

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 470

Introduced by La Grone, 49.

Read first time January 18, 2019

Committee: Revenue

1 A BILL FOR AN ACT relating to revenue and taxation; to amend sections
2 72-1239.01, 77-2716, 85-1802, 85-1804, 85-1806, 85-1807, 85-1808,
3 85-1809, 85-1811, 85-1812, 85-1813, and 85-1814, Reissue Revised
4 Statutes of Nebraska; to authorize and provide a tax deduction for
5 contributions to the Nebraska educational savings plan trust made by
6 nonparticipant contributors as prescribed; to remove a tax deduction
7 limit relating to the Nebraska educational savings plan trust and
8 the achieving a better life experience program; to define a term; to
9 harmonize provisions; to provide an operative date; and to repeal
10 the original sections.

11 Be it enacted by the people of the State of Nebraska,

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

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

18 (b) As fiduciaries, the appointed members of the council and the
19 state investment officer shall discharge their duties with respect to the
20 assets of the retirement systems, of the Nebraska educational savings
21 plan trust, and of the achieving a better life experience program solely
22 in the interests of the members and beneficiaries of the retirement
23 systems or the interests of the participants, nonparticipant
24 contributors, and beneficiaries of the Nebraska educational savings plan
25 trust and the achieving a better life experience program, as the case may
26 be, for the exclusive purposes of providing benefits to members, members'
27 beneficiaries, participants, nonparticipant contributors, and
28 participants' beneficiaries and defraying reasonable expenses incurred
29 within the limitations and according to the powers, duties, and purposes
30 prescribed by law.

31 (2)(a) The appointed members of the council shall have the

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

7 (b) As fiduciaries, the appointed members of the council and the
8 state investment officer shall discharge their duties with respect to the
9 assets of state funds solely in the interests of the citizens of the
10 state within the limitations and according to the powers, duties, and
11 purposes prescribed by law.

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

25 (4) Neither the appointed members of the council nor the state
26 investment officer shall be deemed fiduciaries with respect to
27 investments of the assets of a retirement system provided for under the
28 Class V School Employees Retirement Act made by or on behalf of the board
29 of education as defined in section 79-978 or the board of trustees
30 provided for in section 79-980. Neither the council nor any member
31 thereof nor the state investment officer shall be liable for the action

1 or inaction of the board of education or the board of trustees with
2 respect to the investment of the assets of a retirement system provided
3 for under the Class V School Employees Retirement Act, the consequences
4 of any such action or inaction of the board of education or the board of
5 trustees, and any claims, suits, losses, damages, fees, and costs related
6 to such action or inaction or consequences thereof.

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

9 77-2716 (1) The following adjustments to federal adjusted gross
10 income or, for corporations and fiduciaries, federal taxable income shall
11 be made for interest or dividends received:

12 (a)(i) There shall be subtracted interest or dividends received by
13 the owner of obligations of the United States and its territories and
14 possessions or of any authority, commission, or instrumentality of the
15 United States to the extent includable in gross income for federal income
16 tax purposes but exempt from state income taxes under the laws of the
17 United States; and

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

22 (b) There shall be subtracted that portion of the total dividends
23 and other income received from a regulated investment company which is
24 attributable to obligations described in subdivision (a) of this
25 subsection as reported to the recipient by the regulated investment
26 company;

27 (c) There shall be added interest or dividends received by the owner
28 of obligations of the District of Columbia, other states of the United
29 States, or their political subdivisions, authorities, commissions, or
30 instrumentalities to the extent excluded in the computation of gross
31 income for federal income tax purposes except that such interest or

1 dividends shall not be added if received by a corporation which is a
2 regulated investment company;

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

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

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

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

30 (3) There shall be subtracted from federal adjusted gross income for
31 all taxable years beginning on or after January 1, 1987, the amount of

1 any state income tax refund to the extent such refund was deducted under
2 the Internal Revenue Code, was not allowed in the computation of the tax
3 due under the Nebraska Revenue Act of 1967, and is included in federal
4 adjusted gross income.

