

AMENDMENTS TO LB610

Introduced by Linehan, 39.

1 1. Strike the original sections and insert the following new
2 sections:

3 Section 1. Section 72-1239.01, Reissue Revised Statutes of Nebraska,
4 is amended to read:

5 72-1239.01 (1)(a) The appointed members of the council shall have
6 the responsibility for the investment management of the assets of the
7 retirement systems administered by the Public Employees Retirement Board
8 as provided in section 84-1503, the assets of the Nebraska educational
9 savings plan trust created pursuant to sections 85-1801 to 85-1814 and
10 sections 9 to 11 of this act, the assets of the achieving a better life
11 experience program pursuant to sections 77-1401 to 77-1409, and beginning
12 January 1, 2017, the assets of each retirement system provided for under
13 the Class V School Employees Retirement Act. Except as provided in
14 subsection (4) of this section, the appointed members shall be deemed
15 fiduciaries with respect to the investment of the assets of the
16 retirement systems, of the Nebraska educational savings plan trust, and
17 of the achieving a better life experience program and shall be held to
18 the standard of conduct of a fiduciary specified in subsection (3) of
19 this section. The nonvoting, ex officio members of the council shall not
20 be deemed fiduciaries.

21 (b) As fiduciaries, the appointed members of the council and the
22 state investment officer shall discharge their duties with respect to the
23 assets of the retirement systems, of the Nebraska educational savings
24 plan trust, and of the achieving a better life experience program solely
25 in the interests of the members and beneficiaries of the retirement
26 systems or the interests of the participants and beneficiaries of the
27 Nebraska educational savings plan trust and the achieving a better life

1 experience program, as the case may be, for the exclusive purposes of
2 providing benefits to members, members' beneficiaries, participants, and
3 participants' beneficiaries and defraying reasonable expenses incurred
4 within the limitations and according to the powers, duties, and purposes
5 prescribed by law.

6 (2)(a) The appointed members of the council shall have the
7 responsibility for the investment management of the assets of state
8 funds. The appointed members shall be deemed fiduciaries with respect to
9 the investment of the assets of state funds and shall be held to the
10 standard of conduct of a fiduciary specified in subsection (3) of this
11 section. The nonvoting, ex officio members of the council shall not be
12 deemed fiduciaries.

13 (b) As fiduciaries, the appointed members of the council and the
14 state investment officer shall discharge their duties with respect to the
15 assets of state funds solely in the interests of the citizens of the
16 state within the limitations and according to the powers, duties, and
17 purposes prescribed by law.

18 (3) The appointed members of the council shall act with the care,
19 skill, prudence, and diligence under the circumstances then prevailing
20 that a prudent person acting in like capacity and familiar with such
21 matters would use in the conduct of an enterprise of a like character and
22 with like aims by diversifying the investments of the assets of the
23 retirement systems, the Nebraska educational savings plan trust, the
24 achieving a better life experience program, and state funds so as to
25 minimize risk of large losses, unless in light of such circumstances it
26 is clearly prudent not to do so. No assets of the retirement systems, the
27 Nebraska educational savings plan trust, or the achieving a better life
28 experience program shall be invested or reinvested if the sole or primary
29 investment objective is for economic development or social purposes or
30 objectives.

31 (4) Neither the appointed members of the council nor the state

1 investment officer shall be deemed fiduciaries with respect to
2 investments of the assets of a retirement system provided for under the
3 Class V School Employees Retirement Act made by or on behalf of the board
4 of education as defined in section 79-978 or the board of trustees
5 provided for in section 79-980. Neither the council nor any member
6 thereof nor the state investment officer shall be liable for the action
7 or inaction of the board of education or the board of trustees with
8 respect to the investment of the assets of a retirement system provided
9 for under the Class V School Employees Retirement Act, the consequences
10 of any such action or inaction of the board of education or the board of
11 trustees, and any claims, suits, losses, damages, fees, and costs related
12 to such action or inaction or consequences thereof.

