

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 681

Introduced by Linehan, 39.

Read first time January 20, 2021

Committee:

1 A BILL FOR AN ACT relating to the Nebraska educational savings plan
2 trust; to amend sections 68-1201, 85-1801, 85-1805, 85-1811,
3 85-1812, and 85-1814, Reissue Revised Statutes of Nebraska, and
4 sections 72-1239.01, 77-3,110, 77-2716, 85-1802, 85-1804, 85-1806,
5 85-1807, 85-1808, 85-1809, 85-1810, 85-1813, 85-1815, 85-1816,
6 85-1817, 85-2802, 85-2803, and 85-2804, Revised Statutes Cumulative
7 Supplement, 2020; to provide additional tax benefits for Nebraska
8 educational savings plan trust accounts; to restate intent; to
9 change provisions relating to withdrawals; to include savings plans
10 for elementary and secondary education in the Nebraska educational
11 savings plan trust; to redefine terms; to transfer provisions; to
12 harmonize provisions; to provide an operative date; and to repeal
13 the original sections.

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

1 Section 1. Section 68-1201, Reissue Revised Statutes of Nebraska, is
2 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 6 of this act ~~85-1802~~;

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

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

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

26 (5) Income received for participation in grant-funded research on
27 the impact that income has on the development of children in low-income
28 families, except that such exclusion of income must not exceed four
29 thousand dollars per year for a maximum of four years and such exclusion
30 shall only be made if the exclusion is permissible under federal law for
31 each program referenced in this section. No such exclusion shall be made

1 for such income on or after December 31, 2022; and

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

4 Sec. 2. Section 72-1239.01, Revised Statutes Cumulative Supplement,
5 2020, is amended to read:

6 72-1239.01 (1)(a) The appointed members of the council shall have
7 the responsibility for the investment management of the assets of the
8 retirement systems administered by the Public Employees Retirement Board
9 as provided in section 84-1503, the assets of the Nebraska educational
10 savings plan trust as provided in section 10 of this act ~~created pursuant~~
11 ~~to sections 85-1801 to 85-1817~~, the assets of the achieving a better life
12 experience program pursuant to sections 77-1401 to 77-1409, and beginning
13 January 1, 2017, the assets of each retirement system provided for under
14 the Class V School Employees Retirement Act. Except as provided in
15 subsection (4) of this section, the appointed members shall be deemed
16 fiduciaries with respect to the investment of the assets of the
17 retirement systems, of the Nebraska educational savings plan trust, and
18 of the achieving a better life experience program and shall be held to
19 the standard of conduct of a fiduciary specified in subsection (3) of
20 this section. The nonvoting, ex officio members of the council shall not
21 be deemed fiduciaries.

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

1 within the limitations and according to the powers, duties, and purposes
2 prescribed by law.

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

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

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

28 (4) Neither the appointed members of the council nor the state
29 investment officer shall be deemed fiduciaries with respect to
30 investments of the assets of a retirement system provided for under the
31 Class V School Employees Retirement Act made by or on behalf of the board

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

10 Sec. 3. Section 77-3,110, Revised Statutes Cumulative Supplement,
11 2020, is amended to read:

12 77-3,110 (1) All funds received pursuant to sections 77-3,109 and
13 77-3,118 shall be remitted to the State Treasurer for credit to the
14 Department of Revenue Miscellaneous Receipts Fund which is hereby
15 created.

16 ~~(2) On or before September 1, 2020, the State Treasurer shall~~
17 ~~transfer fifty-nine thousand five hundred dollars from the College~~
18 ~~Savings Plan Expense Fund to the Department of Revenue Miscellaneous~~
19 ~~Receipts Fund.~~

20 (2) ~~(3)~~ All money in the Department of Revenue Miscellaneous
21 Receipts Fund shall be administered by the Department of Revenue and
22 shall be used as follows: ~~(a) Any money transferred to the fund under~~
23 ~~subsection (2) of this section shall be used by the Department of Revenue~~
24 ~~to defray the costs incurred to implement Laws 2020, LB1042; and (b) All~~
25 ~~other funds shall be used to defray the cost of production of the~~
26 ~~publications listed in section 77-3,109 or of the listings described in~~
27 ~~section 77-3,118 and to carry out any administrative responsibilities of~~
28 ~~the department.~~

29 (3) ~~(4)~~ Transfers may be made from the fund to the General Fund at
30 the direction of the Legislature. Any money in the Department of Revenue
31 Miscellaneous Receipts Fund available for investment shall be invested by

1 the state investment officer pursuant to the Nebraska Capital Expansion
2 Act and the Nebraska State Funds Investment Act.

3 Sec. 4. Section 77-2716, Revised Statutes Cumulative Supplement,
4 2020, is amended to read:

5 77-2716 (1) The following adjustments to federal adjusted gross
6 income or, for corporations and fiduciaries, federal taxable income shall
7 be made for interest or dividends received:

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

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

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

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

30 (d) There shall be added that portion of the total dividends and
31 other income received from a regulated investment company which is

1 attributable to obligations described in subdivision (c) of this
2 subsection and excluded for federal income tax purposes as reported to
3 the recipient by the regulated investment company; and

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

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

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

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

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

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

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

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

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

26 (c) The result of the calculation in subdivision (b) of this
27 subsection shall be subtracted from the amount of federal taxable income
28 used in subdivision (a) of this subsection. The result of such
29 calculation, if greater than zero, shall be subtracted from federal
30 taxable income.

