

## LEGISLATIVE BILL 1003

Approved by the Governor April 11, 2000

Introduced by Schrock, 38; Brown, 6; Dierks, 40; Hilgert, 7; Price, 26;  
Smith, 48; Tyson, 19; D. Pederson, 42

AN ACT relating to education; to amend section 77-2716, Revised Statutes Supplement, 1998; to establish an education savings plan; to create funds; to provide for administration of the plan; to harmonize provisions; to provide operative dates; and to repeal the original section.

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

Section 1. The Legislature finds that the general welfare and well-being of the state are directly related to educational levels and skills of the citizens of the state and that a vital and valid public purpose is served by the creation and implementation of programs which encourage and make possible the attainment of higher education by the greatest number of citizens of the state. The state has limited resources to provide additional programs for higher education funding and the continued operation and maintenance of the state's public institutions of higher education, and the general welfare of the citizens of the state will be enhanced by establishing a program which allows parents and others interested in the higher education of our youth to invest money in a public trust for future application to the payment of higher education costs. The creation of the means of encouragement for persons to invest in such a program represents the carrying out of a vital and valid public purpose. In order to make available to parents and others interested in the higher education of our youth an opportunity to fund future higher education needs, it is necessary that a public trust be established in which money may be invested for future educational use. It is also necessary to establish an endowment fund which may not be funded with public funds but may receive gifts, grants, and donations from private parties, which will be made available to participants in the trust to enhance their savings invested for the payment of future higher education costs.

Sec. 2. For purposes of sections 1 to 14 of this act:

(1) Administrative fund means the administrative fund created in section 7 of this act;

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

(3) Benefits means the payment of higher education costs on behalf of a beneficiary by the trust during the beneficiary's attendance at an institution of higher education;

(4) Endowment fund means the endowment fund created in section 7 of this act;

(5) Higher education costs means the certified costs of tuition and fees, books, supplies, and equipment required for enrollment or attendance at an institution of higher education. Reasonable room and board expenses, based on the minimum amount applicable for the institution of higher education during the period of enrollment, shall be included as a higher education cost for those students enrolled on at least a half-time basis;

(6) Institution of higher education means an institution described in section 529 of the Internal Revenue Code which is eligible to participate in the United States Department of Education's student aid programs;

(7) Nebraska educational savings plan trust means the trust created in section 4 of this act;

(8) Nebraska institution of higher education means an institution described in section 529 of the Internal Revenue Code which is eligible to participate in the United States Department of Education's student aid program and which is located in Nebraska;

(9) Participant 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 and the regulations interpreting such section who has entered into a participation agreement for the advance payment of higher education costs on behalf of a beneficiary;

(10) Participation agreement means an agreement between a participant and the Nebraska educational savings plan trust entered into under sections 1 to 14 of this act;

(11) Program fund means the program fund created in section 7 of this act;

(12) Refund penalty means the amount assessed by the State Treasurer for cancellation of a participation agreement which is not considered a de minimis penalty pursuant to section 529 of the Internal Revenue Code; and

(13) Tuition and fees means the quarter or semester charges imposed to attend an institution of higher education and required as a condition of enrollment.

Sec. 3. It is the intent of the Legislature that the Nebraska educational savings plan trust be operated with a minimum of General Fund appropriations and that earnings from the trust 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, except to the extent that appropriations are made by the Legislature to the administrative fund.

It is further the intent of the Legislature to appropriate two hundred thousand dollars for FY2000-01 to the administrative fund for startup costs for the trust and an additional one hundred thousand dollars for operating expenses to the State Treasurer for FY2000-01. If the State Treasurer determines that the level of General Fund appropriations is insufficient to administer, operate, and maintain a qualified program, the State Treasurer shall hold the trust in abeyance and shall request additional funds during the legislative session in 2001 to establish, operate, and administer the program. If the trust has not begun operation by January 1, 2002, sections 1 to 14 of this act shall terminate on January 2, 2002.

Sec. 4. Unless held in abeyance as provided in section 3 of this act, the Nebraska educational savings plan trust is created. The State Treasurer is the trustee of the trust, 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 1 to 14 of this act pertaining to the administration, operation, and maintenance of the trust and program, except that the state investment officer shall invest the money in the administrative fund, endowment fund, and program fund pursuant to policies established by the Nebraska Investment Council. The State Treasurer shall adopt and promulgate rules and regulations to implement sections 1 to 14 of this act and to provide for the efficient administration, operation, and maintenance of the trust and program. The State Treasurer or his or her designee shall also have the power to:

(1) Enter into agreements with any institution of higher education, the state, any federal or other state agency, or any other entity to implement sections 1 to 14 of this act;

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

(3) Accept any grants, gifts, legislative appropriations, and other money from the state, any unit of federal, state, or local government, or any other person which shall be deposited into the administrative fund or program fund;

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

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

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

(7) Solicit and accept for the benefit of the endowment fund gifts, grants, and donations from private parties;

(8) Enter into participation agreements with participants;

(9) Make payments to institutions of higher education pursuant to participation agreements on behalf of beneficiaries;

(10) Make refunds to participants upon the termination of participation agreements pursuant to the provisions, limitations, and restrictions set forth in sections 1 to 14 of this act;

(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; 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.

