

AMENDMENTS TO LB547

Introduced by Education.

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, or (c) a distribution from an account to pay the costs of  
18 attending kindergarten through grade twelve;

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

30 (9) Participation agreement means an agreement between a participant  
31 and the Nebraska educational savings plan trust entered into under

1 sections 85-1801 to 85-1814 and sections 9 to 11 of this act;

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

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

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

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

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

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

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

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

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

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

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

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

1 81-8,239.01;

2 (6) Enter into participation agreements with participants;

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

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

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

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

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

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

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

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

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

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

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

31           (5) A beneficiary under a participation agreement may be changed as

1 permitted under the rules and regulations adopted under sections 85-1801  
2 to 85-1814 and sections 9 to 11 of this act and consistent with section  
3 529 of the Internal Revenue Code upon written request of the participant  
4 as long as the substitute beneficiary is eligible for participation.  
5 Participation agreements may otherwise be freely amended throughout their  
6 term in order to enable participants to increase or decrease the level of  
7 participation, change the designation of beneficiaries, and carry out  
8 similar matters as authorized by rule and regulation; and

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

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

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

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

31 (3) If the beneficiary graduates from an eligible educational



1 institution and a balance remains in the participant's account, any  
2 remaining funds may be transferred as allowed by rule or regulation,  
3 subject to the provisions of section 529 of the Internal Revenue Code, as  
4 well as any other applicable state or federal laws or regulations.

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

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

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

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

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

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

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

1           Sec. 7. Section 85-1812, Reissue Revised Statutes of Nebraska, is  
2 amended to read:

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

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

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

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

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

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

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

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

31           (2) State income tax treatment of the Nebraska educational savings

1 plan trust shall be as provided in section 77-2716.

2 (3) For purposes of federal gift and generation-skipping transfer  
3 taxes, contributions to an account are considered a completed gift from  
4 the contributor to the beneficiary. This subsection shall not apply to  
5 any state matching grants made pursuant to section 11 of this act.

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

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

15 Sec. 9. (1) For purposes of this section, qualified private  
16 contribution means a contribution from an individual or private entity  
17 which is made for the purpose of providing an ongoing source of funding  
18 for the College Savings Plan Matching Grant Program established in  
19 section 11 of this act.

20 (2) There is hereby established in the state treasury a trust fund  
21 to be known as the College Savings Plan Endowment Fund. The fund shall be  
22 administered by the State Treasurer and shall consist of qualified  
23 private contributions and any amounts appropriated or transferred to the  
24 fund by the Legislature. Any money in the fund available for investment  
25 shall be invested by the state investment officer pursuant to the  
26 Nebraska Capital Expansion Act and the Nebraska State Funds Investment  
27 Act. No portion of the principal of the fund shall be expended for any  
28 purpose except investment pursuant to this subsection.

29 (3) All investment earnings from the College Savings Plan Endowment  
30 Fund shall be credited to the College Savings Plan Cash Fund. Such funds  
31 shall only be used to pay for qualified higher education expenses.

1           Sec. 10. (1) The College Savings Plan Cash Fund is created. The  
2 fund shall be administered by the State Treasurer and shall consist of  
3 all funds credited from the College Savings Plan Endowment Fund pursuant  
4 to section 9 of this act and any other money appropriated or transferred  
5 to the fund by the Legislature.

6           (2) The College Savings Plan Cash Fund shall be used to provide  
7 state matching grants under the College Savings Plan Matching Grant  
8 Program established in section 11 of this act. Any money in the fund  
9 available for investment shall be invested by the state investment  
10 officer pursuant to the Nebraska Capital Expansion Act and the Nebraska  
11 State Funds Investment Act.

12           Sec. 11. (1) There is hereby established the College Savings Plan  
13 Matching Grant Program. The purpose of the program is to encourage  
14 contributions to accounts established under the Nebraska educational  
15 savings plan trust for the benefit of individuals with limited means. The  
16 State Treasurer shall implement and administer the program.

17           (2) A participant shall be eligible for the program if the  
18 beneficiary for whom contributions are made is part of a family whose  
19 household income for the most recently completed taxable year is not more  
20 than three hundred percent of the federal poverty level.

21           (3) Applications for participation in the program shall be submitted  
22 to the State Treasurer on forms prescribed by the State Treasurer. If the  
23 requirements of subsection (2) of this section are met, the State  
24 Treasurer shall approve the application and notify the applicant of the  
25 approval.

26           (4) Any participant who is approved for the program under subsection  
27 (3) of this section must resubmit an application each year thereafter and  
28 be reapproved in order to continue participation in the program.

29           (5) If a participant is approved for the program, any contribution  
30 made by such participant under the program shall be matched with grant  
31 funds provided by the State of Nebraska. The matching grant shall be

1 equal to:

2 (a) One hundred percent of the participant's contribution if the  
3 beneficiary for whom the contribution is made is part of a family whose  
4 household income for the most recently completed taxable year is more  
5 than two hundred percent of the federal poverty level but not more than  
6 three hundred percent of the federal poverty level, not to exceed one  
7 thousand dollars; or

8 (b) Two hundred percent of the participant's contribution if the  
9 beneficiary for whom the contribution is made is part of a family whose  
10 household income for the most recently completed taxable year is not more  
11 than two hundred percent of the federal poverty level, not to exceed one  
12 thousand dollars.

13 (6) Between January 1 and January 31 of each year, the State  
14 Treasurer shall transfer from the College Savings Plan Cash Fund to the  
15 College Savings Plan Program Fund the amount necessary to meet the  
16 matching obligations of this section for the preceding calendar year.  
17 Such amount shall be deposited into the appropriate accounts of the  
18 participants making contributions under the program.

19 (7) The State Treasurer shall prepare and submit to the Governor and  
20 the Legislature a report on the program on or before January 31 of each  
21 year. The report submitted to the Legislature shall be submitted  
22 electronically. The report shall include (a) the number of accounts  
23 opened under the program, (b) the amount of funds contributed to such  
24 accounts by the participants who are part of the program, (c) the amount  
25 of matching grant funds provided under the program, (d) the average  
26 household income of the beneficiaries for whom contributions are made  
27 under the program, (e) an analysis of the success of the program in  
28 meeting the purpose of the program, and (f) any other information deemed  
29 appropriate by the State Treasurer.

30 (8) The State Treasurer may adopt and promulgate rules and  
31 regulations to carry out the College Savings Plan Matching Grant Program.

1           Sec. 12.   Original sections 72-1239.01, 77-2716, 85-1802, 85-1804,  
2   85-1806, 85-1809, 85-1812, and 85-1814, Reissue Revised Statutes of  
3   Nebraska, are repealed.