

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 804

Introduced by Brasch, 16.

Read first time January 04, 2018

Committee: Revenue

1 A BILL FOR AN ACT relating to the Nebraska educational savings plan
2 trust; to amend sections 85-1801, 85-1802, 85-1804, 85-1805,
3 85-1806, 85-1807, 85-1808, 85-1809, 85-1810, 85-1811, 85-1812,
4 85-1813, and 85-1814, Reissue Revised Statutes of Nebraska, and
5 sections 68-1201, 72-1239.01, and 77-2716, Revised Statutes
6 Cumulative Supplement, 2016; to provide additional tax benefits for
7 Nebraska educational savings plan trust accounts; to restate intent;
8 to change provisions relating to withdrawals; to include savings
9 plans for elementary and secondary education in the Nebraska
10 educational savings plan trust; to redefine terms; to transfer
11 provisions; to harmonize provisions; to provide operative dates; and
12 to repeal the original sections.
13 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 68-1201, Revised Statutes Cumulative Supplement,
2 2016, is amended to read:

3 68-1201 In determining eligibility for the program for aid to
4 dependent children pursuant to section 43-512 as administered by the
5 State of Nebraska pursuant to the federal Temporary Assistance for Needy
6 Families program, 42 U.S.C. 601 et seq., for the low-income home energy
7 assistance program administered by the State of Nebraska pursuant to the
8 federal Energy Policy Act of 2005, 42 U.S.C. 8621 to 8630, for the
9 Supplemental Nutrition Assistance Program administered by the State of
10 Nebraska pursuant to the federal Food and Nutrition Act of 2008, 7 U.S.C.
11 2011 et seq., and for the child care subsidy program established pursuant
12 to section 68-1202, the following shall not be included in determining
13 assets or income:

14 (1) Assets in or income from an educational savings account, a
15 Coverdell educational savings account described in 26 U.S.C. 530, a
16 qualified tuition program established pursuant to 26 U.S.C. 529, or any
17 similar savings account or plan established to save for qualified higher
18 education expenses as defined in section 85-1802 prior to January 1,
19 2020, or for qualified education expenses as defined in section 5 of this
20 act beginning January 1, 2020;

21 (2) Income from scholarships or grants related to postsecondary
22 education, whether merit-based, need-based, or a combination thereof;

23 (3) Income from postsecondary educational work-study programs,
24 whether federally funded, funded by a postsecondary educational
25 institution, or funded from any other source;

26 (4) Assets in or income from an account under a qualified program as
27 provided in section 77-1402;

28 (5) Income received for participation in grant-funded research on
29 the impact that income has on the development of children in low-income
30 families, except that such exclusion of income must not exceed four
31 thousand dollars per year for a maximum of four years and such exclusion

1 shall only be made if the exclusion is permissible under federal law for
2 each program referenced in this section. No such exclusion shall be made
3 for such income on or after December 31, 2022; and

4 (6) Income from any tax credits received pursuant to the School
5 Readiness Tax Credit Act.

6 Sec. 2. Section 72-1239.01, Revised Statutes Cumulative Supplement,
7 2016, is amended to read:

8 72-1239.01 (1)(a) The appointed members of the council shall have
9 the responsibility for the investment management of the assets of the
10 retirement systems administered by the Public Employees Retirement Board
11 as provided in section 84-1503, the assets of the Nebraska educational
12 savings plan trust created pursuant to sections 85-1801 to 85-1814 prior
13 to January 1, 2020, or sections 4 to 16 of this act beginning January 1,
14 2020, the assets of the achieving a better life experience program
15 pursuant to sections 77-1401 to 77-1409, and beginning January 1, 2017,
16 the assets of each retirement system provided for under the Class V
17 School Employees Retirement Act. Except as provided in subsection (4) of
18 this section, the appointed members shall be deemed fiduciaries with
19 respect to the investment of the assets of the retirement systems, of the
20 Nebraska educational savings plan trust, and of the achieving a better
21 life experience program and shall be held to the standard of conduct of a
22 fiduciary specified in subsection (3) of this section. The nonvoting, ex
23 officio members of the council shall not be deemed fiduciaries.

