

ENGROSSED LEGISLATIVE BILL 748

Introduced by Sorrentino, 39.

A BILL FOR AN ACT relating to revenue and taxation; to amend sections 77-1416, 77-1417, 77-1419, 77-1420, 77-1422, and 77-1427, Revised Statutes Supplement, 2025; to define and redefine terms; to change provisions relating to the Nebraska educational savings plan trust and allow for the use of trust funds for recognized postsecondary credential programs as prescribed; to harmonize provisions; and to repeal the original sections.

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

Section 1. Section 77-1416, Revised Statutes Supplement, 2025, is amended to read:

77-1416 For purposes of sections 77-1415 to 77-1430:

(1) Administrative fund means the Education Savings Plan Administrative Fund created in section 77-1420;

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

(3) Benefits means the payment of qualified education expenses on behalf of a beneficiary or, in the case of a qualified education loan payment, on behalf of a beneficiary or the sibling of a beneficiary by the Nebraska educational savings plan trust;

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

(5) Expense fund means the Education Savings Plan Expense Fund created in section 77-1420;

(6) Nebraska educational savings plan trust means the trust created in section 77-1417;

(7) Nonqualified withdrawal refers to (a) a distribution from an account

to the extent it is not used to pay the qualified education expenses of the beneficiary or, in the case of a qualified education loan payment, to the extent it is not used to pay the qualified education expenses of the beneficiary or a sibling of the beneficiary or to the extent it does not constitute a rollover to a Roth individual retirement account as permitted by section 529 of the Internal Revenue Code, (b) a qualified rollover permitted by section 529 of the Internal Revenue Code where the funds are transferred to a qualified tuition program sponsored by another state or entity, or (c) until January 1, 2029, a distribution from an account to pay the costs of attending kindergarten through grade twelve;

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

(9) Participation agreement means an agreement between a participant and the Nebraska educational savings plan trust entered into under sections 77-1415 to 77-1430;

(10) Program fund means the Education Savings Plan Program Fund created in section 77-1420;

(11) Qualified education loan payment means the payment of principal or interest on a qualified education loan as defined in 26 U.S.C. 221(d), as such section existed on January 1, 2022, of the beneficiary or a sibling of the beneficiary as described in 26 U.S.C. 152(d)(2)(B), as such section existed on January 1, 2022. For purposes of this subdivision, the aggregate total of qualified education loan payments for the qualified education loans of a single

beneficiary or sibling shall not exceed ten thousand dollars for all taxable years combined. The aggregate total for qualified education loan payments for the qualified education loans of a sibling of a beneficiary shall be calculated with respect to such sibling and not with respect to the beneficiary and shall include all qualified education loan payments for loans of such sibling, including any qualified education loan payments for which such sibling is the beneficiary or the sibling of a beneficiary;

(12)(a) Qualified education expenses means:

(i) The certified costs of tuition, fees, books, supplies, and equipment required (A) for enrollment or attendance at an eligible postsecondary educational institution or (B) for costs incurred on or after January 1, 2021, for participation in an apprenticeship program registered and certified with the United States Secretary of Labor under 29 U.S.C. 50, as such section existed on January 1, 2021;

(ii) Reasonable room and board expenses, based on the minimum amount applicable for the eligible postsecondary educational institution during the period of enrollment for those students enrolled on at least a half-time basis;

(iii) In the case of a special needs beneficiary, expenses for special needs services incurred in connection with enrollment or attendance at an eligible postsecondary educational institution;

(iv) Expenses paid or incurred on or after January 1, 2022, for the purchase of computer technology or equipment or Internet access and related services in connection with enrollment or attendance at an eligible postsecondary educational institution, subject to the limitations set forth in section 529 of the Internal Revenue Code;

(v) Qualified education loan payments;

(vi) Qualified postsecondary credentialing expenses as defined in section 529(f) of the Internal Revenue Code; or

(vii) Beginning January 1, 2029, expenses as defined in section 529(c)(7) of the Internal Revenue Code in connection with enrollment or attendance at an elementary or secondary school.

