

**First Regular Session
Seventy-second General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 19-0318.01 Nicole Myers x4326

HOUSE BILL 19-1058

HOUSE SPONSORSHIP

Landgraf and Beckman, Pelton

SENATE SPONSORSHIP

(None),

House Committees
Finance

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE CREATION OF INCOME TAX BENEFITS TO FACILITATE**
102 **FAMILY LEAVE.**

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>.)

Section 2 of the bill establishes leave savings accounts. A leave savings account is an account with a financial institution for which the individual uses money to pay for any expense while he or she is on eligible leave, which includes:

- ! The birth of a child of the individual and in order to care for the child;

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 placement of a child with the individual for adoption or foster care;
- ! Caring for a spouse, child, or parent of the individual if the spouse, child, or parent has a serious health condition;
- ! A serious health condition that makes the individual unable to perform the functions of the position of the individual; or
- ! Any qualifying exigency, as determined by the United States secretary of labor, arising out of the fact that a spouse, child, or parent of the individual is on covered active duty, or has been notified of an impending call or order to covered active duty, in the United States armed forces.

An individual may annually contribute up to \$5,000 of state pretax wages to a leave savings account. Employers may also make a matching contribution to an employee's leave savings account. The department of revenue is required to establish a form about a leave savings account, and the individual must annually file this form to be eligible for the tax benefit.

Sections 3 and 4 allow an employee and an employer to claim a state income tax deduction for amounts they contribute to the employee's leave savings account. Section 3 also allows a taxpayer to deduct any interest or other income earned on the investment during the taxable year from their leave savings account.

Regardless of how the money is deposited in the leave savings account, if an individual uses money in the account for an unauthorized purpose, then the money is subject to recapture in the year it is withdrawn and to a penalty equal to 10% of the amount recaptured.

Section 5 creates an income tax credit for an employer that pays an employee for leave that is between 6 and 12 weeks long for one of the following reasons:

- ! The birth of a child of the employee and in order to care for the child;
- ! Placement of a child with the employee for adoption or foster care;
- ! Caring for a spouse, child, or parent of the employee if the spouse, child, or parent has a serious health condition;
- ! A serious health condition that makes the employee unable to perform the functions of the position of the employee; or
- ! Any qualifying exigency, as determined by the United States secretary of labor, arising out of the fact that a spouse, child, or parent of the employee is on covered active duty, or has been notified of an impending call or order to covered active duty, in the United States armed forces.

For employers with fewer than 50 employees, the credit is equal to 50% of the amount paid, and for employers with 50 or more employees it is equal to 25% of the amount paid. The credit is not refundable, but it may be carried forward up to 5 years.

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

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 hereby declares that parental leave policies enable parents to take paid
4 time off from work to prepare for, and recover from, childbirth, the
5 adoption of a child, or foster care. This time provides a crucial bonding
6 experience for parents and children, and partial wage replacement ensures
7 parents stay on track with their financial responsibilities. Based on
8 increasing evidence, short-term leave policies immediately following the
9 birth or adoption of a child result in long-term positive outcomes for
10 childhood development.

11 (2) The general assembly also declares that it is good public policy
12 to facilitate an employee's saving for family leave related to a serious
13 health condition of the employee or the employee's family member.

14 (3) Now, therefore, it is the intent of the general assembly to
15 create appropriate tax incentives to encourage employers to voluntarily
16 establish paid parental and medical leave programs for their eligible
17 employees while concurrently promoting a structured savings program
18 where employers and employees may proactively save for time away from
19 work during the important first weeks of a child's life and during family
20 medical emergencies.

21 **SECTION 2.** In Colorado Revised Statutes, **add** 39-22-104.8 as
22 follows:

23 **39-22-104.8. Pretax payments - leave savings account -**

1 **definitions.** (1) AS USED IN THIS SECTION:

2 (a) "DEPARTMENT" MEANS THE DEPARTMENT OF REVENUE.

