

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 547

Introduced by Wishart, 27.

Read first time January 22, 2019

Committee: Education

1 A BILL FOR AN ACT relating to the Nebraska educational savings plan
2 trust; to amend sections 72-1239.01, 77-2716, 85-1802, 85-1804,
3 85-1806, 85-1809, 85-1812, and 85-1814, Reissue Revised Statutes of
4 Nebraska; to create funds; to create the College Savings Plan
5 Matching Grant Program and provide for state matching grants as
6 prescribed; to harmonize provisions; and to repeal the original
7 sections.
8 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 and
8 sections 9 to 11 of this act, the assets of the achieving a better life
9 experience program pursuant to sections 77-1401 to 77-1409, and beginning
10 January 1, 2017, the assets of each retirement system provided for under
11 the Class V School Employees Retirement Act. Except as provided in
12 subsection (4) of this section, the appointed members shall be deemed
13 fiduciaries with respect to the investment of the assets of the
14 retirement systems, of the Nebraska educational savings plan trust, and
15 of the achieving a better life experience program and shall be held to
16 the standard of conduct of a fiduciary specified in subsection (3) of
17 this section. The nonvoting, ex officio members of the council shall not
18 be deemed fiduciaries.

19 (b) As fiduciaries, the appointed members of the council and the
20 state investment officer shall discharge their duties with respect to the
21 assets of the retirement systems, of the Nebraska educational savings
22 plan trust, and of the achieving a better life experience program solely
23 in the interests of the members and beneficiaries of the retirement
24 systems or the interests of the participants and beneficiaries of the
25 Nebraska educational savings plan trust and the achieving a better life
26 experience program, as the case may be, for the exclusive purposes of
27 providing benefits to members, members' beneficiaries, participants, 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 sections 9 to 11 of this act and any
12 account established under the achieving a better life experience program
13 as provided in sections 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 as a participant in the Nebraska educational savings plan trust or
17 contributions to an account established under the achieving a better life
18 experience program made for the benefit of a beneficiary as provided in
19 sections 77-1401 to 77-1409, to the extent not deducted for federal
20 income tax purposes, but not to exceed five thousand dollars per married
21 filing separate return or ten thousand dollars for any other return. With
22 respect to a qualified rollover within the meaning of section 529 of the
23 Internal Revenue Code from another state's plan, any interest, earnings,
24 and state contributions received from the other state's educational
25 savings plan which is qualified under section 529 of the code shall
26 qualify for the reduction provided in this subdivision. For contributions
27 by a custodian of a custodial account including rollovers from another
28 custodial account, the reduction shall only apply to funds added to the
29 custodial account after January 1, 2014.

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

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

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

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

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

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

30 (d) The amount of bonus depreciation added to federal adjusted gross
31 income or, for corporations and fiduciaries, federal taxable income by

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

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

27 (11)(a) For taxable years beginning or deemed to begin before
28 January 1, 2018, under the Internal Revenue Code of 1986, as amended,
29 federal adjusted gross income shall be reduced by contributions, up to
30 two thousand dollars per married filing jointly return or one thousand
31 dollars for any other return, and any investment earnings made as a

1 participant in the Nebraska long-term care savings plan under the Long-
2 Term Care Savings Plan Act, to the extent not deducted for federal income
3 tax purposes.

4 (b) For taxable years beginning or deemed to begin before January 1,
5 2018, under the Internal Revenue Code of 1986, as amended, federal
6 adjusted gross income shall be increased by the withdrawals made as a
7 participant in the Nebraska long-term care savings plan under the act by
8 a person who is not a qualified individual or for any reason other than
9 transfer of funds to a spouse, long-term care expenses, long-term care
10 insurance premiums, or death of the participant, including withdrawals
11 made by reason of cancellation of the participation agreement, to the
12 extent previously deducted as a contribution or as investment earnings.

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

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

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

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

26 (b) For taxable years beginning or deemed to begin on or after
27 January 1, 2020, under the Internal Revenue Code of 1986, as amended, the
28 Tax Commissioner shall adjust the dollar amounts provided in subdivisions
29 (13)(a)(i) and (ii) of this section by the same percentage used to adjust
30 individual income tax brackets under subsection (3) of section
31 77-2715.03.