(b) Qualified education expenses does not include any amounts in excess of those allowed by section 529 of the Internal Revenue Code;

(13) Recognized postsecondary credential program means a program described in section 529(f)(2) of the Internal Revenue Code;

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

(15) Tuition means:

(a) Beginning January 1, 2029, for purposes of an elementary or secondary school, the charges imposed for tuition in connection with enrollment or attendance at such elementary or secondary school; and

(b) For purposes of an eligible postsecondary educational institution, the quarter or semester charges imposed to attend an eligible postsecondary educational institution.

Sec. 2. Section 77-1417, Revised Statutes Supplement, 2025, is amended to read:

77-1417 The Nebraska educational savings plan trust is created. The State Treasurer is the trustee of the trust and as such is responsible for the administration, operation, and maintenance of the program and has all powers necessary to carry out and effectuate the purposes, objectives, and provisions of sections 77-1415 to 77-1430 pertaining to the administration, operation, and maintenance of the trust and program, except that the state investment officer shall have fiduciary responsibility to make all decisions regarding the investment of the money in the administrative fund, expense fund, and program fund, including the selection of all investment options and the approval of all fees and other costs charged to trust assets except costs for administration, operation, and maintenance of the trust as appropriated by the Legislature, pursuant to the directions, guidelines, and policies established by the Nebraska Investment Council. The State Treasurer may adopt and promulgate rules and regulations to provide for the efficient administration, operation, and maintenance of the trust and program. The State Treasurer shall not adopt and promulgate rules and regulations that in any way interfere with the fiduciary

responsibility of the state investment officer to make all decisions regarding the investment of money in the administrative fund, expense fund, and program fund. The State Treasurer or his or her designee shall have the power to:

(1) Enter into agreements with any eligible postsecondary educational institution, the state, any federal or other state agency, or any other entity to implement sections 77-1415 to 77-1430, except agreements which pertain to the investment of money in the administrative fund, expense fund, or program fund;

(2) Enter into agreements with any recognized postsecondary credential program to implement sections 77-1415 to 77-1430, except agreements which pertain to the investment of money in the administrative fund, expense fund, or program fund;

(3) Beginning January 1, 2029, enter into agreements with any elementary or secondary school to implement sections 77-1415 to 77-1430, except agreements which pertain to the investment of money in the administrative fund, expense fund, or program fund;

(4) Carry out the duties and obligations of the trust;

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

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

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

(8) Enter into participation agreements with participants;

(9) Make payments to elementary or secondary schools, eligible postsecondary educational institutions, or recognized postsecondary credential programs pursuant to participation agreements on behalf of beneficiaries and make qualified education loan payments on behalf of beneficiaries or their siblings;

(10) Make distributions to participants upon the termination of participation agreements pursuant to the provisions, limitations, and restrictions set forth in sections 77-1415 to 77-1430;

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

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

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

Sec. 3. Section 77-1419, Revised Statutes Supplement, 2025, is amended to read:

77-1419 The Nebraska educational savings plan trust may enter into participation agreements with participants on behalf of beneficiaries pursuant to the following terms and conditions:

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

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

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

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

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

(5) Beginning January 1, 2029, the execution of a participation agreement by the trust shall not guarantee in any way that qualified education expenses will be equal to projections and estimates provided by the trust or that the beneficiary named in any participation agreement will (a) be admitted to an elementary or secondary school, (b) if admitted, be determined a resident for tuition purposes by the elementary or secondary school, (c) be allowed to continue attendance at the elementary or secondary school following admission,

or (d) graduate from the elementary or secondary school;

(6) A beneficiary under a participation agreement may be changed as permitted under the rules and regulations adopted under sections 77-1415 to 77-1430 and consistent with section 529 of the Internal Revenue Code upon written request of the participant as long as the substitute beneficiary is eligible for participation. Participation agreements may otherwise be freely amended throughout their term in order to enable participants to increase or decrease the level of participation, change the designation of beneficiaries, and carry out similar matters as authorized by rule and regulation; and

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

Sec. 4. Section 77-1420, Revised Statutes Supplement, 2025, is amended to read:

77-1420 (1) The State Treasurer shall deposit money received by the Nebraska educational savings plan trust into three funds: The Education Savings Plan Program Fund, the Education Savings Plan Expense Fund, and the Education Savings Plan Administrative Fund. The State Treasurer shall deposit money received by the trust into the appropriate fund. The State Treasurer and Accounting Administrator of the Department of Administrative Services shall determine the state fund types necessary to comply with section 529 of the Internal Revenue Code and state policy. The money in the funds shall be invested by the state investment officer pursuant to policies established by the Nebraska Investment Council. The program fund, the expense fund, and the administrative fund shall be separately administered. The Nebraska educational savings plan trust shall be operated with no General Fund appropriations.

