARY'S RECEIPT OF A SCHOLARSHIP, OR A ROLLOVER OR CHANGE OF DESIGNATED BENEFICIARY.

(11) "PROGRAM" MEANS THE COLLEGE SAVINGS PROGRAM ESTABLISHED PURSUANT TO THIS PART 3.

(12) "QUALIFIED HIGHER EDUCATION EXPENSES" HAS THE SAME MEANING AS IS PROVIDED FOR THAT TERM IN 26 U.S.C. SEC. 529 (e) (3).

(13) "QUALIFIED WITHDRAWAL" MEANS A WITHDRAWAL FROM AN ACCOUNT TO PAY THE QUALIFIED HIGHER EDUCATION EXPENSES OF THE DESIGNATED BENEFICIARY OF THE ACCOUNT, A WITHDRAWAL MADE ON ACCOUNT OF THE DEATH OR DISABILITY OF THE DESIGNATED BENEFICIARY, OR A WITHDRAWAL MADE ON ACCOUNT OF A SCHOLARSHIP, BUT ONLY IF THE WITHDRAWAL IS MADE IN ACCORDANCE WITH THIS PART 3.

23-3.1-303. Department - purpose - powers - duties. (1) IN ADDITION TO ANY

OTHER POWERS AND DUTIES SPECIFICALLY GRANTED BY LAW, THE DEPARTMENT OF THE TREASURY SHALL:

(a) DESIGN THE PROGRAM AND THE POLICIES RELATED THERETO IN A MANNER CONSISTENT WITH THIS PART 3 AND CONSISTENT WITH THE REQUIREMENTS OF SECTION 529 OF THE INTERNAL REVENUE CODE; AND

(b) APPROVE ANY PLAN FOR PROMOTING THE PROGRAM DEVELOPED BY A MANAGER, AS PROVIDED IN SECTION 23-3.1-305 (6) (f).

23-3.1-304. Authority - purpose - powers - duties. (1) IN ADDITION TO ANY OTHER POWERS OR DUTIES SPECIFICALLY GRANTED TO THE AUTHORITY IN THIS PART 3, THE AUTHORITY SHALL:

(a) DEVELOP AND IMPLEMENT THE PROGRAM IN A MANNER CONSISTENT WITH THIS PART 3 AND WITH THE PROGRAM DESIGN AND POLICIES AS ESTABLISHED BY THE DEPARTMENT OF THE TREASURY THROUGH THE ADOPTION OF RULES, GUIDELINES, AND PROCEDURES;

(b) SELECT THE FINANCIAL INSTITUTION OR INSTITUTIONS, AND ENTER INTO A CONTRACT WITH SAID INSTITUTION OR INSTITUTIONS TO SERVE AS MANAGERS AND TO INVEST THE CONTRIBUTIONS DEPOSITED INTO THE ACCOUNTS;

(c) ESTABLISH RULES REGARDING WITHDRAWAL OF FUNDS, WHICH RULES SHALL INCLUDE PROVISIONS THAT WILL ENABLE THE AUTHORITY OR THE MANAGER TO DETERMINE IF A WITHDRAWAL IS A NONQUALIFIED WITHDRAWAL OR A QUALIFIED WITHDRAWAL;

(d) RETAIN THE PROFESSIONAL SERVICES OF ACCOUNTANTS, AUDITORS, CONSULTANTS, AND OTHER EXPERTS IF NECESSARY IN ORDER TO IMPLEMENT AND DEVELOP THE PROGRAM;

(e) SEEK RULINGS AND OTHER GUIDANCE FROM THE UNITED STATES DEPARTMENT OF THE TREASURY, THE INTERNAL REVENUE SERVICE, AND THE SECURITIES AND EXCHANGE COMMISSION RELATING TO THE PROGRAM AS IS NECESSARY FOR PROPER IMPLEMENTATION AND DEVELOPMENT OF THE PROGRAM;

(f) MAKE CHANGES TO THE PROGRAM REQUIRED IN ORDER FOR ACCOUNT OWNERS AND BENEFICIARIES AND THE PROGRAM TO OBTAIN OR MAINTAIN FEDERAL INCOME TAX BENEFITS OR TREATMENT PROVIDED BY SECTION 529 OF THE INTERNAL REVENUE CODE AND EXEMPTIONS UNDER FEDERAL SECURITIES LAWS;