13 Sec. 2. Section 77-2716, Reissue Revised Statutes of Nebraska, is
14 amended to read:

15 77-2716 (1) The following adjustments to federal adjusted gross
16 income or, for corporations and fiduciaries, federal taxable income shall
17 be made for interest or dividends received:

18 (a)(i) There shall be subtracted interest or dividends received by
19 the owner of obligations of the United States and its territories and
20 possessions or of any authority, commission, or instrumentality of the
21 United States to the extent includable in gross income for federal income
22 tax purposes but exempt from state income taxes under the laws of the
23 United States; and

24 (ii) There shall be subtracted interest received by the owner of
25 obligations of the State of Nebraska or its political subdivisions or
26 authorities which are Build America Bonds to the extent includable in
27 gross income for federal income tax purposes;

28 (b) There shall be subtracted that portion of the total dividends
29 and other income received from a regulated investment company which is
30 attributable to obligations described in subdivision (a) of this
31 subsection as reported to the recipient by the regulated investment

1 company;

2 (c) There shall be added interest or dividends received by the owner
3 of obligations of the District of Columbia, other states of the United
4 States, or their political subdivisions, authorities, commissions, or
5 instrumentalities to the extent excluded in the computation of gross
6 income for federal income tax purposes except that such interest or
7 dividends shall not be added if received by a corporation which is a
8 regulated investment company;

9 (d) There shall be added that portion of the total dividends and
10 other income received from a regulated investment company which is
11 attributable to obligations described in subdivision (c) of this
12 subsection and excluded for federal income tax purposes as reported to
13 the recipient by the regulated investment company; and

14 (e)(i) Any amount subtracted under this subsection shall be reduced
15 by any interest on indebtedness incurred to carry the obligations or
16 securities described in this subsection or the investment in the
17 regulated investment company and by any expenses incurred in the
18 production of interest or dividend income described in this subsection to
19 the extent that such expenses, including amortizable bond premiums, are
20 deductible in determining federal taxable income.

21 (ii) Any amount added under this subsection shall be reduced by any
22 expenses incurred in the production of such income to the extent
23 disallowed in the computation of federal taxable income.

24 (2) There shall be allowed a net operating loss derived from or
25 connected with Nebraska sources computed under rules and regulations
26 adopted and promulgated by the Tax Commissioner consistent, to the extent
27 possible under the Nebraska Revenue Act of 1967, with the laws of the
28 United States. For a resident individual, estate, or trust, the net
29 operating loss computed on the federal income tax return shall be
30 adjusted by the modifications contained in this section. For a
31 nonresident individual, estate, or trust or for a partial-year resident

1 individual, the net operating loss computed on the federal return shall
2 be adjusted by the modifications contained in this section and any
3 carryovers or carrybacks shall be limited to the portion of the loss
4 derived from or connected with Nebraska sources.

5 (3) There shall be subtracted from federal adjusted gross income for
6 all taxable years beginning on or after January 1, 1987, the amount of
7 any state income tax refund to the extent such refund was deducted under
8 the Internal Revenue Code, was not allowed in the computation of the tax
9 due under the Nebraska Revenue Act of 1967, and is included in federal
10 adjusted gross income.

11 (4) Federal adjusted gross income, or, for a fiduciary, federal
12 taxable income shall be modified to exclude the portion of the income or
13 loss received from a small business corporation with an election in
14 effect under subchapter S of the Internal Revenue Code or from a limited
15 liability company organized pursuant to the Nebraska Uniform Limited
16 Liability Company Act that is not derived from or connected with Nebraska
17 sources as determined in section 77-2734.01.

18 (5) There shall be subtracted from federal adjusted gross income or,
19 for corporations and fiduciaries, federal taxable income dividends
20 received or deemed to be received from corporations which are not subject
21 to the Internal Revenue Code.

22 (6) There shall be subtracted from federal taxable income a portion
23 of the income earned by a corporation subject to the Internal Revenue
24 Code of 1986 that is actually taxed by a foreign country or one of its
25 political subdivisions at a rate in excess of the maximum federal tax
26 rate for corporations. The taxpayer may make the computation for each
27 foreign country or for groups of foreign countries. The portion of the
28 taxes that may be deducted shall be computed in the following manner:

29 (a) The amount of federal taxable income from operations within a
30 foreign taxing jurisdiction shall be reduced by the amount of taxes
31 actually paid to the foreign jurisdiction that are not deductible solely

1 because the foreign tax credit was elected on the federal income tax
2 return;

3 (b) The amount of after-tax income shall be divided by one minus the
4 maximum tax rate for corporations in the Internal Revenue Code; and

5 (c) The result of the calculation in subdivision (b) of this
6 subsection shall be subtracted from the amount of federal taxable income
7 used in subdivision (a) of this subsection. The result of such
8 calculation, if greater than zero, shall be subtracted from federal
9 taxable income.

10 (7) Federal adjusted gross income shall be modified to exclude any
11 amount repaid by the taxpayer for which a reduction in federal tax is
12 allowed under section 1341(a)(5) of the Internal Revenue Code.