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

deposited into the appropriate accounts within the program fund. A participant or beneficiary shall not provide investment direction regarding program contributions or earnings held by the trust. Until January 1, 2029, money accrued in the program fund may be used for the benefit of a beneficiary for payments to any eligible postsecondary educational institution or recognized postsecondary credential program, but shall not be used to pay expenses associated with attending kindergarten through grade twelve. Beginning January 1, 2029, money accrued in the program fund may be used for the benefit of a beneficiary for payments to any elementary or secondary school, eligible postsecondary educational institution, or recognized postsecondary credential program. Any money in the program fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

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

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

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

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

(iii) To transfer from the expense fund to the State Investment Officer's

Cash Fund an amount equal to the pro rata share of the budget appropriated to the Nebraska Investment Council as permitted in section 72-1249.02, to cover reasonable expenses incurred for investment management of the Nebraska educational savings plan trust. Annually and prior to such transfer to the State Investment Officer's Cash Fund, the State Treasurer shall report to the budget division of the Department of Administrative Services and to the Legislative Fiscal Analyst the amounts transferred during the previous fiscal year. The report submitted to the Legislative Fiscal Analyst shall be submitted electronically.

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

Sec. 5. Section 77-1422, Revised Statutes Supplement, 2025, is amended to read:

77-1422 (1) A participant retains ownership of all contributions made under a participation agreement up to the date of utilization for payment of qualified education expenses for the beneficiary or, in the case of a qualified education loan payment, for the beneficiary or a sibling of the beneficiary. Notwithstanding any other provision of law, any amount credited to any account is not susceptible to any levy, execution, judgment, or other operation of law, garnishment, or other judicial enforcement, and the amount is not an asset or property of either the participant or the beneficiary for the purposes of any state insolvency or inheritance tax laws. All income derived from the investment of the contributions made by the participant shall be considered to be held in trust for the benefit of the beneficiary.

(2) If the program created by sections 77-1415 to 77-1430 is terminated prior to payment of qualified education expenses, the participant is entitled to receive the fair market value of the account established in the program.

(3) If the beneficiary graduates from an eligible postsecondary educational institution or recognized postsecondary credential program and a balance remains in the participant's account, any remaining funds may be used

to make qualified education loan payments for siblings of the beneficiary or transferred as allowed by rule or regulation, subject to the provisions of section 529 of the Internal Revenue Code, as well as any other applicable state or federal laws or regulations.

(4)(a) The eligible postsecondary educational institution or recognized postsecondary credential program shall obtain ownership of the payments made for the qualified education expenses paid to the institution or program at the time each payment is made to the institution or program.

(b) Beginning January 1, 2029, the elementary or secondary school shall obtain ownership of the payments made for the qualified education expenses paid to the school at the time each payment is made to the school.

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

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

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

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

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

(10) Upon the death of a beneficiary, the participant may change the

beneficiary on the account, transfer assets to another beneficiary who is a member of the family of the former beneficiary, or request a nonqualified withdrawal.

Sec. 6. Section 77-1427, Revised Statutes Supplement, 2025, is amended to read:

77-1427 Nothing in sections 77-1415 to 77-1426 shall be deemed to prohibit both resident and nonresident participants and designated beneficiaries from being eligible to participate in and benefit from the Nebraska educational savings plan trust and program. It is the intent of the Legislature that funds and income credited to the program fund are fully portable and may be used at any eligible postsecondary educational institution, any recognized postsecondary credential program, and beginning January 1, 2029, at any elementary or secondary school.

Sec. 7. Original sections 77-1416, 77-1417, 77-1419, 77-1420, 77-1422, and 77-1427, Revised Statutes Supplement, 2025, are repealed.

PRESIDENT OF THE LEGISLATURE

THIS IS TO CERTIFY that the within LB 748 was passed by the One Hundred Ninth Legislature of Nebraska at its Second Session on the day of 20.....

CLERK OF THE LEGISLATURE

Approved:

..... 20....., o'clockM.

GOVERNOR