(g) WHEN ESTABLISHING RULES, POLICIES, GUIDELINES, AND PROCEDURES, INTERPRET THE PROVISIONS OF THIS PART 3 BROADLY IN LIGHT OF THE PURPOSE AND OBJECTIVES SET FORTH IN THIS PART 3;

(h) CHARGE, IMPOSE, AND COLLECT ADMINISTRATIVE FEES AND SERVICE CHARGES IN CONNECTION WITH ANY AGREEMENT, CONTRACT, OR TRANSACTION RELATING TO THE PROGRAM IN AMOUNTS NOT EXCEEDING THE COST OF ESTABLISHING AND MAINTAINING THE PROGRAM;

(i) APPROVE THE APPLICATION AND REVIEW, FOR PURPOSES OF COMPLIANCE WITH APPLICABLE LAWS AND REGULATIONS, ANY INFORMATIONAL MATERIALS UTILIZED BY THE MANAGER TO BE FURNISHED TO PERSONS WHO DESIRE TO PARTICIPATE IN THE PROGRAM ESTABLISHED IN THIS PART 3;

(j) PROMULGATE RULES RELATING TO PENALTIES ASSOCIATED WITH NONQUALIFIED WITHDRAWALS FROM ACCOUNTS PURSUANT TO SECTION 23-3.1-306 (8);

(k) ADOPT RULES TO PREVENT CONTRIBUTIONS ON BEHALF OF A DESIGNATED BENEFICIARY IN EXCESS OF THOSE NECESSARY TO PAY THE QUALIFIED HIGHER EDUCATION EXPENSES OF THE DESIGNATED BENEFICIARY;

(1) REQUIRE THAT EVERY CONTRACT, APPLICATION, DEPOSIT SLIP, OR OTHER SIMILAR DOCUMENT THAT MAY BE USED IN CONNECTION WITH A CONTRIBUTION TO AN ACCOUNT CLEARLY INDICATE THAT THE ACCOUNT IS NOT INSURED BY THIS STATE AND NEITHER THE PRINCIPAL DEPOSITED NOR THE INVESTMENT RETURN IS GUARANTEED BY THE STATE.

(2) NOTWITHSTANDING THE RESTRICTIONS IN SECTION 23-3.1-216, THE AUTHORITY IS HEREBY AUTHORIZED TO CONTRACT WITH ONE OR MORE FINANCIAL INSTITUTIONS PURSUANT TO SECTION 23-3.1-305 TO ACT AS MANAGERS FOR THE INVESTMENT OF CONTRIBUTIONS RELATED TO THIS PROGRAM IN STOCKS, BONDS, MUTUAL FUNDS, AND OTHER SUCH INVESTMENTS AS DEEMED APPROPRIATE BY THE AUTHORITY. IN SO DOING, THE AUTHORITY SHALL BE BOUND BY THE FIDUCIARY DUTY DESCRIBED IN SECTION 15-1-304, C.R.S., AND SHALL ASSURE THAT INVESTMENTS BY THE MANAGERS ARE MADE WITH JUDGMENT AND CARE WHICH MEN OF PRUDENCE, DISCRETION, AND INTELLIGENCE EXERCISE IN THE MANAGEMENT OF THE PROPERTY OF ANOTHER, NOT IN REGARD TO SPECULATION BUT IN REGARD TO THE PERMANENT DISPOSITION OF FUNDS, CONSIDERING THE PROBABLE INCOME AS WELL AS THE PROBABLE SAFETY OF CAPITAL. THE FUNDS CONTRIBUTED TO THE ACCOUNTS ESTABLISHED BY ACCOUNT OWNERS PURSUANT TO THIS SECTION ARE HELD IN TRUST BY THE AUTHORITY AND THE MANAGER FOR THE SOLE BENEFIT OF THE ACCOUNT OWNER AND BENEFICIARY. THESE CONTRIBUTIONS ARE NOT SUBJECT TO ANY LIMITATIONS ON THE INVESTMENT OF PUBLIC FUNDS AND ARE NOT SUBJECT TO SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION, WHICH LIMITS FISCAL YEAR SPENDING OF STATE GOVERNMENT AND OTHER DISTRICTS.