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

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

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

23 (a) The amount of federal taxable income from operations within a
24 foreign taxing jurisdiction shall be reduced by the amount of taxes
25 actually paid to the foreign jurisdiction that are not deductible solely
26 because the foreign tax credit was elected on the federal income tax
27 return;

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

30 (c) The result of the calculation in subdivision (b) of this
31 subsection shall be subtracted from the amount of federal taxable income

1 used in subdivision (a) of this subsection. The result of such
2 calculation, if greater than zero, shall be subtracted from federal
3 taxable income.

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

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

14 (b) Federal adjusted gross income or, for corporations and
15 fiduciaries, federal taxable income shall be reduced by any contributions
16 to an account established under ~~as a participant in~~ the Nebraska
17 educational savings plan trust made by a participant or nonparticipant
18 contributor or contributions to an account established under the
19 achieving a better life experience program made for the benefit of a
20 beneficiary as provided in sections 77-1401 to 77-1409, to the extent not
21 deducted for federal income tax purposes, ~~but not to exceed five thousand~~
22 ~~dollars per married filing separate return or ten thousand dollars for~~
23 ~~any other return~~. With respect to a qualified rollover within the meaning
24 of section 529 of the Internal Revenue Code from another state's plan,
25 any interest, earnings, and state contributions received from the other
26 state's educational savings plan which is qualified under section 529 of
27 the code shall qualify for the reduction provided in this subdivision.
28 For contributions by a custodian of a custodial account including
29 rollovers from another custodial account, the reduction shall only apply
30 to funds added to the custodial account after January 1, 2014.

31 (c) Federal adjusted gross income or, for corporations and

1 fiduciaries, federal taxable income shall be increased by:

2 (i) The amount resulting from the cancellation of a participation
3 agreement refunded to the taxpayer as a participant in or as a
4 nonparticipant contributor to the Nebraska educational savings plan trust
5 to the extent previously deducted under subdivision (8)(b) of this
6 section; and

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

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

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

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

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

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

29 (11)(a) For taxable years beginning or deemed to begin before
30 January 1, 2018, under the Internal Revenue Code of 1986, as amended,
31 federal adjusted gross income shall be reduced by contributions, up to

1 two thousand dollars per married filing jointly return or one thousand
2 dollars for any other return, and any investment earnings made as a
3 participant in the Nebraska long-term care savings plan under the Long-
4 Term Care Savings Plan Act, to the extent not deducted for federal income
5 tax purposes.

6 (b) For taxable years beginning or deemed to begin before January 1,
7 2018, under the Internal Revenue Code of 1986, as amended, federal
8 adjusted gross income shall be increased by the withdrawals made as a
9 participant in the Nebraska long-term care savings plan under the act by
10 a person who is not a qualified individual or for any reason other than
11 transfer of funds to a spouse, long-term care expenses, long-term care
12 insurance premiums, or death of the participant, including withdrawals
13 made by reason of cancellation of the participation agreement, to the
14 extent previously deducted as a contribution or as investment earnings.

15 (12) There shall be added to federal adjusted gross income for
16 individuals, estates, and trusts any amount taken as a credit for
17 franchise tax paid by a financial institution under sections 77-3801 to
18 77-3807 as allowed by subsection (5) of section 77-2715.07.

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

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

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

28 (b) For taxable years beginning or deemed to begin on or after
29 January 1, 2020, under the Internal Revenue Code of 1986, as amended, the
30 Tax Commissioner shall adjust the dollar amounts provided in subdivisions
31 (13)(a)(i) and (ii) of this section by the same percentage used to adjust

1 individual income tax brackets under subsection (3) of section
2 77-2715.03.

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

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

21 85-1802 For purposes of sections 85-1801 to 85-1814:

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

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

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

31 (4) Eligible educational institution means an institution described

1 in 20 U.S.C. 1088 which is eligible to participate in a program under
2 Title IV of the federal Higher Education Act of 1965;

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

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

7 (7) Nonparticipant contributor means a person other than the
8 participant who makes contributions to an account which is established
9 under the Nebraska educational savings plan trust for the purpose of
10 meeting the qualified higher education expenses of a beneficiary;

11 (8) (7) Nonqualified withdrawal refers to (a) a distribution from an
12 account to the extent it is not used to pay the qualified higher
13 education expenses of the beneficiary or (b) a qualified rollover
14 permitted by section 529 of the Internal Revenue Code where the funds are
15 transferred to a qualified tuition program sponsored by another state or
16 entity;