13 (8)(a) Federal adjusted gross income or, for corporations and
14 fiduciaries, federal taxable income shall be reduced, to the extent
15 included, by income from interest, earnings, and state contributions
16 received from the Nebraska educational savings plan trust created in
17 sections 85-1801 to 85-1814 and sections 9 to 11 of this act and any
18 account established under the achieving a better life experience program
19 as provided in sections 77-1401 to 77-1409.

20 (b) Federal adjusted gross income or, for corporations and
21 fiduciaries, federal taxable income shall be reduced by any contributions
22 as a participant in the Nebraska educational savings plan trust or
23 contributions to an account established under the achieving a better life
24 experience program made for the benefit of a beneficiary as provided in
25 sections 77-1401 to 77-1409, to the extent not deducted for federal
26 income tax purposes, but not to exceed five thousand dollars per married
27 filing separate return or ten thousand dollars for any other return. With
28 respect to a qualified rollover within the meaning of section 529 of the
29 Internal Revenue Code from another state's plan, any interest, earnings,
30 and state contributions received from the other state's educational
31 savings plan which is qualified under section 529 of the code shall

1 qualify for the reduction provided in this subdivision. For contributions
2 by a custodian of a custodial account including rollovers from another
3 custodial account, the reduction shall only apply to funds added to the
4 custodial account after January 1, 2014.

5 (c) Federal adjusted gross income or, for corporations and
6 fiduciaries, federal taxable income shall be increased by:

7 (i) The amount resulting from the cancellation of a participation
8 agreement refunded to the taxpayer as a participant in the Nebraska
9 educational savings plan trust to the extent previously deducted under
10 subdivision (8)(b) of this section; and

11 (ii) The amount of any withdrawals by the owner of an account
12 established under the achieving a better life experience program as
13 provided in sections 77-1401 to 77-1409 for nonqualified expenses to the
14 extent previously deducted under subdivision (8)(b) of this section.

15 (9)(a) For income tax returns filed after September 10, 2001, for
16 taxable years beginning or deemed to begin before January 1, 2006, under
17 the Internal Revenue Code of 1986, as amended, federal adjusted gross
18 income or, for corporations and fiduciaries, federal taxable income shall
19 be increased by eighty-five percent of any amount of any federal bonus
20 depreciation received under the federal Job Creation and Worker
21 Assistance Act of 2002 or the federal Jobs and Growth Tax Act of 2003,
22 under section 168(k) or section 1400L of the Internal Revenue Code of
23 1986, as amended, for assets placed in service after September 10, 2001,
24 and before December 31, 2005.

25 (b) For a partnership, limited liability company, cooperative,
26 including any cooperative exempt from income taxes under section 521 of
27 the Internal Revenue Code of 1986, as amended, limited cooperative
28 association, subchapter S corporation, or joint venture, the increase
29 shall be distributed to the partners, members, shareholders, patrons, or
30 beneficiaries in the same manner as income is distributed for use against
31 their income tax liabilities.

1 (c) For a corporation with a unitary business having activity both
2 inside and outside the state, the increase shall be apportioned to
3 Nebraska in the same manner as income is apportioned to the state by
4 section 77-2734.05.

5 (d) The amount of bonus depreciation added to federal adjusted gross
6 income or, for corporations and fiduciaries, federal taxable income by
7 this subsection shall be subtracted in a later taxable year. Twenty
8 percent of the total amount of bonus depreciation added back by this
9 subsection for tax years beginning or deemed to begin before January 1,
10 2003, under the Internal Revenue Code of 1986, as amended, may be
11 subtracted in the first taxable year beginning or deemed to begin on or
12 after January 1, 2005, under the Internal Revenue Code of 1986, as
13 amended, and twenty percent in each of the next four following taxable
14 years. Twenty percent of the total amount of bonus depreciation added
15 back by this subsection for tax years beginning or deemed to begin on or
16 after January 1, 2003, may be subtracted in the first taxable year
17 beginning or deemed to begin on or after January 1, 2006, under the
18 Internal Revenue Code of 1986, as amended, and twenty percent in each of
19 the next four following taxable years.

20 (10) For taxable years beginning or deemed to begin on or after
21 January 1, 2003, and before January 1, 2006, under the Internal Revenue
22 Code of 1986, as amended, federal adjusted gross income or, for
23 corporations and fiduciaries, federal taxable income shall be increased
24 by the amount of any capital investment that is expensed under section
25 179 of the Internal Revenue Code of 1986, as amended, that is in excess
26 of twenty-five thousand dollars that is allowed under the federal Jobs
27 and Growth Tax Act of 2003. Twenty percent of the total amount of
28 expensing added back by this subsection for tax years beginning or deemed
29 to begin on or after January 1, 2003, may be subtracted in the first
30 taxable year beginning or deemed to begin on or after January 1, 2006,
31 under the Internal Revenue Code of 1986, as amended, and twenty percent

1 in each of the next four following tax years.