23-3.1-305. Financial institutions - managers - purpose - selection - requirements - contracts. (1) THE AUTHORITY SHALL IMPLEMENT THE PROGRAM THROUGH THE USE OF ONE OR MORE FINANCIAL INSTITUTIONS TO ACT AS MANAGERS. UNDER THE PROGRAM, POTENTIAL ACCOUNT OWNERS MAY ESTABLISH ACCOUNTS THROUGH THE PROGRAM AT THE FINANCIAL INSTITUTION.

(2) THE AUTHORITY SHALL SOLICIT PROPOSALS FROM FINANCIAL INSTITUTIONS TO ACT AS THE RECIPIENTS OF CONTRIBUTIONS AND MANAGERS.

(3) THE AUTHORITY SHALL SELECT FROM AMONG BIDDING FINANCIAL INSTITUTIONS ONE OR MORE FINANCIAL INSTITUTIONS THAT DEMONSTRATE THE MOST ADVANTAGEOUS COMBINATION TO ACCOUNT OWNERS AND BENEFICIARIES, BASED ON THE FOLLOWING FACTORS:

(a) FINANCIAL STABILITY AND INTEGRITY;

(b) THE ABILITY OF THE FINANCIAL INSTITUTION, DIRECTLY OR THROUGH A SUBCONTRACT, TO SATISFY RECORD-KEEPING AND REPORTING REQUIREMENTS;

(c) THE FINANCIAL INSTITUTION'S PLAN FOR PROMOTING THE PROGRAM AND THE INVESTMENT THAT THE FINANCIAL INSTITUTION IS WILLING TO MAKE IN ORDER TO PROMOTE THE PROGRAM;

(d) THE HISTORIC ABILITY OF THE INVESTMENT INSTRUMENTS UTILIZED BY THE FINANCIAL INSTITUTION TO TRACK THE ESTIMATED COSTS OF HIGHER EDUCATION AS CALCULATED BY THE UNITED STATES DEPARTMENT OF EDUCATION;

(e) THE FEES, IF ANY, PROPOSED TO BE CHARGED TO ACCOUNT OWNERS FOR MAINTAINING ACCOUNTS;

(f) THE MINIMUM INITIAL CASH CONTRIBUTION AND MINIMUM CONTRIBUTIONS THAT THE FINANCIAL INSTITUTION WILL REQUIRE, AND THE WILLINGNESS OF THE FINANCIAL INSTITUTION TO ACCEPT CONTRIBUTIONS THROUGH PAYROLL DEDUCTION PLANS OR SYSTEMATIC DEPOSIT PLANS; AND

(g) ANY OTHER BENEFITS TO THE STATE OR TO ITS RESIDENTS, INCLUDED IN THE PROPOSAL, INCLUDING AN ACCOUNT OPENING FEE PAYABLE TO THE AUTHORITY BY THE ACCOUNT OWNER.

(4) THE AUTHORITY SHALL CONTRACT WITH ONE OR MORE FINANCIAL INSTITUTIONS, IN ACCORDANCE WITH SUBSECTION (5) OF THIS SECTION, TO SERVE AS MANAGERS AND TO INVEST THE CONTRIBUTIONS TO ACCOUNTS.

(5) THE AUTHORITY MAY SELECT MORE THAN ONE FINANCIAL INSTITUTION FOR THE PROGRAM IF THE UNITED STATES INTERNAL REVENUE SERVICE HAS PROVIDED GUIDANCE THAT GIVING A CONTRIBUTOR A CHOICE OF TWO OR MORE FINANCIAL INSTITUTIONS WILL NOT CAUSE THE PROGRAM TO FAIL TO QUALIFY FOR FAVORABLE TAX TREATMENT UNDER SECTION 529 OF THE INTERNAL REVENUE CODE, AND THE AUTHORITY CONCLUDES THAT THE CHOICE OF TWO OR MORE FINANCIAL INSTITUTIONS IS IN THE BEST INTEREST OF ACCOUNT OWNERS AND BENEFICIARIES AND WILL NOT INTERFERE WITH THE PROMOTION OF THE PROGRAM.