17 (9) (8) Participant or account owner means an individual, an
18 individual's legal representative, or any other legal entity authorized
19 to establish a savings account under section 529 of the Internal Revenue
20 Code who has entered into a participation agreement for the advance
21 payment of qualified higher education expenses on behalf of a
22 beneficiary. For purposes of section 77-2716, as to contributions by a
23 custodian to a custodial account established pursuant to the Nebraska
24 Uniform Transfers to Minors Act or similar law in another state, which
25 account has been established under a participation agreement, participant
26 includes the parent or guardian of a minor, which parent or guardian is
27 also the custodian of the account;

28 (10) (9) Participation agreement means an agreement between a
29 participant and the Nebraska educational savings plan trust entered into
30 under sections 85-1801 to 85-1814;

31 (11) (10) Program fund means the College Savings Plan Program Fund

1 created in section 85-1807;

2 (12) ~~(11)~~ Qualified higher education expenses means the certified
3 costs of tuition and fees, books, supplies, and equipment required for
4 enrollment or attendance at an eligible educational institution.
5 Reasonable room and board expenses, based on the minimum amount
6 applicable for the eligible educational institution during the period of
7 enrollment, shall be included as qualified higher education expenses for
8 those students enrolled on at least a half-time basis. In the case of a
9 special needs beneficiary, expenses for special needs services incurred
10 in connection with enrollment or attendance at an eligible educational
11 institution shall be included as qualified higher education expenses.
12 Expenses paid or incurred in 2009 or 2010 for the purchase of computer
13 technology or equipment or Internet access and related services, subject
14 to the limitations set forth in section 529 of the Internal Revenue Code,
15 shall be included as qualified higher education expenses. Qualified
16 higher education expenses does not include any amounts in excess of those
17 allowed by section 529 of the Internal Revenue Code;

18 (13) ~~(12)~~ Section 529 of the Internal Revenue Code means such
19 section of the code and the regulations interpreting such section; and

20 (14) ~~(13)~~ Tuition and fees means the quarter or semester charges
21 imposed to attend an eligible educational institution.

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

24 85-1804 The Nebraska educational savings plan trust is created. The
25 State Treasurer is the trustee of the trust and as such is responsible
26 for the administration, operation, and maintenance of the program and has
27 all powers necessary to carry out and effectuate the purposes,
28 objectives, and provisions of sections 85-1801 to 85-1814 pertaining to
29 the administration, operation, and maintenance of the trust and program,
30 except that the state investment officer shall have fiduciary
31 responsibility to make all decisions regarding the investment of the

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

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

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

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

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

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

30 (6) Enter into participation agreements with participants;

31 (7) Make payments to eligible educational institutions pursuant to

1 participation agreements on behalf of beneficiaries;

2 (8) Make distributions to participants and nonparticipant
3 contributors upon the termination of participation agreements pursuant to
4 the provisions, limitations, and restrictions set forth in sections
5 85-1801 to 85-1814;

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

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

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

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

26 85-1806 The Nebraska educational savings plan trust may enter into
27 participation agreements with participants on behalf of beneficiaries
28 pursuant to the following terms and conditions:

29 (1) A participation agreement shall authorize a participant and
30 nonparticipant contributors to make contributions to an account which is
31 established for the purpose of meeting the qualified higher education

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

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

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

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

29 (5) A beneficiary under a participation agreement may be changed as
30 permitted under the rules and regulations adopted under sections 85-1801
31 to 85-1814 and consistent with section 529 of the Internal Revenue Code

1 upon written request of the participant as long as the substitute
2 beneficiary is eligible for participation. Participation agreements may
3 otherwise be freely amended throughout their term in order to enable
4 participants to increase or decrease the level of participation, change
5 the designation of beneficiaries, and carry out similar matters as
6 authorized by rule and regulation; and