24 (b) As fiduciaries, the appointed members of the council and the
25 state investment officer shall discharge their duties with respect to the
26 assets of the retirement systems, of the Nebraska educational savings
27 plan trust, and of the achieving a better life experience program solely
28 in the interests of the members and beneficiaries of the retirement
29 systems or the interests of the participants and beneficiaries of the
30 Nebraska educational savings plan trust and the achieving a better life
31 experience program, as the case may be, for the exclusive purposes of

1 providing benefits to members, members' beneficiaries, participants, and
2 participants' beneficiaries and defraying reasonable expenses incurred
3 within the limitations and according to the powers, duties, and purposes
4 prescribed by law.

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

12 (b) As fiduciaries, the appointed members of the council and the
13 state investment officer shall discharge their duties with respect to the
14 assets of state funds solely in the interests of the citizens of the
15 state within the limitations and according to the powers, duties, and
16 purposes prescribed by law.

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

30 (4) Neither the appointed members of the council nor the state
31 investment officer shall be deemed fiduciaries with respect to

1 investments of the assets of a retirement system provided for under the
2 Class V School Employees Retirement Act made by or on behalf of the board
3 of education as defined in section 79-978 or the board of trustees
4 provided for in section 79-980. Neither the council nor any member
5 thereof nor the state investment officer shall be liable for the action
6 or inaction of the board of education or the board of trustees with
7 respect to the investment of the assets of a retirement system provided
8 for under the Class V School Employees Retirement Act, the consequences
9 of any such action or inaction of the board of education or the board of
10 trustees, and any claims, suits, losses, damages, fees, and costs related
11 to such action or inaction or consequences thereof.

12 Sec. 3. Section 77-2716, Revised Statutes Cumulative Supplement,
13 2016, is amended to read:

14 77-2716 (1) The following adjustments to federal adjusted gross
15 income or, for corporations and fiduciaries, federal taxable income shall
16 be made for interest or dividends received:

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

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

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

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

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

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

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

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

1 be adjusted by the modifications contained in this section and any
2 carryovers or carrybacks shall be limited to the portion of the loss
3 derived from or connected with Nebraska sources.

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

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

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

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

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

1 return;

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

4 (c) The result of the calculation in subdivision (b) of this
5 subsection shall be subtracted from the amount of federal taxable income
6 used in subdivision (a) of this subsection. The result of such
7 calculation, if greater than zero, shall be subtracted from federal
8 taxable income.

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

12 (8)(a) Federal adjusted gross income or, for corporations and
13 fiduciaries, federal taxable income shall be reduced, to the extent
14 included, by income from interest, earnings, and state contributions
15 received from the Nebraska educational savings plan trust created in
16 sections 85-1801 to 85-1814 prior to January 1, 2020, or sections 4 to 16
17 of this act beginning January 1, 2020, and any account established under
18 the achieving a better life experience program as provided in sections
19 77-1401 to 77-1409.

20 (b) Federal adjusted gross income or, for corporations and
21 fiduciaries, federal taxable income shall be reduced by any contributions
22 as a participant in the Nebraska educational savings plan trust or
23 contributions to an account established under the achieving a better life
24 experience program made for the benefit of a beneficiary as provided in
25 sections 77-1401 to 77-1409, to the extent not deducted for federal
26 income tax purposes, but not to exceed five thousand dollars per married
27 filing separate return or ten thousand dollars for any other return. With
28 respect to a qualified rollover within the meaning of section 529 of the
29 Internal Revenue Code from another state's plan, any interest, earnings,
30 and state contributions received from the other state's educational
31 savings plan which is qualified under section 529 of the code shall

1 qualify for the reduction provided in this subdivision. For contributions
2 by a custodian of a custodial account including rollovers from another
3 custodial account, the reduction shall only apply to funds added to the
4 custodial account after January 1, 2014.

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

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

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

15 (9)(a) For income tax returns filed after September 10, 2001, for
16 taxable years beginning or deemed to begin before January 1, 2006, under
17 the Internal Revenue Code of 1986, as amended, federal adjusted gross
18 income or, for corporations and fiduciaries, federal taxable income shall
19 be increased by eighty-five percent of any amount of any federal bonus
20 depreciation received under the federal Job Creation and Worker
21 Assistance Act of 2002 or the federal Jobs and Growth Tax Act of 2003,
22 under section 168(k) or section 1400L of the Internal Revenue Code of
23 1986, as amended, for assets placed in service after September 10, 2001,
24 and before December 31, 2005.

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

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

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

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

1 in each of the next four following tax years.