2 (11)(a) For taxable years beginning or deemed to begin before
3 January 1, 2018, under the Internal Revenue Code of 1986, as amended,
4 federal adjusted gross income shall be reduced by contributions, up to
5 two thousand dollars per married filing jointly return or one thousand
6 dollars for any other return, and any investment earnings made as a
7 participant in the Nebraska long-term care savings plan under the Long-
8 Term Care Savings Plan Act, to the extent not deducted for federal income
9 tax purposes.

10 (b) For taxable years beginning or deemed to begin before January 1,
11 2018, under the Internal Revenue Code of 1986, as amended, federal
12 adjusted gross income shall be increased by the withdrawals made as a
13 participant in the Nebraska long-term care savings plan under the act by
14 a person who is not a qualified individual or for any reason other than
15 transfer of funds to a spouse, long-term care expenses, long-term care
16 insurance premiums, or death of the participant, including withdrawals
17 made by reason of cancellation of the participation agreement, to the
18 extent previously deducted as a contribution or as investment earnings.

19 (12) There shall be added to federal adjusted gross income for
20 individuals, estates, and trusts any amount taken as a credit for
21 franchise tax paid by a financial institution under sections 77-3801 to
22 77-3807 as allowed by subsection (5) of section 77-2715.07.

23 (13)(a) For taxable years beginning or deemed to begin on or after
24 January 1, 2015, under the Internal Revenue Code of 1986, as amended,
25 federal adjusted gross income shall be reduced by the amount received as
26 benefits under the federal Social Security Act which are included in the
27 federal adjusted gross income if:

28 (i) For taxpayers filing a married filing joint return, federal
29 adjusted gross income is fifty-eight thousand dollars or less; or

30 (ii) For taxpayers filing any other return, federal adjusted gross
31 income is forty-three thousand dollars or less.

1 (b) For taxable years beginning or deemed to begin on or after
2 January 1, 2020, under the Internal Revenue Code of 1986, as amended, the
3 Tax Commissioner shall adjust the dollar amounts provided in subdivisions
4 (13)(a)(i) and (ii) of this section by the same percentage used to adjust
5 individual income tax brackets under subsection (3) of section
6 77-2715.03.

7 (14) For taxable years beginning or deemed to begin on or after
8 January 1, 2015, under the Internal Revenue Code of 1986, as amended, an
9 individual may make a one-time election within two calendar years after
10 the date of his or her retirement from the military to exclude income
11 received as a military retirement benefit by the individual to the extent
12 included in federal adjusted gross income and as provided in this
13 subsection. The individual may elect to exclude forty percent of his or
14 her military retirement benefit income for seven consecutive taxable
15 years beginning with the year in which the election is made or may elect
16 to exclude fifteen percent of his or her military retirement benefit
17 income for all taxable years beginning with the year in which he or she
18 turns sixty-seven years of age. For purposes of this subsection, military
19 retirement benefit means retirement benefits that are periodic payments
20 attributable to service in the uniformed services of the United States
21 for personal services performed by an individual prior to his or her
22 retirement.

23 Sec. 3. Section 85-1802, Reissue Revised Statutes of Nebraska, is
24 amended to read:

25 85-1802 For purposes of sections 85-1801 to 85-1814 and sections 9
26 to 11 of this act:

27 (1) Administrative fund means the College Savings Plan
28 Administrative Fund created in section 85-1807;

29 (2) Beneficiary means the individual designated by a participation
30 agreement to benefit from advance payments of qualified higher education
31 expenses on behalf of the beneficiary;

1 (3) Benefits means the payment of qualified higher education
2 expenses on behalf of a beneficiary by the Nebraska educational savings
3 plan trust during the beneficiary's attendance at an eligible educational
4 institution;

5 (4) Eligible educational institution means an institution described
6 in 20 U.S.C. 1088 which is eligible to participate in a program under
7 Title IV of the federal Higher Education Act of 1965;

8 (5) Expense fund means the College Savings Plan Expense Fund created
9 in section 85-1807;

10 (6) Nebraska educational savings plan trust means the trust created
11 in section 85-1804;

12 (7) Nonqualified withdrawal refers to (a) a distribution from an
13 account to the extent it is not used to pay the qualified higher
14 education expenses of the beneficiary or (b) a qualified rollover
15 permitted by section 529 of the Internal Revenue Code where the funds are
16 transferred to a qualified tuition program sponsored by another state or
17 entity;