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

11 Sec. 6. Section 85-1807, Reissue Revised Statutes of Nebraska, is
12 amended to read:

13 85-1807 (1) The State Treasurer shall deposit money received by the
14 Nebraska educational savings plan trust into three funds: The College
15 Savings Plan Program Fund, the College Savings Plan Expense Fund, and the
16 College Savings Plan Administrative Fund. The State Treasurer shall
17 deposit money received by the trust into the appropriate fund. The State
18 Treasurer and Accounting Administrator of the Department of
19 Administrative Services shall determine the state fund types necessary to
20 comply with section 529 of the Internal Revenue Code and state policy.
21 The money in the funds shall be invested by the state investment officer
22 pursuant to policies established by the Nebraska Investment Council. The
23 program fund, the expense fund, and the administrative fund shall be
24 separately administered. The Nebraska educational savings plan trust
25 shall be operated with no General Fund appropriations.

26 (2) The College Savings Plan Program Fund is created. All money paid
27 by participants and nonparticipant contributors in connection with
28 participation agreements and all investment income earned on such money
29 shall be deposited as received into separate accounts within the program
30 fund. Contributions to the trust made by participants and nonparticipant
31 contributors may only be made in the form of cash. All funds generated in

1 connection with participation agreements shall be deposited into the
2 appropriate accounts within the program fund. A participant,
3 nonparticipant contributor, or beneficiary shall not provide investment
4 direction regarding program contributions or earnings held by the trust.
5 Money accrued in the separate accounts within ~~by participants in~~ the
6 program fund may be used for payments to any eligible educational
7 institution. Any money in the program fund available for investment shall
8 be invested by the state investment officer pursuant to the Nebraska
9 Capital Expansion Act and the Nebraska State Funds Investment Act.

10 (3) The College Savings Plan Administrative Fund is created. Money
11 from the trust transferred from the expense fund to the administrative
12 fund in an amount authorized by an appropriation from the Legislature
13 shall be utilized to pay for the costs of administering, operating, and
14 maintaining the trust, to the extent permitted by section 529 of the
15 Internal Revenue Code. The administrative fund shall not be credited with
16 any money other than money transferred from the expense fund in an amount
17 authorized by an appropriation by the Legislature or any interest income
18 earned on the balances held in the administrative fund. Any money in the
19 administrative fund available for investment shall be invested by the
20 state investment officer pursuant to the Nebraska Capital Expansion Act
21 and the Nebraska State Funds Investment Act.

22 (4) The College Savings Plan Expense Fund is created. The expense
23 fund shall be used to pay costs associated with the Nebraska educational
24 savings plan trust and shall be funded with fees assessed to the program
25 fund. The State Treasurer shall transfer from the expense fund to the
26 State Investment Officer's Cash Fund an amount equal to the pro rata
27 share of the budget appropriated to the Nebraska Investment Council as
28 permitted in section 72-1249.02, to cover reasonable expenses incurred
29 for investment management of the Nebraska educational savings plan trust.
30 Annually and prior to such transfer to the State Investment Officer's
31 Cash Fund, the State Treasurer shall report to the budget division of the

1 Department of Administrative Services and to the Legislative Fiscal
2 Analyst the amounts transferred during the previous fiscal year. The
3 report submitted to the Legislative Fiscal Analyst shall be submitted
4 electronically. Transfers may be made from the expense fund to the
5 General Fund at the direction of the Legislature. Any money in the
6 expense fund available for investment shall be invested by the state
7 investment officer pursuant to the Nebraska Capital Expansion Act and the
8 Nebraska State Funds Investment Act.

9 Sec. 7. Section 85-1808, Reissue Revised Statutes of Nebraska, is
10 amended to read:

11 85-1808 (1) A participant may cancel a participation agreement at
12 will by submitting a request to terminate the participation agreement.
13 Additionally, if a participant requests and obtains a nonqualified
14 withdrawal, the participation agreement shall be deemed canceled with
15 respect to the amount of the nonqualified withdrawal. A participation
16 agreement shall not be deemed canceled if a participant requests and
17 obtains a distribution of his or her entire account balance for qualified
18 higher education expenses and subsequently closes his or her account.
19 Furthermore, the State Treasurer shall have the power to terminate,
20 freeze, or suspend a participation agreement if he or she determines that
21 the participant provided false or misleading information to the detriment
22 of the Nebraska educational savings plan trust, if the participant's
23 account has a zero balance, or if the State Treasurer is unable to verify
24 the identity of the participant.