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

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

19 85-1802 For purposes of sections 85-1801 to 85-1814 and sections 9
20 to 11 of this act:

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

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

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

30 (4) Eligible educational institution means an institution described
31 in 20 U.S.C. 1088 which is eligible to participate in a program under

1 Title IV of the federal Higher Education Act of 1965;

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

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

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

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

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

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

28 (11) Qualified higher education expenses means the certified costs
29 of tuition and fees, books, supplies, and equipment required for
30 enrollment or attendance at an eligible educational institution.
31 Reasonable room and board expenses, based on the minimum amount

1 applicable for the eligible educational institution during the period of
2 enrollment, shall be included as qualified higher education expenses for
3 those students enrolled on at least a half-time basis. In the case of a
4 special needs beneficiary, expenses for special needs services incurred
5 in connection with enrollment or attendance at an eligible educational
6 institution shall be included as qualified higher education expenses.
7 Expenses paid or incurred in 2009 or 2010 for the purchase of computer
8 technology or equipment or Internet access and related services, subject
9 to the limitations set forth in section 529 of the Internal Revenue Code,
10 shall be included as qualified higher education expenses. Qualified
11 higher education expenses does not include any amounts in excess of those
12 allowed by section 529 of the Internal Revenue Code;

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

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

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

19 85-1804 The Nebraska educational savings plan trust is created. The
20 State Treasurer is the trustee of the trust and as such is responsible
21 for the administration, operation, and maintenance of the program and has
22 all powers necessary to carry out and effectuate the purposes,
23 objectives, and provisions of sections 85-1801 to 85-1814 and sections 9
24 to 11 of this act pertaining to the administration, operation, and
25 maintenance of the trust and program, except that the state investment
26 officer shall have fiduciary responsibility to make all decisions
27 regarding the investment of the money in the administrative fund, expense
28 fund, and program fund, including the selection of all investment options
29 and the approval of all fees and other costs charged to trust assets
30 except costs for administration, operation, and maintenance of the trust
31 as appropriated by the Legislature, pursuant to the directions,

1 guidelines, and policies established by the Nebraska Investment Council.
2 The State Treasurer may adopt and promulgate rules and regulations to
3 provide for the efficient administration, operation, and maintenance of
4 the trust and program. The State Treasurer shall not adopt and promulgate
5 rules and regulations that in any way interfere with the fiduciary
6 responsibility of the state investment officer to make all decisions
7 regarding the investment of money in the administrative fund, expense
8 fund, and program fund. The State Treasurer or his or her designee shall
9 have the power to:

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

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

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

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

23 (5) Procure insurance against any loss in connection with the
24 property, assets, or activities of the trust as provided in section
25 81-8,239.01;

26 (6) Enter into participation agreements with participants;

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

29 (8) Make distributions to participants upon the termination of
30 participation agreements pursuant to the provisions, limitations, and
31 restrictions set forth in sections 85-1801 to 85-1814 and sections 9 to

1 11 of this act;

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

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

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

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

22 85-1806 The Nebraska educational savings plan trust may enter into
23 participation agreements with participants on behalf of beneficiaries
24 pursuant to the following terms and conditions:

25 (1) A participation agreement shall authorize a participant to make
26 contributions to an account which is established for the purpose of
27 meeting the qualified higher education expenses of a beneficiary as
28 allowed by section 529 of the Internal Revenue Code. A participant shall
29 not be required to make an annual contribution on behalf of a
30 beneficiary, shall not be subject to minimum contribution requirements,
31 and shall not be required to maintain a minimum account balance. The

1 maximum contribution shall not exceed the amount allowed under section
2 529 of the Internal Revenue Code. The State Treasurer may set a maximum
3 cumulative contribution, as necessary, to maintain compliance with
4 section 529 of the Internal Revenue Code. Participation agreements may be
5 amended to provide for adjusted levels of contributions based upon
6 changed circumstances or changes in educational plans or to ensure
7 compliance with section 529 of the Internal Revenue Code or any other
8 applicable laws and regulations;

9 (2) Beneficiaries designated in participation agreements shall meet
10 the requirements established by the trustee and section 529 of the
11 Internal Revenue Code;