18 (8) Participant or account owner means an individual, an
19 individual's legal representative, or any other legal entity authorized
20 to establish a savings account under section 529 of the Internal Revenue
21 Code who has entered into a participation agreement for the advance
22 payment of qualified higher education expenses on behalf of a
23 beneficiary. For purposes of section 77-2716, as to contributions by a
24 custodian to a custodial account established pursuant to the Nebraska
25 Uniform Transfers to Minors Act or similar law in another state, which
26 account has been established under a participation agreement, participant
27 includes the parent or guardian of a minor, which parent or guardian is
28 also the custodian of the account;

29 (9) Participation agreement means an agreement between a participant
30 and the Nebraska educational savings plan trust entered into under
31 sections 85-1801 to 85-1814 and sections 9 to 11 of this act;

1 (10) Program fund means the College Savings Plan Program Fund
2 created in section 85-1807;

3 (11) Qualified higher education expenses means the certified costs
4 of tuition and fees, books, supplies, and equipment required for
5 enrollment or attendance at an eligible educational institution.
6 Reasonable room and board expenses, based on the minimum amount
7 applicable for the eligible educational institution during the period of
8 enrollment, shall be included as qualified higher education expenses for
9 those students enrolled on at least a half-time basis. In the case of a
10 special needs beneficiary, expenses for special needs services incurred
11 in connection with enrollment or attendance at an eligible educational
12 institution shall be included as qualified higher education expenses.
13 Expenses paid or incurred in 2009 or 2010 for the purchase of computer
14 technology or equipment or Internet access and related services, subject
15 to the limitations set forth in section 529 of the Internal Revenue Code,
16 shall be included as qualified higher education expenses. Qualified
17 higher education expenses does not include any amounts in excess of those
18 allowed by section 529 of the Internal Revenue Code;

19 (12) Section 529 of the Internal Revenue Code means such section of
20 the code and the regulations interpreting such section; and

21 (13) Tuition and fees means the quarter or semester charges imposed
22 to attend an eligible educational institution.

23 Sec. 4. Section 85-1804, Reissue Revised Statutes of Nebraska, is
24 amended to read:

25 85-1804 The Nebraska educational savings plan trust is created. The
26 State Treasurer is the trustee of the trust and as such is responsible
27 for the administration, operation, and maintenance of the program and has
28 all powers necessary to carry out and effectuate the purposes,
29 objectives, and provisions of sections 85-1801 to 85-1814 and sections 9
30 to 11 of this act pertaining to the administration, operation, and
31 maintenance of the trust and program, except that the state investment

1 officer shall have fiduciary responsibility to make all decisions
2 regarding the investment of the money in the administrative fund, expense
3 fund, and program fund, including the selection of all investment options
4 and the approval of all fees and other costs charged to trust assets
5 except costs for administration, operation, and maintenance of the trust
6 as appropriated by the Legislature, pursuant to the directions,
7 guidelines, and policies established by the Nebraska Investment Council.
8 The State Treasurer may adopt and promulgate rules and regulations to
9 provide for the efficient administration, operation, and maintenance of
10 the trust and program. The State Treasurer shall not adopt and promulgate
11 rules and regulations that in any way interfere with the fiduciary
12 responsibility of the state investment officer to make all decisions
13 regarding the investment of money in the administrative fund, expense
14 fund, and program fund. The State Treasurer or his or her designee shall
15 have the power to:

16 (1) Enter into agreements with any eligible educational institution,
17 the state, any federal or other state agency, or any other entity to
18 implement sections 85-1801 to 85-1814 and sections 9 to 11 of this act,
19 except agreements which pertain to the investment of money in the
20 administrative fund, expense fund, or program fund;

21 (2) Carry out the duties and obligations of the trust;

22 (3) Carry out studies and projections to advise participants
23 regarding present and estimated future qualified higher education
24 expenses and levels of financial participation in the trust required in
25 order to enable participants to achieve their educational funding
26 objectives;

27 (4) Participate in any federal, state, or local governmental program
28 for the benefit of the trust;

29 (5) Procure insurance against any loss in connection with the
30 property, assets, or activities of the trust as provided in section
31 81-8,239.01;

1 (6) Enter into participation agreements with participants;

2 (7) Make payments to eligible educational institutions pursuant to
3 participation agreements on behalf of beneficiaries;

4 (8) Make distributions to participants upon the termination of
5 participation agreements pursuant to the provisions, limitations, and
6 restrictions set forth in sections 85-1801 to 85-1814 and sections 9 to
7 11 of this act;

8 (9) Contract for goods and services and engage personnel as
9 necessary, including consultants, actuaries, managers, legal counsels,
10 and auditors for the purpose of rendering professional, managerial, and
11 technical assistance and advice regarding trust administration and
12 operation, except contracts which pertain to the investment of the
13 administrative, expense, or program funds; and

14 (10) Establish, impose, and collect administrative fees and charges
15 in connection with transactions of the trust, and provide for reasonable
16 service charges, including penalties for cancellations and late payments
17 with respect to participation agreements.