25 (2) If a participation agreement is canceled for any of the causes
26 listed in this subsection, the participant and any nonparticipant
27 contributor shall be entitled to receive the principal amount of all
28 contributions made by such person ~~the participant~~ under the participation
29 agreement plus the actual program fund investment income earned on such
30 person's ~~the~~ contributions, less any losses incurred on the investment,
31 and such distribution will generally not be subject to federal tax

1 penalty:

2 (a) Death of the beneficiary if the distribution is paid to the
3 estate of the beneficiary or transferred to another beneficiary as set
4 forth in subsection (10) of section 85-1809;

5 (b) Permanent disability or mental incapacity of the beneficiary;

6 (c) The beneficiary is awarded a scholarship as defined in section
7 529 of the Internal Revenue Code, but only to the extent the distribution
8 of earnings does not exceed the scholarship amount; or

9 (d) A qualified rollover is made as permitted by section 529 of the
10 Internal Revenue Code, except that if a qualified rollover is made into a
11 plan sponsored by another state or entity, the participation agreement
12 shall be deemed to have been canceled for purposes of subdivision (8)(c)
13 of section 77-2716 and federal adjusted gross income shall be increased
14 to the extent previously deducted as a contribution to the trust.

15 (3) Notwithstanding any other provisions of this section, under no
16 circumstances shall a participant, nonparticipant contributor, or
17 beneficiary receive a distribution that is more than the fair market
18 value of the specific account on the applicable liquidation date.

19 (4) If a participant cancels a participation agreement, obtains a
20 rollover into a plan sponsored by another state or entity, or obtains a
21 distribution, a portion of which constitutes a nonqualified withdrawal,
22 the amount of the distribution, rollover, or withdrawal will be subject
23 to recapture of previous Nebraska state income tax deductions as set
24 forth in subdivision (8)(c) of section 77-2716. The transfer of assets
25 among plans sponsored by the State of Nebraska shall be considered an
26 investment option change and not a rollover.

27 Sec. 8. Section 85-1809, Reissue Revised Statutes of Nebraska, is
28 amended to read:

29 85-1809 (1) A participant and any nonparticipant contributor retains
30 ownership of all contributions made by such person under a participation
31 agreement up to the date of utilization for payment of qualified higher

1 education expenses for the beneficiary. Notwithstanding any other
2 provision of law, any amount credited to any account is not susceptible
3 to any levy, execution, judgment, or other operation of law, garnishment,
4 or other judicial enforcement, and the amount is not an asset or property
5 of ~~either~~ the participant, the nonparticipant contributor, or the
6 beneficiary for the purposes of any state insolvency or inheritance tax
7 laws. All income derived from the investment of the contributions made by
8 the participant and nonparticipant contributors shall be considered to be
9 held in trust for the benefit of the beneficiary.

10 (2) If the program created by sections 85-1801 to 85-1814 is
11 terminated prior to payment of qualified higher education expenses for
12 the beneficiary, the participant and each nonparticipant contributor are
13 is entitled to receive such person's proportionate share of the fair
14 market value of the account established in the program, which shall be
15 based on the amount contributed by each such person.

16 (3) If the beneficiary graduates from an eligible educational
17 institution and a balance remains in the participant's account, any
18 remaining funds may be transferred as allowed by rule or regulation,
19 subject to the provisions of section 529 of the Internal Revenue Code, as
20 well as any other applicable state or federal laws or regulations.

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

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

27 (6) A participant may transfer ownership rights to another eligible
28 participant, including a gift of the ownership rights to a minor
29 beneficiary. The transfer shall be made and the property distributed in
30 accordance with the rules and regulations or with the terms of the
31 participation agreement.

1 (7) A participant or nonparticipant contributor shall not be
2 entitled to utilize any interest in the Nebraska educational savings plan
3 trust as security for a loan.

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

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

14 (10) Upon the death of a beneficiary, the participant may change the
15 beneficiary on the account, transfer assets to another beneficiary who is
16 a member of the family of the former beneficiary, or request a
17 nonqualified withdrawal.