Sec. 5. Any advertising or promotional materials relating to the Nebraska educational savings plan trust may include references to a public office but shall not refer to an officeholder by name.

Sec. 6. 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 require a participant to agree to invest a specific amount of money in the trust for a specific period of time for the benefit of a specific beneficiary. A participant shall not be required to make an annual contribution on behalf of a beneficiary. The minimum contribution per beneficiary per year, in a year in which a participant is making a contribution, shall be three hundred dollars, and the maximum contribution shall not exceed the amount allowed under section 529 of the Internal Revenue Code and the regulations interpreting such section. 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 may be designated from date of birth up to, but not including, their eighteenth birthday;

(3) Payment of benefits provided under participation agreements must begin not later than the first full fall academic quarter or semester of enrollment at an institution of higher education following the thirtieth birthday or high school graduation of the beneficiary, whichever is later;

(4) The execution of a participation agreement by the trust shall not guarantee in any way that higher education costs 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 institution of higher education, (b) if admitted, be determined a resident for tuition purposes by the institution of higher education, (c) be allowed to continue attendance at the institution of higher education following admission, or (d) graduate from the institution of higher education;

(5) A beneficiary under a participation agreement may be changed as permitted under the rules and regulations adopted under sections 1 to 14 of this act and consistent with section 529 of the Internal Revenue Code upon written request of the participant prior to the date of admission of the beneficiary to an institution of higher education 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

(6) 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. 7. (1) The State Treasurer shall segregate money received by the Nebraska educational savings plan trust into three funds: The program fund, the endowment fund, and the administrative 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. All money paid by participants in connection with participation agreements shall be deposited as received into separate accounts within the program fund. All money received by the trust from the proceeds of gifts and other endowments for the purposes of the trust shall be deposited as received into the endowment fund. The State Treasurer may receive gifts of funds which are for the sole purpose of defraying the costs of administering the trust, which gifts shall be deposited into the administrative fund. The program fund and endowment fund shall be separately administered. Any gifts, grants, or donations to the trust for deposit to the endowment fund shall be a grant, gift, or donation to the state for the accomplishment of a valid public eleemosynary, charitable, and educational purpose and shall not be included in the income of the donor for state income tax purposes. Contributions to the trust made by participants or received in the form of gifts, grants, or donations may only be made in the form of cash. A participant or beneficiary shall not provide investment direction regarding program contributions or earnings held by the trust.

(2) Each beneficiary under a participation agreement shall receive a pro rata interest in the endowment fund each year after any transfers to the administrative fund have been made. The amount received from the endowment fund shall be in the ratio that the principal amount paid by the participant

under the participation agreement and investment income earned to date under the agreement bears to the principal amount of all money, funds, and securities then held in the program fund, but not to exceed the amount which, in combination with the current payment due from the program fund, equals the beneficiary's higher education costs for the current period of enrollment. Money accrued by participants in the program fund may be used for payments to any institution of higher education. No rights to any money derived from the endowment fund shall exist if money payable under the participation agreement is paid to an institution of higher education which is not a Nebraska institution of higher education.

Sec. 8. (1) A participant may cancel a participation agreement at will. If the participation agreement is canceled by a participant prior to the expiration of two years from the date of original execution of the participation agreement, the participant shall receive one hundred percent of the principal amount of all contributions made by the participant or the fair market value of the participant's account, whichever is less, but any program fund investment income or endowment fund money which has been credited to the participant's account which exceeds the principal amount of all contributions made by the participant shall be retained by the Nebraska educational savings plan trust to cover administration expenses. After a participation agreement has been in effect for two years, a participant shall be entitled to the return upon cancellation of the agreement of the principal amount of all contributions made by the participant plus actual program fund investment income on the contributions, but not endowment fund money, less a refund penalty to be levied by the trust. The penalty shall be deposited in the administrative fund.

(2) Upon the occurrence of any of the following circumstances, no refund penalty shall be levied by the trust in the event of termination of a participation agreement:

- (a) Death of the beneficiary;
- (b) Permanent disability or mental incapacity of the beneficiary; or
- (c) The beneficiary is awarded a scholarship as defined in section 529 of the Internal Revenue Code, but only to the extent the refund of earnings does not exceed the scholarship amount.

In the event of cancellation of a participation agreement for any of the causes listed in this subsection, the participant shall be entitled to receive the principal amount of all contributions made by the participant under the participation agreement plus the actual program fund investment income earned on the contributions, but not endowment fund money.

Sec. 9. (1) A participant retains ownership of all contributions made under a participation agreement up to the date of utilization for payment of higher education costs for 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 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 1 to 14 of this act is terminated prior to payment of higher education costs for the beneficiary, the participant is entitled to a full refund of all contributions made under the participation agreement and all investment income credited on all the contributions. No right to receive investment income shall exist in cases of voluntary participant termination except as provided in section 8 of this act.

