

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 865

Introduced by Wayne, 13.

Read first time January 09, 2020

Committee: Revenue

1 A BILL FOR AN ACT relating to the Nebraska educational savings plan
2 trust; to amend sections 85-1808, 85-1810, and 85-1812, Reissue
3 Revised Statutes of Nebraska, and sections 77-2701, 77-2716,
4 85-1802, 85-1806, 85-1807, 85-1809, and 85-1816, Revised Statutes
5 Supplement, 2019; to authorize and provide an income tax deduction
6 for employer contributions as prescribed; to provide for
7 contributions of income tax refunds; to define terms; to require
8 that employer contributions not be recognized as income for certain
9 purposes; to harmonize provisions; to provide an operative date; and
10 to repeal the original sections.

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

1 Section 1. Section 77-2701, Revised Statutes Supplement, 2019, is
2 amended to read:

3 77-2701 Sections 77-2701 to 77-27,135.01, 77-27,222, 77-27,235,
4 77-27,236, 77-27,238, and 77-27,239 and section 3 of this act shall be
5 known and may be cited as the Nebraska Revenue Act of 1967.

6 Sec. 2. Section 77-2716, Revised Statutes Supplement, 2019, is
7 amended to read:

8 77-2716 (1) The following adjustments to federal adjusted gross
9 income or, for corporations and fiduciaries, federal taxable income shall
10 be made for interest or dividends received:

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

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

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

26 (c) There shall be added interest or dividends received by the owner
27 of obligations of the District of Columbia, other states of the United
28 States, or their political subdivisions, authorities, commissions, or
29 instrumentalities to the extent excluded in the computation of gross
30 income for federal income tax purposes except that such interest or
31 dividends shall not be added if received by a corporation which is a

1 regulated investment company;

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

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

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

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

29 (3) There shall be subtracted from federal adjusted gross income for
30 all taxable years beginning on or after January 1, 1987, the amount of
31 any state income tax refund to the extent such refund was deducted under

1 the Internal Revenue Code, was not allowed in the computation of the tax
2 due under the Nebraska Revenue Act of 1967, and is included in federal
3 adjusted gross income.

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

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

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

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

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

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

1 calculation, if greater than zero, shall be subtracted from federal
2 taxable income.

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

6 (8)(a) Federal adjusted gross income or, for corporations and
7 fiduciaries, federal taxable income shall be reduced, to the extent
8 included, by income from interest, earnings, and state contributions
9 received from the Nebraska educational savings plan trust created in
10 sections 85-1801 to 85-1817 and any account established under the
11 achieving a better life experience program as provided in sections
12 77-1401 to 77-1409.

13 (b) Federal adjusted gross income or, for corporations and
14 fiduciaries, federal taxable income shall be reduced by any contributions
15 as a participant in the Nebraska educational savings plan trust or
16 contributions to an account established under the achieving a better life
17 experience program made for the benefit of a beneficiary as provided in
18 sections 77-1401 to 77-1409, to the extent not deducted for federal
19 income tax purposes, but not to exceed five thousand dollars per married
20 filing separate return or ten thousand dollars for any other return. With
21 respect to a qualified rollover within the meaning of section 529 of the
22 Internal Revenue Code from another state's plan, any interest, earnings,
23 and state contributions received from the other state's educational
24 savings plan which is qualified under section 529 of the code shall
25 qualify for the reduction provided in this subdivision. For contributions
26 by a custodian of a custodial account including rollovers from another
27 custodial account, the reduction shall only apply to funds added to the
28 custodial account after January 1, 2014. For taxable years beginning or
29 deemed to begin on or after January 1, 2021, under the Internal Revenue
30 Code of 1986, as amended, a participant in the Nebraska educational
31 savings plan trust may include any employer contribution as defined in

1 section 85-1802 that is made to such participant's account in any
2 reduction taken pursuant to this subdivision to the extent such employer
3 contribution is included in such participant's federal adjusted gross
4 income.

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. (1) Beginning with tax year 2021, the Tax Commissioner
24 shall include space on the individual income tax return form in which the
25 individual taxpayer may, if a refund is due, designate any amount of such
26 refund as a contribution to an account established under the Nebraska
27 educational savings plan trust.