18 Sec. 9. Section 85-1811, Reissue Revised Statutes of Nebraska, is
19 amended to read:

20 85-1811 (1) The State Treasurer shall submit an annual audited
21 financial report, prepared in accordance with generally accepted
22 accounting principles, on the operations of the Nebraska educational
23 savings plan trust by November 1 to the Governor and the Legislature. The
24 report submitted to the Legislature shall be submitted electronically.
25 The State Treasurer shall cause the audit to be made either by the
26 Auditor of Public Accounts or by an independent certified public
27 accountant designated by the State Treasurer, and the audit shall include
28 direct and indirect costs attributable to the use of outside consultants,
29 independent contractors, and any other persons who are not state
30 employees.

31 (2) The annual audit shall be supplemented by all of the following

1 information prepared by the State Treasurer:

2 (a) Any related studies or evaluations prepared in the preceding
3 year;

4 (b) A summary of the benefits provided by the trust, including the
5 number of participants, nonparticipant contributors, and beneficiaries in
6 the trust; and

7 (c) Any other information which is relevant in order to make a full,
8 fair, and effective disclosure of the operations of the trust, including
9 the investment performance of the funds.

10 Sec. 10. Section 85-1812, Reissue Revised Statutes of Nebraska, is
11 amended to read:

12 85-1812 (1) For federal income tax purposes, the Nebraska
13 educational savings plan trust shall be considered a qualified state
14 tuition program exempt from taxation pursuant to section 529 of the
15 Internal Revenue Code. The trust meets the requirements of section 529(b)
16 of the Internal Revenue Code as follows:

17 (a) Pursuant to section 85-1806, a participant and nonparticipant
18 contributors may make contributions to an account which is established
19 for the purpose of meeting the qualified higher education expenses of the
20 designated beneficiary of the account;

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

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

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

27 (e) Pursuant to section 85-1807, a participant, nonparticipant
28 contributor, or beneficiary shall not provide investment direction
29 regarding program contributions or earnings held by the trust;

30 (f) Penalties are provided on distributions of earnings which are:

31 (i) Not used for qualified higher education expenses of the beneficiary;

1 (ii) made on account of the death of the designated beneficiary if the
2 distribution is not transferred to another beneficiary or paid to the
3 estate of the beneficiary; (iii) not made on account of the permanent
4 disability or mental incapacity of the designated beneficiary; or (iv)
5 made due to scholarship, allowance, or payment receipt in excess of the
6 scholarship, allowance, or payment receipt; and

7 (g) Pursuant to section 85-1809, a participant or nonparticipant
8 contributor shall not pledge any interest in the trust as security for a
9 loan.

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

12 (3) For purposes of federal gift and generation-skipping transfer
13 taxes, contributions to an account are considered a completed gift from
14 the participant or nonparticipant contributor to the beneficiary.

15 Sec. 11. Section 85-1813, Reissue Revised Statutes of Nebraska, is
16 amended to read:

17 85-1813 The assets of the Nebraska educational savings plan trust,
18 including the program fund and excluding the administrative fund and the
19 expense fund, shall at all times be preserved, invested, and expended
20 solely and only for the purposes of the trust and shall be held in trust
21 for the participants, nonparticipant contributors, and beneficiaries. No
22 property rights in the trust shall exist in favor of the state. Such
23 assets of the trust shall not be transferred or used by the state for any
24 purposes other than the purposes of the trust.

25 Sec. 12. Section 85-1814, Reissue Revised Statutes of Nebraska, is
26 amended to read:

27 85-1814 Nothing in sections 85-1801 to 85-1813 shall be deemed to
28 prohibit both resident and nonresident participants, nonparticipant
29 contributors, and designated beneficiaries from being eligible to
30 participate in and benefit from the Nebraska educational savings plan
31 trust and program. It is the intent of the Legislature that funds and

1 income credited to the program fund are fully portable and may be used at
2 any eligible educational institution.

3 Sec. 13. This act becomes operative on January 1, 2020.

4 Sec. 14. Original sections 72-1239.01, 77-2716, 85-1802, 85-1804,
5 85-1806, 85-1807, 85-1808, 85-1809, 85-1811, 85-1812, 85-1813, and
6 85-1814, Reissue Revised Statutes of Nebraska, are repealed.