2 (11)(a) For taxable years beginning or deemed to begin before
3 January 1, 2018, under the Internal Revenue Code of 1986, as amended,
4 federal adjusted gross income shall be reduced by contributions, up to
5 two thousand dollars per married filing jointly return or one thousand
6 dollars for any other return, and any investment earnings made as a
7 participant in the Nebraska long-term care savings plan under the Long-
8 Term Care Savings Plan Act, to the extent not deducted for federal income
9 tax purposes.

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

19 (12) There shall be added to federal adjusted gross income for
20 individuals, estates, and trusts any amount taken as a credit for
21 franchise tax paid by a financial institution under sections 77-3801 to
22 77-3807 as allowed by subsection (5) of section 77-2715.07.

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

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

30 (b) For taxpayers filing any other return, federal adjusted gross
31 income is forty-three thousand dollars or less.

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. 4. Section 85-1801, Reissue Revised Statutes of Nebraska, is
18 amended to read:

19 ~~85-1801~~ The Legislature finds that the general welfare and well-
20 being of the state are directly related to educational levels and skills
21 of the citizens of the state and that a vital and valid public purpose is
22 served by the creation and implementation of programs which encourage and
23 make possible the attainment of higher education by the greatest number
24 of citizens of the state. The state has limited resources to provide
25 additional programs for ~~higher~~ education funding and the continued
26 operation and maintenance of the state's public institutions of higher
27 education, elementary education, and secondary education and the general
28 welfare of the citizens of the state will be enhanced by establishing a
29 program which allows parents and others interested in the ~~higher~~
30 education of our youth to invest money in a public trust for future
31 application to the payment of qualified ~~higher~~ education expenses. The

1 creation of the means of encouragement for persons to invest in such a
2 program represents the carrying out of a vital and valid public purpose.
3 In order to make available to parents and others interested in the ~~higher~~
4 education of our youth an opportunity to fund future ~~higher~~ education
5 needs, it is necessary that a public trust be established in which money
6 may be invested for future educational use.

7 Sec. 5. Section 85-1802, Reissue Revised Statutes of Nebraska, is
8 amended to read:

9 ~~85-1802~~ For purposes of sections 4 to 16 of this act ~~85-1801 to~~
10 ~~85-1814~~:

11 (1) Administrative fund means the Education College Savings Plan
12 Administrative Fund created in section 9 of this act ~~85-1807~~;

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

16 (3) Benefits means the payment of qualified ~~higher~~ education
17 expenses on behalf of a beneficiary by the Nebraska educational savings
18 plan trust during the beneficiary's attendance at an eligible educational
19 institution, an elementary school, or a secondary school;

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

23 (5) Expense fund means the Education College Savings Plan Expense
24 Fund created in section 9 of this act ~~85-1807~~;

25 (6) Nebraska educational savings plan trust means the trust created
26 in section 6 of this act ~~85-1804~~;

27 (7) Nonqualified withdrawal refers to (a) a distribution from an
28 account to the extent it is not used to pay the qualified ~~higher~~
29 education expenses of the beneficiary or (b) a qualified rollover
30 permitted by section 529 of the Internal Revenue Code where the funds are
31 transferred to a qualified tuition program or a qualified program as

1 defined in section 77-1401 sponsored by another state or entity;

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

13 (9) Participation agreement means an agreement between a participant
14 and the Nebraska educational savings plan trust entered into under
15 sections 4 to 16 of this act ~~85-1801 to 85-1814~~;

16 (10) Program fund means the Education College Savings Plan Program
17 Fund created in section 9 of this act ~~85-1807~~;

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

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

4 (b) For purposes of an elementary school or a secondary school,
5 qualified education expenses means the expenses for tuition in connection
6 with enrollment or attendance at an elementary or secondary school and
7 does not include any amounts in excess of ten thousand dollars per
8 beneficiary per taxable year;

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

11 (13)(a) For purposes of an eligible educational institution, tuition
12 ~~(13)~~ Tuition and fees means the quarter or semester charges imposed to
13 attend an eligible educational institution; and -

14 (b) For purposes of an elementary school or a secondary school,
15 tuition means the charges imposed for tuition in connection with
16 enrollment or attendance at an elementary or secondary public, private,
17 or religious school.