28 (2) The Tax Commissioner shall determine the total amount of
29 contributions designated pursuant to this section each year, and the
30 State Treasurer shall transfer such amount from the General Fund to the
31 College Savings Plan Program Fund for deposit into the appropriate

1 accounts within the College Savings Plan Program Fund.

2 Sec. 4. Section 85-1802, Revised Statutes Supplement, 2019, is
3 amended to read:

4 85-1802 For purposes of sections 85-1801 to 85-1817:

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

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

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

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

17 (5) Employer contribution means a contribution that is made by an
18 employer to the account of a participant who is an employee of such
19 employer;

20 ~~(6) (5)~~ Expense fund means the College Savings Plan Expense Fund
21 created in section 85-1807;

22 ~~(7) (6)~~ Nebraska educational savings plan trust means the trust
23 created in section 85-1804;

24 ~~(8) (7)~~ Nonqualified withdrawal refers to (a) a distribution from an
25 account to the extent it is not used to pay the qualified higher
26 education expenses of the beneficiary, (b) a qualified rollover permitted
27 by section 529 of the Internal Revenue Code where the funds are
28 transferred to a qualified tuition program sponsored by another state or
29 entity, or (c) a distribution from an account to pay the costs of
30 attending kindergarten through grade twelve;

31 ~~(9) (8)~~ Participant or account owner means an individual, an

1 individual's legal representative, or any other legal entity authorized
2 to establish a savings account under section 529 of the Internal Revenue
3 Code who has entered into a participation agreement for the advance
4 payment of qualified higher education expenses on behalf of a
5 beneficiary. For purposes of section 77-2716, as to contributions by a
6 custodian to a custodial account established pursuant to the Nebraska
7 Uniform Transfers to Minors Act or similar law in another state, which
8 account has been established under a participation agreement, participant
9 includes the parent or guardian of a minor, which parent or guardian is
10 also the custodian of the account;

11 (10) Participant contribution means a contribution that is made by a
12 participant to an account for which such participant has entered into a
13 participation agreement;

14 (11) (9) Participation agreement means an agreement between a
15 participant and the Nebraska educational savings plan trust entered into
16 under sections 85-1801 to 85-1817;

17 (12) (10) Program fund means the College Savings Plan Program Fund
18 created in section 85-1807;

19 (13) (11) Qualified higher education expenses means the certified
20 costs of tuition and fees, books, supplies, and equipment required for
21 enrollment or attendance at an eligible educational institution.
22 Reasonable room and board expenses, based on the minimum amount
23 applicable for the eligible educational institution during the period of
24 enrollment, shall be included as qualified higher education expenses for
25 those students enrolled on at least a half-time basis. In the case of a
26 special needs beneficiary, expenses for special needs services incurred
27 in connection with enrollment or attendance at an eligible educational
28 institution shall be included as qualified higher education expenses.
29 Expenses paid or incurred in 2009 or 2010 for the purchase of computer
30 technology or equipment or Internet access and related services, subject
31 to the limitations set forth in section 529 of the Internal Revenue Code,

1 shall be included as qualified higher education expenses. Qualified
2 higher education expenses does not include any amounts in excess of those
3 allowed by section 529 of the Internal Revenue Code;

4 ~~(14)~~ ~~(12)~~ Section 529 of the Internal Revenue Code means such
5 section of the code and the regulations interpreting such section; and

6 ~~(15)~~ ~~(13)~~ Tuition and fees means the quarter or semester charges
7 imposed to attend an eligible educational institution.

8 Sec. 5. Section 85-1806, Revised Statutes Supplement, 2019, is
9 amended to read:

10 85-1806 The Nebraska educational savings plan trust may enter into
11 participation agreements with participants on behalf of beneficiaries
12 pursuant to the following terms and conditions:

13 (1) A participation agreement shall authorize a participant to make
14 contributions to an account which is established for the purpose of
15 meeting the qualified higher education expenses of a beneficiary as
16 allowed by section 529 of the Internal Revenue Code. A participation
17 agreement may also authorize employers to make employer contributions to
18 a participant's account. A participant shall not be required to make an
19 annual contribution on behalf of a beneficiary, shall not be subject to
20 minimum contribution requirements, and shall not be required to maintain
21 a minimum account balance. The maximum contribution shall not exceed the
22 amount allowed under section 529 of the Internal Revenue Code. The State
23 Treasurer may set a maximum cumulative contribution, as necessary, to
24 maintain compliance with section 529 of the Internal Revenue Code.
25 Participation agreements may be amended to provide for adjusted levels of
26 contributions based upon changed circumstances or changes in educational
27 plans or to ensure compliance with section 529 of the Internal Revenue
28 Code or any other applicable laws and regulations;