3 (b) "ELIGIBLE LEAVE" MEANS LEAVE THAT AN INDIVIDUAL TAKES
4 FROM WORK FOR ONE OR MORE OF THE FOLLOWING REASONS:

5 (I) THE BIRTH OF A CHILD OF THE INDIVIDUAL AND IN ORDER TO
6 CARE FOR THE CHILD;

7 (II) THE PLACEMENT OF A CHILD WITH THE INDIVIDUAL FOR
8 ADOPTION OR FOSTER CARE;

9 (III) TO CARE FOR A SPOUSE, CHILD, OR PARENT OF THE
10 INDIVIDUAL IF THE SPOUSE, CHILD, OR PARENT HAS A SERIOUS HEALTH
11 CONDITION;

12 (IV) A SERIOUS HEALTH CONDITION THAT MAKES THE INDIVIDUAL
13 UNABLE TO PERFORM THE FUNCTIONS OF THE POSITION OF THE
14 INDIVIDUAL; OR

15 (V) ANY QUALIFYING EXIGENCY, AS DETERMINED BY THE UNITED
16 STATES SECRETARY OF LABOR, ARISING OUT OF THE FACT THAT A SPOUSE,
17 CHILD, OR PARENT OF THE INDIVIDUAL IS ON COVERED ACTIVE DUTY, OR
18 HAS BEEN NOTIFIED OF AN IMPENDING CALL OR ORDER TO COVERED
19 ACTIVE DUTY, IN THE UNITED STATES ARMED FORCES THAT WOULD
20 ENTITLE THE INDIVIDUAL FOR LEAVE UNDER SECTION 29 U.S.C. SEC. 2612
21 (a)(1)(E).

22 (c) "FINANCIAL INSTITUTION" MEANS ANY STATE BANK, STATE
23 TRUST COMPANY, SAVINGS AND LOAN ASSOCIATION, FEDERALLY
24 CHARTERED CREDIT UNION DOING BUSINESS IN THE STATE, CREDIT UNION
25 CHARTERED BY THE STATE, NATIONAL BANK, BROKER-DEALER, MUTUAL
26 FUND, INSURANCE COMPANY, OR OTHER SIMILAR FINANCIAL ENTITY
27 QUALIFIED TO DO BUSINESS IN THE STATE.

1 (d) "LEAVE SAVINGS ACCOUNT" OR "ACCOUNT" MEANS AN
2 ACCOUNT WITH A FINANCIAL INSTITUTION DESIGNATED AS SUCH IN
3 ACCORDANCE WITH SUBSECTION (3) OF THIS SECTION.

4 (2) (a) FOR INCOME TAX YEARS COMMENCING ON OR AFTER
5 JANUARY 1, 2020, AMOUNTS WITHHELD FROM AN INDIVIDUAL'S WAGES
6 THAT ARE DEPOSITED IN A LEAVE SAVINGS ACCOUNT, UP TO AN ANNUAL
7 MAXIMUM OF FIVE THOUSAND DOLLARS, ARE EXCLUDED FROM THE
8 INDIVIDUAL'S FEDERAL TAXABLE INCOME FOR PURPOSES OF THE STATE
9 INCOME TAX IMPOSED BY SECTION 39-22-104.

10 (b) AN EMPLOYER MAY MAKE A CONTRIBUTION TO AN EMPLOYEE'S
11 LEAVE SAVINGS ACCOUNT IN AN AMOUNT UP TO A MATCHING
12 CONTRIBUTION FOR ANY CONTRIBUTION MADE BY THE EMPLOYEE.
13 EMPLOYER CONTRIBUTIONS TO AN EMPLOYEE'S LEAVE SAVINGS ACCOUNT
14 CONSTITUTE A DEDUCTION FROM THE EMPLOYER'S FEDERAL TAXABLE
15 INCOME, PURSUANT TO SECTIONS 39-22-104 (4)(z).

16 (3) BEGINNING JANUARY 1, 2020, AN INDIVIDUAL MAY OPEN AN
17 ACCOUNT WITH A FINANCIAL INSTITUTION AND DESIGNATE THE ACCOUNT,
18 IN ITS ENTIRETY, AS A LEAVE SAVINGS ACCOUNT FOR USE BY THE
19 INDIVIDUAL. FOR PURPOSES OF THE INCOME TAX BENEFIT CONFERRED
20 UNDER THIS SECTION, MONEY MAY REMAIN IN AN ACCOUNT FOR AN
21 UNLIMITED DURATION WITHOUT BEING SUBJECT TO RECAPTURE OR
22 PENALTY AND MAY BE:

23 (a) WITHDRAWN BY THE INDIVIDUAL AND USED TO PAY FOR ANY
24 EXPENSE INCURRED BY THE INDIVIDUAL WHILE HE OR SHE IS ON ELIGIBLE
25 LEAVE; OR

26 (b) USED TO PAY A SERVICE FEE THAT IS DEDUCTED BY THE
27 FINANCIAL INSTITUTION.