18 Sec. 6. Section 85-1804, Reissue Revised Statutes of Nebraska, is
19 amended to read:

20 ~~85-1804~~ The Nebraska educational savings plan trust is created. The
21 State Treasurer is the trustee of the trust and as such is responsible
22 for the administration, operation, and maintenance of the program and has
23 all powers necessary to carry out and effectuate the purposes,
24 objectives, and provisions of sections 4 to 16 of this act ~~85-1801 to~~
25 ~~85-1814~~ pertaining to the administration, operation, and maintenance of
26 the trust and program, except that the state investment officer shall
27 have fiduciary responsibility to make all decisions regarding the
28 investment of the money in the administrative fund, expense fund, and
29 program fund, including the selection of all investment options and the
30 approval of all fees and other costs charged to trust assets except costs
31 for administration, operation, and maintenance of the trust as

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

10 (1) Enter into agreements with any eligible educational institution,
11 elementary school, or secondary school, the state, any federal or other
12 state agency, or any other entity to implement sections 4 to 16 of this
13 act ~~85-1801 to 85-1814~~, except agreements which pertain to the investment
14 of money in the 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, elementary
28 schools, or secondary schools pursuant to participation agreements on
29 behalf of beneficiaries;

30 (8) Make distributions to participants upon the termination of
31 participation agreements pursuant to the provisions, limitations, and

1 restrictions set forth in sections 4 to 16 of this act ~~85-1801 to~~
2 ~~85-1814~~;

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

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

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

21 Sec. 7. Section 85-1805, Reissue Revised Statutes of Nebraska, is
22 amended to read:

23 ~~85-1805~~ Any advertising or promotional materials relating to the
24 Nebraska educational savings plan trust may include references to a
25 public office but shall not refer to an officeholder by name.

26 Sec. 8. Section 85-1806, Reissue Revised Statutes of Nebraska, is
27 amended to read:

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

31 (1) A participation agreement shall authorize a participant to make

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

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

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

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

31 (5) A beneficiary under a participation agreement may be changed as

1 permitted under the rules and regulations adopted under sections 4 to 16
2 of this act 85-1801 to 85-1814 and consistent with section 529 of the
3 Internal Revenue Code upon written request of the participant as long as
4 the substitute beneficiary is eligible for participation. Participation
5 agreements may otherwise be freely amended throughout their term in order
6 to enable participants to increase or decrease the level of
7 participation, change the designation of beneficiaries, and carry out
8 similar matters as authorized by rule and regulation; and

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

13 Sec. 9. Section 85-1807, Reissue Revised Statutes of Nebraska, is
14 amended to read:

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

29 (2) The Education ~~College~~ Savings Plan Program Fund is created. All
30 money paid by participants in connection with participation agreements
31 and all investment income earned on such money shall be deposited as

1 received into separate accounts within the program fund. Contributions to
2 the trust made by participants may only be made in the form of cash. All
3 funds generated in connection with participation agreements shall be
4 deposited into the appropriate accounts within the program fund. A
5 participant or beneficiary shall not provide investment direction
6 regarding program contributions or earnings held by the trust. Money
7 accrued by participants in the program fund may be used for payments to
8 any eligible educational institution, elementary school, or secondary
9 school. Any money in the program fund available for investment shall be
10 invested by the state investment officer pursuant to the Nebraska Capital
11 Expansion Act and the Nebraska State Funds Investment Act.

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

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

1 plan trust. Annually and prior to such transfer to the State Investment
2 Officer's Cash Fund, the State Treasurer shall report to the budget
3 division of the Department of Administrative Services and to the
4 Legislative Fiscal Analyst the amounts transferred during the previous
5 fiscal year. The report submitted to the Legislative Fiscal Analyst shall
6 be submitted electronically. Transfers may be made from the expense fund
7 to the General Fund at the direction of the Legislature. Any money in the
8 expense fund available for investment shall be invested by the state
9 investment officer pursuant to the Nebraska Capital Expansion Act and the
10 Nebraska State Funds Investment Act.

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

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

27 (2) If a participation agreement is canceled for any of the causes
28 listed in this subsection, the participant shall be entitled to receive
29 the principal amount of all contributions made by the participant under
30 the participation agreement plus the actual program fund investment
31 income earned on the contributions, less any losses incurred on the

1 investment, and such distribution will generally not be subject to
2 federal tax penalty:

3 (a) Death of the beneficiary if the distribution is paid to the
4 estate of the beneficiary or transferred to another beneficiary as set
5 forth in subsection (10) of section 11 of this act ~~85-1809~~;

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

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

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

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

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

29 Sec. 11. Section 85-1809, Reissue Revised Statutes of Nebraska, is
30 amended to read:

31 ~~85-1809~~ (1) A participant retains ownership of all contributions

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

11 (2) If the program created by sections 4 to 16 of this act ~~85-1801~~
12 ~~to 85-1814~~ is terminated prior to payment of qualified ~~higher~~ education
13 expenses for the beneficiary, the participant is entitled to receive the
14 fair market value of the account established in the program.