(6) A MANAGER SHALL:

(a) TAKE ALL ACTIONS REQUIRED TO KEEP THE PROGRAM IN COMPLIANCE WITH THE REQUIREMENTS OF THIS PART 3 AND TO ASSURE THAT THE PROGRAM IS TREATED AS A QUALIFIED STATE TUITION PLAN UNDER SECTION 529 OF THE INTERNAL REVENUE CODE AND TO ASSURE THAT THE PROGRAM IS EXEMPT FROM REGISTRATION UNDER THE FEDERAL SECURITIES LAW;

(b) KEEP ADEQUATE AND SEPARATE RECORDS OF EACH ACCOUNT AND PROVIDE THE AUTHORITY WITH THE INFORMATION NECESSARY TO PREPARE THE REPORTS REQUIRED BY SECTION 529 OF THE INTERNAL REVENUE CODE OR FILE THESE REPORTS ON BEHALF OF THE AUTHORITY;

(c) COMPILER AND TOTAL INFORMATION CONTAINED IN STATEMENTS REQUIRED TO BE PREPARED PURSUANT TO SECTION 23-3.1-306 (16) AND (17) AND PROVIDE THESE COMPILATIONS TO THE AUTHORITY;

(d) PROVIDE REPRESENTATIVES OF THE AUTHORITY ACCESS TO THE BOOKS AND RECORDS OF THE MANAGER TO THE EXTENT NEEDED TO DETERMINE COMPLIANCE WITH THE CONTRACT;

(e) HOLD ALL ACCOUNTS IN TRUST FOR THE SOLE BENEFIT OF THE ACCOUNT OWNER AND BENEFICIARY ON BEHALF OF THE PROGRAM, ACTING IN A FIDUCIARY CAPACITY AND MAKING INVESTMENTS WITH JUDGMENT, CARE, AND PRUDENCE AS DESCRIBED IN SECTION 15-1-304, C.R.S.; AND

(f) DEVELOP A PLAN TO PROMOTE THE PROGRAM AND, AFTER APPROVAL OF SUCH PLAN BY THE DEPARTMENT OF THE TREASURY, PROMOTE THE PROGRAM IN ACCORDANCE WITH THE PLAN.

(7) ANY CONTRACT EXECUTED BETWEEN THE AUTHORITY AND A FINANCIAL INSTITUTION PURSUANT TO THIS SECTION SHALL BE FOR A TERM OF AT LEAST FIVE YEARS AND MAY BE RENEWABLE.

(8) IF A CONTRACT EXECUTED BETWEEN THE AUTHORITY AND A FINANCIAL INSTITUTION PURSUANT TO THIS SECTION IS NOT RENEWED, ALL OF THE FOLLOWING CONDITIONS SHALL APPLY AT THE END OF THE TERM OF THE NONRENEWED CONTRACT, SO LONG AS APPLYING THESE CONDITIONS DOES NOT DISQUALIFY THE PROGRAM AS A QUALIFIED STATE TUITION PLAN UNDER SECTION 529 OF THE INTERNAL REVENUE CODE:

(a) THE AUTHORITY SHALL CONTINUE TO MAINTAIN THE PROGRAM AT THE FINANCIAL INSTITUTION;

(b) ACCOUNTS PREVIOUSLY ESTABLISHED AT THE FINANCIAL INSTITUTION SHALL NOT BE TERMINATED, EXCEPT AS PROVIDED IN PARAGRAPH (e) OF THIS SUBSECTION (8) OR AS PROVIDED IN SUBSECTION (9) OF THIS SECTION;

(c) ADDITIONAL CONTRIBUTIONS MAY BE MADE TO THE ACCOUNTS;

(d) NO NEW ACCOUNTS MAY BE PLACED WITH THAT FINANCIAL INSTITUTION; AND

(e) IF THE AUTHORITY DETERMINES THAT CONTINUING THE ACCOUNTS AT THE FINANCIAL INSTITUTION IS NOT IN THE BEST INTEREST OF THE ACCOUNT OWNERS, THE ACCOUNTS MAY BE TRANSFERRED TO ANOTHER FINANCIAL INSTITUTION UNDER CONTRACT WITH THE AUTHORITY.

(9) THE AUTHORITY MAY TERMINATE A CONTRACT WITH A FINANCIAL INSTITUTION AT ANY TIME. IF A CONTRACT IS TERMINATED PURSUANT TO THIS SUBSECTION (9), THE AUTHORITY SHALL TAKE CUSTODY OF ACCOUNTS HELD AT THAT FINANCIAL INSTITUTION AND SHALL SEEK TO PROMPTLY TRANSFER THE ACCOUNTS TO ANOTHER FINANCIAL INSTITUTION THAT IS SELECTED AS A MANAGER AND INTO INVESTMENT INSTRUMENTS AS SIMILAR TO THE ORIGINAL INVESTMENTS AS POSSIBLE PURSUANT TO THE GUIDELINES ESTABLISHED IN SECTION 23-3.1-306 (13).