29 (2) Beneficiaries designated in participation agreements shall meet
30 the requirements established by the trustee and section 529 of the
31 Internal Revenue Code;

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

4 (4) The execution of a participation agreement by the trust shall
5 not guarantee in any way that qualified higher education expenses will be
6 equal to projections and estimates provided by the trust or that the
7 beneficiary named in any participation agreement will (a) be admitted to
8 an eligible educational institution, (b) if admitted, be determined a
9 resident for tuition purposes by the eligible educational institution,
10 (c) be allowed to continue attendance at the eligible educational
11 institution following admission, or (d) graduate from the eligible
12 educational institution;

13 (5) A beneficiary under a participation agreement may be changed as
14 permitted under the rules and regulations adopted under sections 85-1801
15 to 85-1817 and consistent with section 529 of the Internal Revenue Code
16 upon written request of the participant as long as the substitute
17 beneficiary is eligible for participation. Participation agreements may
18 otherwise be freely amended throughout their term in order to enable
19 participants to increase or decrease the level of participation, change
20 the designation of beneficiaries, and carry out similar matters as
21 authorized by rule and regulation; and

22 (6) Each participation agreement shall provide that the
23 participation agreement may be canceled upon the terms and conditions and
24 upon payment of applicable fees and costs set forth and contained in the
25 rules and regulations.

26 Sec. 6. Section 85-1807, Revised Statutes Supplement, 2019, is
27 amended to read:

28 85-1807 (1) The State Treasurer shall deposit money received by the
29 Nebraska educational savings plan trust into three funds: The College
30 Savings Plan Program Fund, the College Savings Plan Expense Fund, and the
31 College Savings Plan Administrative Fund. The State Treasurer shall

1 deposit money received by the trust into the appropriate fund. The State
2 Treasurer and Accounting Administrator of the Department of
3 Administrative Services shall determine the state fund types necessary to
4 comply with section 529 of the Internal Revenue Code and state policy.
5 The money in the funds shall be invested by the state investment officer
6 pursuant to policies established by the Nebraska Investment Council. The
7 program fund, the expense fund, and the administrative fund shall be
8 separately administered. The Nebraska educational savings plan trust
9 shall be operated with no General Fund appropriations.

10 (2) The College Savings Plan Program Fund is created. All money paid
11 by participants in connection with participation agreements, all employer
12 contributions, and all investment income earned on such money shall be
13 deposited as received into separate accounts within the program fund.
14 Participant contributions and employer contributions ~~Contributions to the~~
15 ~~trust made by participants~~ may only be made in the form of cash. All
16 funds generated in connection with participation agreements shall be
17 deposited into the appropriate accounts within the program fund. A
18 participant or beneficiary shall not provide investment direction
19 regarding program contributions or earnings held by the trust. Money
20 accrued by participants in the program fund may be used for payments to
21 any eligible educational institution. Any money in the program fund
22 available for investment shall be invested by the state investment
23 officer pursuant to the Nebraska Capital Expansion Act and the Nebraska
24 State Funds Investment Act.

25 (3) The College Savings Plan Administrative Fund is created. Money
26 from the trust transferred from the expense fund to the administrative
27 fund in an amount authorized by an appropriation from the Legislature
28 shall be utilized to pay for the costs of administering, operating, and
29 maintaining the trust, to the extent permitted by section 529 of the
30 Internal Revenue Code. The administrative fund shall not be credited with
31 any money other than money transferred from the expense fund in an amount

1 authorized by an appropriation by the Legislature or any interest income
2 earned on the balances held in the administrative fund. Any money in the
3 administrative fund available for investment shall be invested by the
4 state investment officer pursuant to the Nebraska Capital Expansion Act
5 and the Nebraska State Funds Investment Act.