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

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

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

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

1 participation agreement.

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

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

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

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

18 Sec. 12. Section 85-1810, Reissue Revised Statutes of Nebraska, is
19 amended to read:

20 ~~85-1810~~ A student loan program, student grant program, or other
21 program administered by any agency of the state, except as may be
22 otherwise provided by federal law or the provisions of any specific grant
23 applicable to the federal law, shall not take into account and shall not
24 consider amounts available for the payment of qualified ~~higher~~ education
25 expenses pursuant to the Nebraska educational savings plan trust in
26 determining need and eligibility for student aid.

27 Sec. 13. Section 85-1811, Reissue Revised Statutes of Nebraska, is
28 amended to read:

29 ~~85-1811~~ (1) The State Treasurer shall submit an annual audited
30 financial report, prepared in accordance with generally accepted
31 accounting principles, on the operations of the Nebraska educational

1 savings plan trust by November 1 to the Governor and the Legislature. The
2 report submitted to the Legislature shall be submitted electronically.
3 The State Treasurer shall cause the audit to be made either by the
4 Auditor of Public Accounts or by an independent certified public
5 accountant designated by the State Treasurer, and the audit shall include
6 direct and indirect costs attributable to the use of outside consultants,
7 independent contractors, and any other persons who are not state
8 employees.

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

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

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

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

18 Sec. 14. Section 85-1812, Reissue Revised Statutes of Nebraska, is
19 amended to read:

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

25 (a) Pursuant to section 8 of this act ~~85-1806~~, a participant may
26 make contributions to an account which is established for the purpose of
27 meeting the qualified ~~higher~~ education expenses of the designated
28 beneficiary of the account;

29 (b) Pursuant to section 8 of this act ~~85-1806~~, a maximum
30 contribution level is established;

31 (c) Pursuant to section 9 of this act ~~85-1807~~, a separate account is

1 established for each beneficiary;

2 (d) Pursuant to section 9 of this act ~~85-1807~~, contributions may
3 only be made in the form of cash;

4 (e) Pursuant to section 9 of this act ~~85-1807~~, a participant or
5 beneficiary shall not provide investment direction regarding program
6 contributions or earnings held by the trust;

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

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

9 (ii) made on account of the death of the designated beneficiary if the
10 distribution is not transferred to another beneficiary or paid to the
11 estate of the beneficiary; (iii) not made on account of the permanent
12 disability or mental incapacity of the designated beneficiary; or (iv)
13 made due to scholarship, allowance, or payment receipt in excess of the
14 scholarship, allowance, or payment receipt; and

15 (g) Pursuant to section 11 of this act ~~85-1809~~, a participant shall
16 not pledge any interest in the trust as security for a loan.

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

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

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

24 ~~85-1813~~ The assets of the Nebraska educational savings plan trust,
25 including the program fund and excluding the administrative fund and the
26 expense fund, shall at all times be preserved, invested, and expended
27 solely and only for the purposes of the trust and shall be held in trust
28 for the participants and beneficiaries. No property rights in the trust
29 shall exist in favor of the state. Such assets of the trust shall not be
30 transferred or used by the state for any purposes other than the purposes
31 of the trust.

1 Sec. 16. Section 85-1814, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 ~~85-1814~~ Nothing in sections 4 to 16 of this act ~~85-1801 to 85-1813~~
4 shall be deemed to prohibit both resident and nonresident participants
5 and designated beneficiaries from being eligible to participate in and
6 benefit from the Nebraska educational savings plan trust and program. It
7 is the intent of the Legislature that funds and income credited to the
8 program fund are fully portable and may be used at any eligible
9 educational institution, elementary school, or secondary school.

10 Sec. 17. Sections 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, and
11 18 of this act become operative on January 1, 2020. The other sections of
12 this act become operative on their effective date.

13 Sec. 18. Original sections 85-1801, 85-1802, 85-1804, 85-1805,
14 85-1806, 85-1807, 85-1808, 85-1809, 85-1810, 85-1811, 85-1812, 85-1813,
15 and 85-1814, Reissue Revised Statutes of Nebraska, are repealed.

16 Sec. 19. Original sections 68-1201, 72-1239.01, and 77-2716,
17 Revised Statutes Cumulative Supplement, 2016, are repealed.