1 (4) (a) EXCEPT AS SET FORTH IN SUBSECTION (4)(b) OF THIS
2 SECTION, MONEY WITHDRAWN FROM A LEAVE SAVINGS ACCOUNT THAT IS
3 USED FOR ANY PURPOSE OTHER THAN THOSE SPECIFIED IN SUBSECTION (3)
4 OF THIS SECTION IS SUBJECT TO RECAPTURE AS PART OF THE INDIVIDUAL'S
5 INCOME IN THE TAXABLE YEAR IN WHICH IT IS WITHDRAWN AND TO A
6 PENALTY EQUAL TO TEN PERCENT OF THE AMOUNT RECAPTURED. THE
7 PENALTY APPLIES WHETHER THE MONEY WAS EXCLUDED UNDER THIS
8 SECTION OR SUBTRACTED FROM FEDERAL TAXABLE INCOME UNDER
9 SECTION 39-22-104 (4)(z) OR 39-22-304 (3)(p).

10 (b) IF THE INDIVIDUAL WHO CREATED THE LEAVE SAVINGS
11 ACCOUNT DIES, THEN ALL OF THE MONEY IN THE ACCOUNT THAT WAS
12 SUBTRACTED FROM TAXABLE INCOME IS SUBJECT TO RECAPTURE IN THE
13 TAXABLE YEAR OF THE DEATH, BUT NO PENALTY IS DUE TO THE
14 DEPARTMENT.

15 (5) THE DEPARTMENT SHALL ESTABLISH A FORM FOR AN
16 INDIVIDUAL TO ANNUALLY REPORT INFORMATION ABOUT A LEAVE
17 SAVINGS ACCOUNT INCLUDING, BUT NOT LIMITED TO, HOW THE MONEY
18 FROM THE FUND IS USED, AND IDENTIFY ANY SUPPORTING
19 DOCUMENTATION THAT IS REQUIRED TO BE MAINTAINED. TO BE ELIGIBLE
20 FOR THE TAX BENEFIT UNDER THIS SECTION, AN INDIVIDUAL MUST
21 ANNUALLY FILE WITH HIS OR HER STATE INCOME TAX RETURN THE
22 COMPLETED FORM AND ANY OTHER SUPPORTING DOCUMENTATION THE
23 DEPARTMENT REQUIRES. THE INDIVIDUAL IS RESPONSIBLE FOR
24 MAINTAINING DOCUMENTATION FOR THE ACCOUNT AND FOR ANY USE OF
25 MONEY FROM THE ACCOUNT.

26 (6) (a) A FINANCIAL INSTITUTION IS NOT REQUIRED TO:

27 (I) DESIGNATE AN ACCOUNT AS A LEAVE SAVINGS ACCOUNT IN THE

1 FINANCIAL INSTITUTION'S ACCOUNT CONTRACTS OR SYSTEMS OR IN ANY
2 OTHER WAY;

3 (II) TRACK THE USE OF MONEY WITHDRAWN FROM A LEAVE
4 SAVINGS ACCOUNT; OR

5 (III) REPORT ANY INFORMATION TO THE DEPARTMENT OR ANY
6 OTHER GOVERNMENTAL AGENCY THAT IS NOT OTHERWISE REQUIRED BY
7 LAW.

8 (b) A FINANCIAL INSTITUTION IS NOT RESPONSIBLE OR LIABLE FOR:

9 (I) DETERMINING OR ENSURING THAT MONEY IN A LEAVE SAVINGS
10 ACCOUNT IS USED FOR AN ELIGIBLE EXPENSE; OR

11 (II) REPORTING OR REMITTING TAXES OR PENALTIES RELATED TO
12 THE USE OF MONEY IN A LEAVE SAVINGS ACCOUNT.