6 (4)(a) The College Savings Plan Expense Fund is created. The expense
7 fund shall be funded with fees assessed to the program fund. The State
8 Treasurer shall use the expense fund:

9 (i) To pay costs associated with the Nebraska educational savings
10 plan trust;

11 (ii) For the purposes described in the Meadowlark Act; and

12 (iii) To transfer from the expense fund to the State Investment
13 Officer's Cash Fund an amount equal to the pro rata share of the budget
14 appropriated to the Nebraska Investment Council as permitted in section
15 72-1249.02, to cover reasonable expenses incurred for investment
16 management of the Nebraska educational savings plan trust. Annually and
17 prior to such transfer to the State Investment Officer's Cash Fund, the
18 State Treasurer shall report to the budget division of the Department of
19 Administrative Services and to the Legislative Fiscal Analyst the amounts
20 transferred during the previous fiscal year. The report submitted to the
21 Legislative Fiscal Analyst shall be submitted electronically.

22 (b) Any money in the expense fund available for investment shall be
23 invested by the state investment officer pursuant to the Nebraska Capital
24 Expansion Act and the Nebraska State Funds Investment Act.

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

27 85-1808 (1) A participant may cancel a participation agreement at
28 will by submitting a request to terminate the participation agreement.
29 Additionally, if a participant requests and obtains a nonqualified
30 withdrawal, the participation agreement shall be deemed canceled with
31 respect to the amount of the nonqualified withdrawal. A participation

1 agreement shall not be deemed canceled if a participant requests and
2 obtains a distribution of his or her entire account balance for qualified
3 higher education expenses and subsequently closes his or her account.
4 Furthermore, the State Treasurer shall have the power to terminate,
5 freeze, or suspend a participation agreement if he or she determines that
6 the participant provided false or misleading information to the detriment
7 of the Nebraska educational savings plan trust, if the participant's
8 account has a zero balance, or if the State Treasurer is unable to verify
9 the identity of the participant.

10 (2) If a participation agreement is canceled for any of the causes
11 listed in this subsection, the participant shall be entitled to receive
12 the principal amount of all contributions made by the participant under
13 the participation agreement, the principal amount of all employer
14 contributions made to the participant's account, and ~~plus~~ the actual
15 program fund investment income earned on the contributions, less any
16 losses incurred on the investment, and such distribution will generally
17 not be subject to a federal tax penalty:

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

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

22 (c) The beneficiary is awarded a scholarship as defined in section
23 529 of the Internal Revenue Code, but only to the extent the distribution
24 of earnings does not exceed the scholarship amount; or

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

31 (3) Notwithstanding any other provisions of this section, under no

1 circumstances shall a participant or beneficiary receive a distribution
2 that is more than the fair market value of the specific account on the
3 applicable liquidation date.

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

12 Sec. 8. Section 85-1809, Revised Statutes Supplement, 2019, is
13 amended to read:

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

27 (2) If the program created by sections 85-1801 to 85-1817 is
28 terminated prior to payment of qualified higher education expenses for
29 the beneficiary, the participant is entitled to receive the fair market
30 value of the account established in 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. 9. Section 85-1810, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 85-1810 (1) A student loan program, student grant program, or other
4 program administered by any agency of the state, except as may be
5 otherwise provided by federal law or the provisions of any specific grant
6 applicable to the federal law, shall not take into account and shall not
7 consider amounts available for the payment of qualified higher education
8 expenses pursuant to the Nebraska educational savings plan trust in
9 determining need and eligibility for student aid.

10 (2) Any government program administered by any agency of the state
11 that provides benefits or aid to individuals based on financial need,
12 except as may be otherwise provided by federal law or the provisions of
13 any specific grant applicable to the federal law, shall not take into
14 account and shall not consider employer contributions to a participant's
15 account in determining the income of such participant.