23-3.1-306. Accounts - contributions - withdrawals - penalties - statements.

(1) THE PROGRAM SHALL BE OPERATED THROUGH THE USE OF ACCOUNTS. AN ACCOUNT MAY BE OPENED BY ANY PERSON WHO DESIRES TO SAVE FOR THE QUALIFIED HIGHER EDUCATION EXPENSES OF A POTENTIAL BENEFICIARY BY SATISFYING EACH OF THE FOLLOWING REQUIREMENTS:

(a) COMPLETING AN APPLICATION IN THE FORM PRESCRIBED BY THE FINANCIAL INSTITUTION AND APPROVED BY THE AUTHORITY. SAID APPLICATION SHALL INCLUDE THE FOLLOWING INFORMATION:

(I) THE NAME, ADDRESS, AND SOCIAL SECURITY NUMBER OR EMPLOYER IDENTIFICATION NUMBER OF ANY PERSON THAT CONTRIBUTES TO THE ACCOUNT;

(II) THE NAME, ADDRESS, AND SOCIAL SECURITY NUMBER OR EMPLOYER IDENTIFICATION NUMBER OF THE ACCOUNT OWNER;

(III) THE NAME, ADDRESS, SOCIAL SECURITY NUMBER OR EMPLOYER IDENTIFICATION NUMBER, AND DATE OF BIRTH OF THE DESIGNATED BENEFICIARY;

(IV) A CERTIFICATION FROM THE CONTRIBUTOR THAT STATES THAT TO THE BEST OF THE CONTRIBUTOR'S KNOWLEDGE, THE ACCOUNT BALANCE FOR THE DESIGNATED BENEFICIARY IN ALL QUALIFIED STATE TUITION PROGRAMS, AS DEFINED IN SECTION 529 OF THE INTERNAL REVENUE CODE, DOES NOT EXCEED THE GREATER OF EITHER A MAXIMUM COLLEGE SAVINGS AMOUNT ESTABLISHED BY THE AUTHORITY OR THE COST IN CURRENT DOLLARS OF QUALIFIED HIGHER EDUCATION EXPENSES THAT THE CONTRIBUTOR REASONABLY ANTICIPATES THE DESIGNATED BENEFICIARY WILL INCUR; AND

(V) ANY OTHER INFORMATION THAT THE AUTHORITY MAY DEEM NECESSARY.

(b) MAKING THE MINIMUM CONTRIBUTION REQUIRED BY THE FINANCIAL INSTITUTION TO OPEN AN ACCOUNT.

(2) ANY PERSON MAY MAKE CONTRIBUTIONS TO AN ACCOUNT, CONSISTENT WITH THE TERMS ESTABLISHED BY THE AUTHORITY, AFTER THE ACCOUNT IS OPENED.

(3) CONTRIBUTIONS TO ACCOUNTS SHALL BE MADE IN CASH ONLY.

(4) ACCOUNT OWNERS MAY WITHDRAW ALL OR PART OF THE BALANCE FROM AN ACCOUNT UPON GIVING SIXTY DAYS' NOTICE, OR UPON SUCH SHORTER PERIOD AS MAY BE AUTHORIZED BY THE AUTHORITY PURSUANT TO RULES ESTABLISHED BY THE AUTHORITY, INCLUDING ANY APPLICABLE FEES AND PENALTIES.

(5) AN ACCOUNT OWNER MAY CHANGE THE DESIGNATED BENEFICIARY OF AN ACCOUNT TO AN INDIVIDUAL WHO IS A MEMBER OF THE FAMILY OR FORMER DESIGNATED BENEFICIARY IN ACCORDANCE WITH PROCEDURES ESTABLISHED BY THE AUTHORITY.

(6) AT THE DIRECTION OF THE ACCOUNT OWNER, ALL OR A PORTION OF AN ACCOUNT MAY BE TRANSFERRED TO ANOTHER ACCOUNT, IF THE DESIGNATED BENEFICIARY OF THE TRANSFEREE ACCOUNT IS A MEMBER OF THE FAMILY OF THE

DESIGNATED BENEFICIARY OF THE TRANSFEROR ACCOUNT.