13 (c) IN IMPLEMENTING THIS SECTION, THE DEPARTMENT SHALL NOT
14 ESTABLISH ANY ADMINISTRATIVE, REPORTING, OR OTHER REQUIREMENTS
15 ON FINANCIAL INSTITUTIONS THAT ARE OUTSIDE THE SCOPE OF NORMAL
16 ACCOUNT PROCEDURES.

17 **SECTION 3.** In Colorado Revised Statutes, 39-22-104, **add**
18 (4)(z) 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 (z) (I) FOR INCOME TAX YEARS BEGINNING ON OR AFTER JANUARY
23 1, 2020:

24 (A) FOR AN EMPLOYER, AN AMOUNT EQUAL TO THE AMOUNT THE
25 EMPLOYER CONTRIBUTES TO AN EMPLOYEE'S LEAVE SAVINGS ACCOUNT;

26 (B) FOR AN EMPLOYEE, AN AMOUNT EQUAL TO THE AMOUNT
27 WITHHELD FROM AN INDIVIDUAL'S WAGES THAT ARE DEPOSITED IN THE

1 EMPLOYEE'S LEAVE SAVINGS ACCOUNT; AND

2 (C) AN AMOUNT EQUAL TO ANY INTEREST AND OTHER INCOME
3 EARNED ON THE INVESTMENT OF THE MONEY DURING THE TAXABLE YEAR
4 IN A TAXPAYER'S LEAVE SAVINGS ACCOUNT.

5 (II) AS USED IN THIS SUBSECTION (4)(z):

6 (A) "EMPLOYEE" HAS THE SAME MEANING AS SET FORTH IN
7 SECTION 39-22-604 (2)(a).

8 (B) "LEAVE SAVINGS ACCOUNT" HAS THE SAME MEANING AS SET
9 FORTH IN SECTION 39-22-104.8 (1)(d).

10 **SECTION 4.** In Colorado Revised Statutes, 39-22-304, **add**
11 (3)(p) as follows:

12 **39-22-304. Net income of corporation - legislative declaration**
13 **- definitions - repeal.** (3) There shall be subtracted from federal taxable
14 income:

15 (p) FOR INCOME TAX YEARS BEGINNING ON OR AFTER JANUARY 1,
16 2020, FOR AN EMPLOYER, AN AMOUNT EQUAL TO THE AMOUNT THE
17 EMPLOYER CONTRIBUTES TO AN EMPLOYEE'S LEAVE SAVINGS ACCOUNT
18 CREATED IN ACCORDANCE WITH SECTION 39-22-104.8. THIS SUBTRACTION
19 IS ALLOWABLE EVEN IF THE CONTRIBUTION IS OTHERWISE EXCLUDED FROM
20 FEDERAL TAXABLE INCOME. AS USED IN THIS SUBSECTION (3)(p),
21 "EMPLOYEE" HAS THE SAME MEANING AS SET FORTH IN SECTION 39-22-604
22 (2)(a).

23 **SECTION 5.** In Colorado Revised Statutes, **add** 39-22-542 as
24 follows:

25 **39-22-542. Credit for employers - family leave - definition.**
26 (1) AS USED IN THIS SECTION, "EMPLOYEE" HAS THE SAME MEANING AS
27 SET FORTH IN SECTION 39-22-604 (2)(a).

1 (2) (a) EXCEPT AS SET FORTH IN SUBSECTION (3) OF THIS SECTION,
2 FOR ANY INCOME TAX YEAR COMMENCING ON OR AFTER JANUARY 1, 2020,
3 A TAXPAYER IS ALLOWED A CREDIT AGAINST THE TAX IMPOSED BY THIS
4 ARTICLE 22 THAT IS EQUAL TO A PERCENTAGE OF THE AMOUNT THE
5 TAXPAYER PAID TO AN EMPLOYEE WHILE THE EMPLOYEE WAS ON LEAVE
6 FROM WORK DURING THE TAXABLE YEAR FOR ONE OF THE FOLLOWING
7 REASONS:

8 (I) THE BIRTH OF A CHILD OF THE EMPLOYEE AND IN ORDER TO
9 CARE FOR THE CHILD;