18 The Nebraska Investment Council may adopt and promulgate rules and
19 regulations to provide for the prudent investment of the assets of the
20 trust. The council or its designee also has the authority to select and
21 enter into agreements with individuals and entities to provide investment
22 advice and management of the assets held by the trust, establish
23 investment guidelines, objectives, and performance standards with respect
24 to the assets held by the trust, and approve any fees, commissions, and
25 expenses, which directly or indirectly affect the return on assets.

26 Sec. 5. Section 85-1806, Reissue Revised Statutes of Nebraska, is
27 amended to read:

28 85-1806 The Nebraska educational savings plan trust may enter into
29 participation agreements with participants on behalf of beneficiaries
30 pursuant to the following terms and conditions:

31 (1) A participation agreement shall authorize a participant to make

1 contributions to an account which is established for the purpose of
2 meeting the qualified higher education expenses of a beneficiary as
3 allowed by section 529 of the Internal Revenue Code. A participant shall
4 not be required to make an annual contribution on behalf of a
5 beneficiary, shall not be subject to minimum contribution requirements,
6 and shall not be required to maintain a minimum account balance. The
7 maximum contribution shall not exceed the amount allowed under section
8 529 of the Internal Revenue Code. The State Treasurer may set a maximum
9 cumulative contribution, as necessary, to maintain compliance with
10 section 529 of the Internal Revenue Code. Participation agreements may be
11 amended to provide for adjusted levels of contributions based upon
12 changed circumstances or changes in educational plans or to ensure
13 compliance with section 529 of the Internal Revenue Code or any other
14 applicable laws and regulations;

15 (2) Beneficiaries designated in participation agreements shall meet
16 the requirements established by the trustee and section 529 of the
17 Internal Revenue Code;

18 (3) Payment of benefits provided under participation agreements
19 shall be made in a manner consistent with section 529 of the Internal
20 Revenue Code;

21 (4) The execution of a participation agreement by the trust shall
22 not guarantee in any way that qualified higher education expenses will be
23 equal to projections and estimates provided by the trust or that the
24 beneficiary named in any participation agreement will (a) be admitted to
25 an eligible educational institution, (b) if admitted, be determined a
26 resident for tuition purposes by the eligible educational institution,
27 (c) be allowed to continue attendance at the eligible educational
28 institution following admission, or (d) graduate from the eligible
29 educational institution;

30 (5) A beneficiary under a participation agreement may be changed as
31 permitted under the rules and regulations adopted under sections 85-1801

1 to 85-1814 and sections 9 to 11 of this act and consistent with section
2 529 of the Internal Revenue Code upon written request of the participant
3 as long as the substitute beneficiary is eligible for participation.
4 Participation agreements may otherwise be freely amended throughout their
5 term in order to enable participants to increase or decrease the level of
6 participation, change the designation of beneficiaries, and carry out
7 similar matters as authorized by rule and regulation; and

8 (6) Each participation agreement shall provide that the
9 participation agreement may be canceled upon the terms and conditions and
10 upon payment of applicable fees and costs set forth and contained in the
11 rules and regulations.

12 Sec. 6. Section 85-1809, Reissue Revised Statutes of Nebraska, is
13 amended to read:

14 85-1809 (1) A participant retains ownership of all contributions
15 made under a participation agreement up to the date of utilization for
16 payment of qualified higher education expenses for the beneficiary.
17 Notwithstanding any other provision of law, any amount credited to any
18 account is not susceptible to any levy, execution, judgment, or other
19 operation of law, garnishment, or other judicial enforcement, and the
20 amount is not an asset or property of either the participant or the
21 beneficiary for the purposes of any state insolvency or inheritance tax
22 laws. All income derived from the investment of the contributions made by
23 the participant shall be considered to be held in trust for the benefit
24 of the beneficiary.

25 (2) If the program created by sections 85-1801 to 85-1814 and
26 sections 9 to 11 of this act is terminated prior to payment of qualified
27 higher education expenses for the beneficiary, the participant is
28 entitled to receive the fair market value of the account established in
29 the program.

30 (3) If the beneficiary graduates from an eligible educational
31 institution and a balance remains in the participant's account, any

1 remaining funds may be transferred as allowed by rule or regulation,
2 subject to the provisions of section 529 of the Internal Revenue Code, as
3 well as any other applicable state or federal laws or regulations.