(7) CHANGES IN DESIGNATED BENEFICIARIES AND ROLLOVERS UNDER THIS SECTION ARE NOT PERMITTED IF THE CHANGES OR ROLLOVERS WOULD VIOLATE RULES RELATED TO EXCESS CONTRIBUTIONS OR RULES RELATED TO INVESTMENT CHOICE.

(8) IN THE CASE OF ANY NONQUALIFIED WITHDRAWAL FROM AN ACCOUNT, AN AMOUNT THAT WOULD CONSTITUTE MORE THAN A DE MINIMIS PENALTY, AS DETERMINED BY THE AUTHORITY IN ACCORDANCE WITH SECTION 529 OF THE INTERNAL REVENUE CODE, SHALL BE WITHHELD AS A PENALTY FROM THE AMOUNT WITHDRAWN OR FROM FUNDS REMAINING IN THE ACCOUNT AND PAID TO THE AUTHORITY FOR USE IN OPERATING THE PROGRAM AND FOR STATE STUDENT FINANCIAL AID.

(9) IF AN ACCOUNT OWNER MAKES A NONQUALIFIED WITHDRAWAL AND NO PENALTY AMOUNT IS WITHHELD PURSUANT TO SUBSECTION (8) OF THIS SECTION, OR THE AMOUNT WITHHELD IS LESS THAN THE AMOUNT REQUIRED TO BE WITHHELD PURSUANT TO SUBSECTION (8) OF THIS SECTION FOR NONQUALIFIED WITHDRAWALS, THE ACCOUNT OWNER SHALL PAY THE UNPAID PORTION OF THE PENALTY TO THE AUTHORITY ON OR BEFORE APRIL 15 OF THE FOLLOWING TAX YEAR.

(10) EACH ACCOUNT SHALL BE ACCOUNTED FOR SEPARATELY FROM ALL OTHER ACCOUNTS UNDER THE PROGRAM.

(11) SEPARATE RECORDS AND ACCOUNTING SHALL BE MAINTAINED FOR EACH ACCOUNT FOR EACH DESIGNATED BENEFICIARY.

(12) AS LONG AS PROHIBITED BY FEDERAL LAW, NO CONTRIBUTOR TO, ACCOUNT OWNER OF, OR DESIGNATED BENEFICIARY OF ANY ACCOUNT MAY DIRECT THE INVESTMENT OF ANY CONTRIBUTION TO AN ACCOUNT OR THE EARNINGS FROM THE ACCOUNT.

(13) IF THE AUTHORITY TERMINATES THE CONTRACT OF A FINANCIAL INSTITUTION TO HOLD ACCOUNTS AND ACCOUNTS MUST BE MOVED FROM THAT FINANCIAL INSTITUTION TO ANOTHER FINANCIAL INSTITUTION, THE AUTHORITY SHALL SELECT THE FINANCIAL INSTITUTION TO WHICH THE BALANCES OF THE ACCOUNTS ARE MOVED.

(14) NEITHER AN ACCOUNT OWNER NOR A DESIGNATED BENEFICIARY MAY USE AN INTEREST IN AN ACCOUNT AS A SECURITY FOR A LOAN. ANY PLEDGE OF AN INTEREST IN AN ACCOUNT IS OF NO FORCE AND EFFECT.

(15) IF THERE IS ANY DISTRIBUTION FROM AN ACCOUNT TO ANY PERSON OR FOR THE BENEFIT OF ANY PERSON DURING THE CALENDAR YEAR, THE DISTRIBUTION SHALL BE REPORTED TO THE INTERNAL REVENUE SERVICE AND TO THE ACCOUNT OWNER OR THE DESIGNATED BENEFICIARY TO THE EXTENT REQUIRED BY FEDERAL LAW.