10 (II) THE PLACEMENT OF A CHILD WITH THE EMPLOYEE FOR
11 ADOPTION OR FOSTER CARE;

12 (III) TO CARE FOR A SPOUSE, CHILD, OR PARENT OF THE EMPLOYEE
13 IF THE SPOUSE, CHILD, OR PARENT HAS A SERIOUS HEALTH CONDITION;

14 (IV) A SERIOUS HEALTH CONDITION THAT MAKES THE EMPLOYEE
15 UNABLE TO PERFORM THE FUNCTIONS OF THE POSITION OF THE EMPLOYEE;

16 OR

17 (V) ANY QUALIFYING EXIGENCY, AS DETERMINED BY THE UNITED
18 STATES SECRETARY OF LABOR, ARISING OUT OF THE FACT THAT A SPOUSE,
19 CHILD, OR PARENT OF THE EMPLOYEE IS ON COVERED ACTIVE DUTY, OR
20 HAS BEEN NOTIFIED OF AN IMPENDING CALL OR ORDER TO COVERED
21 ACTIVE DUTY, IN THE UNITED STATES ARMED FORCES THAT WOULD
22 ENTITLE THE EMPLOYEE FOR LEAVE UNDER SECTION 29 U.S.C. SEC. 2612
23 (a)(1)(E).

24 (b) THE APPLICABLE PERCENTAGE FOR PURPOSES OF THE CREDIT
25 IN SUBSECTION (2)(a) OF THIS SECTION IS:

26 (I) FIFTY PERCENT FOR A TAXPAYER THAT EMPLOYS FEWER THAN
27 FIFTY EMPLOYEES DURING THE TAXABLE YEAR; OR

1 (II) TWENTY-FIVE PERCENT FOR A TAXPAYER THAT EMPLOYEES
2 FIFTY OR MORE EMPLOYEES DURING THE TAXABLE YEAR.

3 (3) TO CLAIM THE CREDIT UNDER SUBSECTION (2) OF THIS SECTION,
4 A TAXPAYER MUST PAY THE EMPLOYEE FOR AT LEAST SIX WEEKS, BUT IN
5 NO CASE SHALL A TAXPAYER CLAIM THE CREDIT FOR MORE THAN TWELVE
6 WEEKS OF PAY. ANY PAYMENTS BY THE EMPLOYER FOR ACCRUED PAID
7 VACATION, SICK, OR PERSONAL LEAVE ARE NOT ELIGIBLE FOR THE CREDIT.

8 (4) IF THE AMOUNT OF A CREDIT ALLOWED UNDER THIS SECTION
9 EXCEEDS A TAXPAYER'S ACTUAL TAX LIABILITY FOR AN INCOME TAX YEAR,
10 THE AMOUNT OF THE CREDIT NOT USED TO OFFSET INCOME TAX LIABILITY
11 FOR THE INCOME TAX YEAR IS NOT REFUNDED TO THE TAXPAYER. THE
12 TAXPAYER MAY CARRY FORWARD AND APPLY THE UNUSED CREDIT
13 AGAINST THE INCOME TAX DUE IN EACH OF THE FIVE SUCCEEDING INCOME
14 TAX YEARS, BUT THE TAXPAYER SHALL APPLY THE CREDIT AGAINST THE
15 INCOME TAX DUE FOR THE EARLIEST OF THE INCOME TAX YEARS POSSIBLE.
16 ANY AMOUNT OF THE TAX CREDIT THAT IS NOT USED AFTER THIS PERIOD
17 IS NOT REFUNDABLE.

18 **SECTION 6. Act subject to petition - effective date.** This act
19 takes effect at 12:01 a.m. on the day following the expiration of the
20 ninety-day period after final adjournment of the general assembly (August
21 2, 2019, if adjournment sine die is on May 3, 2019); except that, if a
22 referendum petition is filed pursuant to section 1 (3) of article V of the
23 state constitution against this act or an item, section, or part of this act
24 within such period, then the act, item, section, or part will not take effect
25 unless approved by the people at the general election to be held in
26 November 2020 and, in such case, will take effect on the date of the
27 official declaration of the vote thereon by the governor.