4 (4) The eligible educational institution shall obtain ownership of
5 the payments made for the qualified higher education expenses paid to the
6 institution at the time each payment is made to the institution.

7 (5) Any amounts which may be paid to any person or persons pursuant
8 to the Nebraska educational savings plan trust but which are not listed
9 in this section are owned by the trust.

10 (6) A participant may transfer ownership rights to another eligible
11 participant, including a gift of the ownership rights to a minor
12 beneficiary. The transfer shall be made and the property distributed in
13 accordance with the rules and regulations or with the terms of the
14 participation agreement.

15 (7) A participant shall not be entitled to utilize any interest in
16 the Nebraska educational savings plan trust as security for a loan.

17 (8) The Nebraska educational savings plan trust may accept transfers
18 of cash investments from a custodian under the Nebraska Uniform Transfers
19 to Minors Act or any other similar laws under the terms and conditions
20 established by the trustee.

21 (9) A participant may designate a successor account owner to succeed
22 to all of the participant's rights, title, and interest in an account,
23 including the right to change the account beneficiary, upon the death or
24 legal incapacity of the participant. If a participant dies or becomes
25 legally incapacitated and has failed to name a successor account owner,
26 the account beneficiary shall become the account owner.

27 (10) Upon the death of a beneficiary, the participant may change the
28 beneficiary on the account, transfer assets to another beneficiary who is
29 a member of the family of the former beneficiary, or request a
30 nonqualified withdrawal.

31 Sec. 7. Section 85-1812, Reissue Revised Statutes of Nebraska, is

1 amended to read:

2 85-1812 (1) For federal income tax purposes, the Nebraska
3 educational savings plan trust shall be considered a qualified state
4 tuition program exempt from taxation pursuant to section 529 of the
5 Internal Revenue Code. The trust meets the requirements of section 529(b)
6 of the Internal Revenue Code as follows:

7 (a) Pursuant to section 85-1806, a participant may make
8 contributions to an account which is established for the purpose of
9 meeting the qualified higher education expenses of the designated
10 beneficiary of the account;

11 (b) Pursuant to section 85-1806, a maximum contribution level is
12 established;

13 (c) Pursuant to section 85-1807, a separate account is established
14 for each beneficiary;

15 (d) Pursuant to section 85-1807, contributions may only be made in
16 the form of cash;

17 (e) Pursuant to section 85-1807, a participant or beneficiary shall
18 not provide investment direction regarding program contributions or
19 earnings held by the trust;

20 (f) Penalties are provided on distributions of earnings which are:
21 (i) Not used for qualified higher education expenses of the beneficiary;
22 (ii) made on account of the death of the designated beneficiary if the
23 distribution is not transferred to another beneficiary or paid to the
24 estate of the beneficiary; (iii) not made on account of the permanent
25 disability or mental incapacity of the designated beneficiary; or (iv)
26 made due to scholarship, allowance, or payment receipt in excess of the
27 scholarship, allowance, or payment receipt; and

28 (g) Pursuant to section 85-1809, a participant shall not pledge any
29 interest in the trust as security for a loan.

30 (2) State income tax treatment of the Nebraska educational savings
31 plan trust shall be as provided in section 77-2716.

1 (3) For purposes of federal gift and generation-skipping transfer
2 taxes, contributions to an account are considered a completed gift from
3 the contributor to the beneficiary. This subsection shall not apply to
4 any state matching scholarships provided under section 9 of this act.

5 Sec. 8. Section 85-1814, Reissue Revised Statutes of Nebraska, is
6 amended to read:

7 85-1814 Nothing in sections 85-1801 to 85-1814 and sections 9 to 11
8 of this act ~~85-1813~~ shall be deemed to prohibit both resident and
9 nonresident participants and designated beneficiaries from being eligible
10 to participate in and benefit from the Nebraska educational savings plan
11 trust and program. It is the intent of the Legislature that funds and
12 income credited to the program fund are fully portable and may be used at
13 any eligible educational institution.

14 Sec. 9. (1) There is hereby established the College Savings
15 Matching Scholarship Program. The purpose of the program is to encourage
16 participants to make contributions for the benefit of beneficiaries who
17 have limited means by providing state matching scholarships for such
18 contributions. The State Treasurer shall implement and administer the
19 program.

20 (2) A participant's contributions shall be eligible for a matching
21 scholarship under this section if the beneficiary for whom the
22 contributions are made is a resident of Nebraska and a member of a family
23 whose household income for the most recently completed calendar year is
24 not more than three hundred percent of the federal poverty level.