(16) THE FINANCIAL INSTITUTION SHALL PROVIDE STATEMENTS TO EACH ACCOUNT OWNER AT LEAST ONCE EACH YEAR, WITHIN THIRTY-ONE DAYS AFTER THE END OF THE CALENDAR YEAR. THE STATEMENT SHALL IDENTIFY THE CONTRIBUTIONS MADE DURING THE PRECEDING REPORTING PERIOD, THE TOTAL CONTRIBUTIONS MADE THROUGH THE END OF THE REPORTING PERIOD, THE VALUE OF THE ACCOUNT AS OF

THE END OF THE REPORTING PERIOD, WITHDRAWALS MADE DURING THE REPORTING PERIOD, AND ANY OTHER MATTERS THAT THE AUTHORITY REQUIRES TO BE REPORTED TO THE ACCOUNT OWNER.

(17) STATEMENTS AND INFORMATION RETURNS RELATING TO ACCOUNTS SHALL BE PREPARED AND FILED TO THE EXTENT REQUIRED BY FEDERAL OR STATE TAX LAW.

23-3.1-307. Limitations. (1) NOTHING IN THIS PART 3 SHALL BE CONSTRUED TO:

(a) GIVE ANY DESIGNATED BENEFICIARY ANY RIGHTS OR LEGAL INTEREST WITH RESPECT TO AN ACCOUNT UNLESS THE DESIGNATED BENEFICIARY IS THE ACCOUNT OWNER;

(b) GUARANTEE THAT A DESIGNATED BENEFICIARY WILL BE ADMITTED TO AN EDUCATION INSTITUTION OR BE ALLOWED TO CONTINUE ENROLLMENT AT OR GRADUATE FROM AN EDUCATION INSTITUTION;

(c) ESTABLISH STATE RESIDENCY FOR A BENEFICIARY MERELY BECAUSE OF THE DESIGNATION AS A BENEFICIARY; OR

(d) GUARANTEE THAT AMOUNTS SAVED PURSUANT TO THE PROGRAM WILL BE SUFFICIENT TO COVER THE QUALIFIED HIGHER EDUCATION EXPENSES OF A DESIGNATED BENEFICIARY.

(2) NOTHING IN THIS PART 3 SHALL ESTABLISH ANY OBLIGATION OF THE STATE OF COLORADO OR ANY AGENCY OR INSTRUMENTALITY OF THE STATE OF COLORADO TO GUARANTEE FOR THE BENEFIT OF ANY OWNER, CONTRIBUTOR TO AN ACCOUNT, OR DESIGNATED BENEFICIARY ANY OF THE FOLLOWING:

(a) THE RETURN OF ANY AMOUNTS CONTRIBUTED TO AN ACCOUNT;

(b) THE RATE OF INTEREST OR OTHER RETURN ON ANY ACCOUNT;

(c) THE PAYMENT OF INTEREST OR OTHER RETURN ON ANY ACCOUNT; OR

(d) TUITION RATES OR THE COST OF RELATED EDUCATION EXPENDITURES.

(3) NOTHING IN THIS PART 3 SHALL BE CONSTRUED TO INDICATE THAT THE ACCOUNT IS INSURED BY THE STATE OF COLORADO OR THAT THE PRINCIPAL DEPOSITED OR INVESTMENT RETURN IS GUARANTEED BY THE STATE OF COLORADO.

(4) SECTION 23-3.1-211, RELATING TO PERSONAL LIABILITY, SECTION 23-3.1-217.5, RELATING TO CLAIMS OF CREDITORS, AND SECTION 23-3.1-225, RELATING TO CONFIDENTIALITY OF RECORDS, SHALL APPLY TO THIS PART 3.

23-3.1-308. Residency. BOTH RESIDENT AND NONRESIDENT OWNERS AND DESIGNATED BENEFICIARIES SHALL BE ELIGIBLE TO PARTICIPATE IN AND BENEFIT FROM THE COLLEGE SAVINGS PROGRAM.

23-3.1-309. Tax exemption. NOTWITHSTANDING ANY OTHER LAW TO THE CONTRARY, THE AMOUNT OF ANY DISTRIBUTION TO A DESIGNATED BENEFICIARY, AS

DEFINED IN SECTION 529 (e) (1) OF THE INTERNAL REVENUE CODE, FROM AN ACCOUNT ESTABLISHED UNDER THIS PART 3 SHALL BE EXEMPT FROM STATE INCOME TAXATION TO THE EXTENT THAT THIS INCOME IS USED TO PAY QUALIFIED HIGHER EDUCATION EXPENSES OF THE DESIGNATED BENEFICIARY.

SECTION 2. Effective date. This act shall take effect July 1, 1999.

SECTION 3. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 30, 1999