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

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

24 (5) A beneficiary under a participation agreement may be changed as
25 permitted under the rules and regulations adopted under sections 85-1801
26 to 85-1814 and sections 9 to 11 of this act and consistent with section
27 529 of the Internal Revenue Code upon written request of the participant
28 as long as the substitute beneficiary is eligible for participation.
29 Participation agreements may otherwise be freely amended throughout their
30 term in order to enable participants to increase or decrease the level of
31 participation, change the designation of beneficiaries, and carry out

1 similar matters as authorized by rule and regulation; and

2 (6) Each participation agreement shall provide that the
3 participation agreement may be canceled upon the terms and conditions and
4 upon payment of applicable fees and costs set forth and contained in the
5 rules and regulations.

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

8 85-1809 (1) A participant retains ownership of all contributions
9 made under a participation agreement up to the date of utilization for
10 payment of qualified higher education expenses for the beneficiary.
11 Notwithstanding any other provision of law, any amount credited to any
12 account is not susceptible to any levy, execution, judgment, or other
13 operation of law, garnishment, or other judicial enforcement, and the
14 amount is not an asset or property of either the participant or the
15 beneficiary for the purposes of any state insolvency or inheritance tax
16 laws. All income derived from the investment of the contributions made by
17 the participant shall be considered to be held in trust for the benefit
18 of the beneficiary.

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

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

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

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

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

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

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

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

21 (10) Upon the death of a beneficiary, the participant may change the
22 beneficiary on the account, transfer assets to another beneficiary who is
23 a member of the family of the former beneficiary, or request a
24 nonqualified withdrawal.

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

27 85-1812 (1) For federal income tax purposes, the Nebraska
28 educational savings plan trust shall be considered a qualified state
29 tuition program exempt from taxation pursuant to section 529 of the
30 Internal Revenue Code. The trust meets the requirements of section 529(b)
31 of the Internal Revenue Code as follows:

1 (a) Pursuant to section 85-1806, a participant may make
2 contributions to an account which is established for the purpose of
3 meeting the qualified higher education expenses of the designated
4 beneficiary of the account;

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

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

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

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

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

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

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

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

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

1 85-1814 Nothing in sections 85-1801 to 85-1814 and sections 9 to 11
2 of this act ~~85-1813~~ shall be deemed to prohibit both resident and
3 nonresident participants and designated beneficiaries from being eligible
4 to participate in and benefit from the Nebraska educational savings plan
5 trust and program. It is the intent of the Legislature that funds and
6 income credited to the program fund are fully portable and may be used at
7 any eligible educational institution.

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

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

22 (3) Until July 1, 2020, the State Treasurer shall accept qualified
23 private contributions and shall credit all such contributions received to
24 the College Savings Plan Endowment Fund. On such date, the State
25 Treasurer shall determine the total amount of qualified private
26 contributions received under this subsection and shall transfer an equal
27 amount from the General Fund to the College Savings Plan Endowment Fund.

28 (4) All investment earnings from the College Savings Plan Endowment
29 Fund shall be credited to the College Savings Plan Cash Fund.

30 Sec. 10. (1) The College Savings Plan Cash Fund is created. The
31 fund shall be administered by the State Treasurer and shall consist of

1 all funds credited from the College Savings Plan Endowment Fund pursuant
2 to section 9 of this act and any other money appropriated or transferred
3 to the fund by the Legislature.

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

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

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

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

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

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

31 (a) One hundred percent of the participant's contribution if the

1 beneficiary for whom the contribution is made is part of a family whose
2 household income for the most recently completed taxable year is more
3 than two hundred percent of the federal poverty level but not more than
4 three hundred percent of the federal poverty level; or

5 (b) Two hundred percent of the participant's contribution if the
6 beneficiary for whom the contribution is made is part of a family whose
7 household income for the most recently completed taxable year is not more
8 than two hundred percent of the federal poverty level.

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

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

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

28 Sec. 12. Original sections 72-1239.01, 77-2716, 85-1802, 85-1804,
29 85-1806, 85-1809, 85-1812, and 85-1814, Reissue Revised Statutes of
30 Nebraska, are repealed.