25 (3) In order to receive a matching scholarship under this section
26 for any year, a participant shall submit an application to the State
27 Treasurer on forms prescribed by the State Treasurer. The application
28 shall include:

29 (a) The name of the participant;

30 (b) The name of the beneficiary;

31 (c) The amount of contributions made in the most recently completed

1 calendar year for the benefit of such beneficiary;

2 (d) Documentation of the household income of such beneficiary's
3 family for the most recently completed calendar year; and

4 (e) Any other information required by the State Treasurer.

5 (4) If the State Treasurer determines that the participant's
6 contributions qualify for a matching scholarship under this section, the
7 State Treasurer shall approve the application and notify the participant
8 of the approval. If approved, the amount of contributions made by such
9 participant in the most recently completed calendar year shall be matched
10 by a scholarship provided by the State of Nebraska. The matching
11 scholarship shall be equal to:

12 (a) One hundred percent of the participant's total contributions in
13 the most recently completed calendar year to an account established under
14 the Nebraska educational savings plan trust if the beneficiary is part of
15 a family whose household income for such year is more than two hundred
16 percent of the federal poverty level but not more than three hundred
17 percent of the federal poverty level; or

18 (b) Two hundred percent of the participant's total contributions in
19 the most recently completed calendar year to an account established under
20 the Nebraska educational savings plan trust if the beneficiary is part of
21 a family whose household income for such year is not more than two
22 hundred percent of the federal poverty level.

23 (5) Prior to June 30 of each year, the State Treasurer shall
24 determine the total amount of matching scholarships approved for the year
25 and shall transfer such amount from the General Fund to the program fund.

26 (6) The State Treasurer may adopt and promulgate rules and
27 regulations to carry out the College Savings Matching Scholarship
28 Program.

29 Sec. 10. (1) The College Savings Incentive Cash Fund is created.
30 The fund shall be administered by the State Treasurer and shall be used
31 to provide incentive payments under the Employer Matching Contribution

1 Incentive Program established in section 11 of this act.

2 (2) The College Savings Incentive Cash Fund shall not be considered
3 an asset of the Nebraska educational savings plan trust.

4 (3) Any money in the fund available for investment shall be invested
5 by the state investment officer pursuant to the Nebraska Capital
6 Expansion Act and the Nebraska State Funds Investment Act.

7 Sec. 11. (1) There is hereby established the Employer Matching
8 Contribution Incentive Program. The purpose of the program is to
9 encourage employers to make matching contributions by providing incentive
10 payments for such contributions. The State Treasurer shall implement and
11 administer the program.

12 (2) For purposes of this section:

13 (a) Employer means any individual, partnership, limited liability
14 company, association, corporation, business trust, legal representative,
15 or organized group of persons employing one or more employees at any one
16 time, but such term does not include the United States, the state, or any
17 political subdivision thereof; and

18 (b) Matching contribution means a contribution made by an employer
19 to an account established under the Nebraska educational savings plan
20 trust in an amount matching all or part of a contribution made to that
21 same account by an employee of such employer.

22 (3) An employer shall be eligible to receive an incentive payment
23 under this section if the employer made matching contributions during the
24 most recently completed calendar year.

25 (4) In order to receive an incentive payment under this section for
26 any year, an employer shall submit an application to the State Treasurer
27 on forms prescribed by the State Treasurer. The application shall
28 include:

29 (a) The number of employees for whom matching contributions were
30 made in the most recently completed calendar year;

31 (b) The amount of the matching contributions made in the most

1 recently completed calendar year for each employee; and

2 (c) Any other information required by the State Treasurer.

3 (5) If the State Treasurer determines that the employer qualifies
4 for an incentive payment under this section, the State Treasurer shall
5 approve the application and notify the employer of the approval. An
6 employer whose application is approved shall receive an incentive payment
7 equal to twenty-five percent of the total matching contributions made
8 during the most recently completed calendar year, not to exceed two
9 thousand dollars per contributing employee per year.

10 (6) Prior to June 30 of each year, the State Treasurer shall
11 determine the total amount of incentive payments approved for the year,
12 transfer such amount from the General Fund to the College Savings
13 Incentive Cash Fund, and distribute such incentive payments to the
14 approved employers.

15 (7) The State Treasurer may adopt and promulgate rules and
16 regulations to carry out the Employer Matching Contribution Incentive
17 Program.

18 Sec. 12. Original sections 72-1239.01, 77-2716, 85-1802, 85-1804,
19 85-1806, 85-1809, 85-1812, and 85-1814, Reissue Revised Statutes of
20 Nebraska, are repealed.