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

(4) The institution of higher education shall obtain ownership of the payments made for the higher education costs paid to the institution at the time each payment is made to the institution.

(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 trust as security for a loan.

Sec. 10. A student loan program, student grant program, or other program administered by any agency of the state, except as may be otherwise provided by federal law or the provisions of any specific grant applicable to the federal law, shall not take into account and shall not consider amounts available for the payment of higher education costs pursuant to the Nebraska educational savings plan trust in determining need and eligibility for student aid.

Sec. 11. (1) The State Treasurer shall submit an annual audited financial report, prepared in accordance with generally accepted accounting principles, on the operations of the Nebraska educational savings plan trust by November 1 to the Governor and the Legislature. The State Treasurer shall cause the audit to be made either by the the Auditor of Public Accounts or by an independent certified public accountant designated by the State Treasurer, and the audit shall include direct and indirect costs attributable to the use of outside consultants, independent contractors, and any other persons who are not state employees.

(2) The annual audit shall be supplemented by all of the following information prepared by the State Treasurer:

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

(b) A summary of the benefits provided by the trust, including the number of participants and beneficiaries in the trust; and

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

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

(a) Pursuant to section 6 of this act, a participant may make contributions to an account which is established for the purpose of meeting the qualified higher education costs of the designated beneficiary of the account;

(b) Pursuant to section 6 of this act, a maximum contribution level is established;

(c) Pursuant to section 7 of this act, a separate account is established for each beneficiary;

(d) Pursuant to section 7 of this act, contributions may only be made in the form of cash;

(e) Pursuant to section 7 of this act, a participant or beneficiary shall not provide investment direction regarding program contributions or earnings held by the trust;

(f) Pursuant to section 8 of this act, penalties are provided on refunds of earnings which are not used for qualified higher education costs of the beneficiary, made on account of the death or disability of the designated beneficiary, or made due to scholarship, allowance, or payment receipt as provided in section 529(b)(3) of the Internal Revenue Code; and

(g) Pursuant to section 9 of this act, a participant shall not pledge any interest in the trust as security for a loan.

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

Sec. 13. The assets of the Nebraska educational savings plan trust, including the program fund and endowment fund, shall at all times be preserved, invested, and expended solely and only for the purposes of the trust and shall be held in trust for the participants and beneficiaries. No property rights in the trust shall exist in favor of the state. The assets of the trust shall not be transferred or used by the state for any purposes other than the purposes of the trust.

Sec. 14. Nothing in sections 1 to 13 of this act 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 institution of higher education.

Sec. 15. Section 77-2716, Revised Statutes Supplement, 1998, is amended to read:

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

(a) There shall be subtracted interest or dividends received by the

owner of obligations of the United States and its territories and possessions or of any authority, commission, or instrumentality of the United States to the extent includable in gross income for federal income tax purposes but exempt from state income taxes under the laws of the United States;

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

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

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

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

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

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

(3) There shall be subtracted from federal adjusted gross income for all taxable years beginning on or after January 1, 1987, the amount of any state income tax refund to the extent such refund was deducted under the Internal Revenue Code, was not allowed in the computation of the tax due under the Nebraska Revenue Act of 1967, and is included in federal adjusted gross income.

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

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

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

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

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

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

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

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

(8)(a) There shall be subtracted from federal adjusted gross income an amount equal to the difference between the amount qualified for calculation of a deduction as provided in section 162(1) of the Internal Revenue Code and the amount actually allowed pursuant to section 162(1)(1) of the Internal Revenue Code.

(b) For an individual who itemized deductions on his or her federal return, the maximum amount subtracted under subdivision (8)(a) of this section shall be seven and one-half percent of federal adjusted gross income.

(9)(a) Federal adjusted gross income or, for corporations and fiduciaries, federal taxable income shall be reduced, to the extent included, by income from interest, earnings, and state contributions received from the Nebraska educational savings plan trust created in sections 1 to 14 of this act.

(b) Federal adjusted gross income or, for corporations and fiduciaries, federal taxable income shall be reduced, to the extent not deducted for federal income tax purposes, by the amount of any gift, grant, or donation made to the Nebraska educational savings plan trust for deposit in the endowment fund of the trust.

(c) Federal adjusted gross income or, for corporations and fiduciaries, federal taxable income shall be reduced by any contributions as a participant in the Nebraska educational savings plan trust, not to exceed five hundred dollars per married filing separate return or one thousand dollars for any other return.

(d) Federal adjusted gross income or, for corporations and fiduciaries, federal taxable income shall be increased by the amount resulting from the cancellation of a participation agreement refunded to the taxpayer as a participant in the Nebraska educational savings plan trust to the extent previously deducted as a contribution to the trust.

Sec. 16. Sections 1 to 14 and 16 of this act become operative on January 1, 2001. The other sections of this act become operative for taxable years beginning or deemed to begin on or after January 1, 2001, under the Internal Revenue Code of 1986, as amended.

Sec. 17. Original section 77-2716, Revised Statutes Supplement, 1998, is repealed.