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

18 85-1812 (1) For federal income tax purposes, the Nebraska
19 educational savings plan trust shall be considered a qualified state
20 tuition program exempt from taxation pursuant to section 529 of the
21 Internal Revenue Code. The trust meets the requirements of section 529(b)
22 of the Internal Revenue Code as follows:

23 (a) Pursuant to section 85-1806, a participant may make
24 contributions to an account which is established for the purpose of
25 meeting the qualified higher education expenses of the designated
26 beneficiary of the account and a participant's employer may make employer
27 contributions to such an account;

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

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

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

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

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

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

8 (ii) made on account of the death of the designated beneficiary if the
9 distribution is not transferred to another beneficiary or paid to the
10 estate of the beneficiary; (iii) not made on account of the permanent

11 disability or mental incapacity of the designated beneficiary; or (iv)
12 made due to scholarship, allowance, or payment receipt in excess of the
13 scholarship, allowance, or payment receipt; and

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

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

18 (3) For purposes of federal gift and generation-skipping transfer
19 taxes, contributions to an account are considered a completed gift from
20 the contributor to the beneficiary except employer contributions to an
21 account are considered a completed gift from the participant to the
22 beneficiary.

23 Sec. 11. Section 85-1816, Revised Statutes Supplement, 2019, is
24 amended to read:

25 85-1816 (1) The Employer Matching Contribution Incentive Program is
26 created. The program shall begin on January 1, 2022, and shall be
27 implemented and administered by the State Treasurer. The purpose of the
28 program is to encourage employers to make matching contributions by
29 providing incentive payments for such contributions.

30 (2) For purposes of this section:

31 (a) Employer means any individual, partnership, limited liability

1 company, association, corporation, business trust, legal representative,
2 or organized group of persons employing one or more employees at any one
3 time, but such term does not include the United States, the state, or any
4 political subdivision thereof; and

5 (b) Matching contribution means an employer a contribution ~~made by~~
6 ~~an employer to an account established under the Nebraska educational~~
7 ~~savings plan trust~~ in an amount matching all or part of a participant
8 contribution made to that same account by an employee of such employer if
9 such employee individual ~~who~~ resided in the State of Nebraska during the
10 most recently completed taxable year ~~and is an employee of such employer.~~

11 (3) Beginning January 1, 2022, an employer shall be eligible to
12 receive an incentive payment under this section if the employer made
13 matching contributions during the immediately preceding calendar year.

14 (4) In order to receive an incentive payment under this section, an
15 employer shall submit an application to the State Treasurer on forms
16 prescribed by the State Treasurer. The State Treasurer shall accept
17 applications from January 1 to June 1 of each year beginning in 2022. The
18 application shall include:

19 (a) The number of employees for whom matching contributions were
20 made in the immediately preceding calendar year;

21 (b) The amount of the matching contributions made in the immediately
22 preceding calendar year for each employee; and

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

24 (5) If the State Treasurer determines that the employer qualifies
25 for an incentive payment under this section, the State Treasurer shall
26 approve the application and shall notify the employer of the approval.
27 The State Treasurer may approve applications until the annual limit
28 provided in subsection (6) of this section has been reached. An employer
29 whose application is approved shall receive an incentive payment equal to
30 twenty-five percent of the total matching contributions made during the
31 immediately preceding calendar year, not to exceed two thousand dollars

1 per contributing employee per year. An employer shall not receive an
2 incentive payment for a matching contribution if the employer claimed an
3 income tax deduction pursuant to subdivision (8)(b) of section 77-2716
4 for such matching contribution. Employers shall be limited to one
5 incentive payment per beneficiary. The matching contributions for which
6 incentive payments are made shall not be used to pay expenses associated
7 with attending kindergarten through grade twelve.

8 (6) The State Treasurer may approve a total of two hundred fifty
9 thousand dollars of incentive payments each calendar year.

10 (7) On or before June 30, 2022, and on or before June 30 of each
11 year thereafter, the State Treasurer shall determine the total amount of
12 incentive payments approved for the year, shall transfer such amount from
13 the College Savings Plan Expense Fund or the Unclaimed Property Escheat
14 Trust Fund, as determined by the State Treasurer, to the College Savings
15 Incentive Cash Fund, and shall distribute such incentive payments to the
16 approved employers.

17 (8) The State Treasurer may adopt and promulgate rules and
18 regulations to carry out the Employer Matching Contribution Incentive
19 Program.

20 Sec. 12. This act becomes operative on January 1, 2021.

21 Sec. 13. Original sections 85-1808, 85-1810, and 85-1812, Reissue
22 Revised Statutes of Nebraska, and sections 77-2701, 77-2716, 85-1802,
23 85-1806, 85-1807, 85-1809, and 85-1816, Revised Statutes Supplement,
24 2019, are repealed.