31 (7) Federal adjusted gross income shall be modified to exclude any

1 amount repaid by the taxpayer for which a reduction in federal tax is
2 allowed under section 1341(a)(5) of the Internal Revenue Code.

3 (8)(a) Federal adjusted gross income or, for corporations and
4 fiduciaries, federal taxable income shall be reduced, to the extent
5 included, by income from interest, earnings, and state contributions
6 received from the Nebraska educational savings plan trust as provided
7 ~~created~~ in sections 5 to 20 of this act ~~85-1801 to 85-1817~~ and any
8 account established under the achieving a better life experience program
9 as provided in sections 77-1401 to 77-1409.

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

26 (c) For taxable years beginning or deemed to begin on or after
27 January 1, 2021, under the Internal Revenue Code of 1986, as amended,
28 federal adjusted gross income shall be reduced, to the extent included in
29 the adjusted gross income of an individual, by the amount of any
30 contribution made by the individual's employer into an account under the
31 Nebraska educational savings plan trust owned by the individual, not to

1 exceed five thousand dollars per married filing separate return or ten
2 thousand dollars for any other return.

3 (d) Federal adjusted gross income or, for corporations and
4 fiduciaries, federal taxable income shall be increased by:

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

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

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

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

30 (c) For a corporation with a unitary business having activity both
31 inside and outside the state, the increase shall be apportioned to

1 Nebraska in the same manner as income is apportioned to the state by
2 section 77-2734.05.

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

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

31 (11)(a) For taxable years beginning or deemed to begin before

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

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

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

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

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

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

30 (b) For taxable years beginning or deemed to begin on or after
31 January 1, 2020, under the Internal Revenue Code of 1986, as amended, the

1 Tax Commissioner shall adjust the dollar amounts provided in subdivisions
2 (13)(a)(i) and (ii) of this section by the same percentage used to adjust
3 individual income tax brackets under subsection (3) of section
4 77-2715.03.

5 (14)(a) For taxable years beginning or deemed to begin on or after
6 January 1, 2015, and before January 1, 2022, under the Internal Revenue
7 Code of 1986, as amended, an individual may make a one-time election
8 within two calendar years after the date of his or her retirement from
9 the military to exclude income received as a military retirement benefit
10 by the individual to the extent included in federal adjusted gross income
11 and as provided in this subdivision. The individual may elect to exclude
12 forty percent of his or her military retirement benefit income for seven
13 consecutive taxable years beginning with the year in which the election
14 is made or may elect to exclude fifteen percent of his or her military
15 retirement benefit income for all taxable years beginning with the year
16 in which he or she turns sixty-seven years of age.

17 (b) For taxable years beginning or deemed to begin on or after
18 January 1, 2022, under the Internal Revenue Code of 1986, as amended, an
19 individual may exclude fifty percent of the military retirement benefit
20 income received by such individual to the extent included in federal
21 adjusted gross income.

22 (c) For purposes of this subsection, military retirement benefit
23 means retirement benefits that are periodic payments attributable to
24 service in the uniformed services of the United States for personal
25 services performed by an individual prior to his or her retirement.

26 (15) For taxable years beginning or deemed to begin on or after
27 January 1, 2021, under the Internal Revenue Code of 1986, as amended,
28 federal adjusted gross income shall be reduced by the amount received as
29 a Segal AmeriCorps Education Award, to the extent such amount is included
30 in federal adjusted gross income.

31 Sec. 5. Section 85-1801, Reissue Revised Statutes of Nebraska, is

1 amended to read:

2 ~~85-1801~~ The Legislature finds that the general welfare and well-
3 being of the state are directly related to educational levels and skills
4 of the citizens of the state and that a vital and valid public purpose is
5 served by the creation and implementation of programs which encourage and
6 make possible the attainment of higher levels of education by the
7 greatest number of citizens of the state. The state has limited resources
8 to provide additional programs for ~~higher~~ education funding and the
9 continued operation and maintenance of the state's public institutions of
10 elementary, secondary, and postsecondary ~~higher~~ education, and the
11 general welfare of the citizens of the state will be enhanced by
12 establishing a program which allows parents and others interested in the
13 ~~higher~~ education of our youth to invest money in a public trust for
14 future application to the payment of qualified ~~higher~~ education expenses.
15 The creation of the means of encouragement for persons to invest in such
16 a program represents the carrying out of a vital and valid public
17 purpose. In order to make available to parents and others interested in
18 the ~~higher~~ education of our youth an opportunity to fund future ~~higher~~
19 education needs, it is necessary that a public trust be established in
20 which money may be invested for future educational use.

21 Sec. 6. Section 85-1802, Revised Statutes Cumulative Supplement,
22 2020, is amended to read:

23 ~~85-1802~~ For purposes of sections 5 to 20 of this act ~~85-1801 to~~
24 ~~85-1817~~:

25 (1) Administrative fund means the Education College Savings Plan
26 Administrative Fund created in section 10 of this act ~~85-1807~~;

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

30 (3) Benefits means the payment of qualified ~~higher~~ education
31 expenses on behalf of a beneficiary by the Nebraska educational savings

1 plan trust during the beneficiary's attendance at an elementary or
2 secondary school or eligible postsecondary educational institution;

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

6 (5) Expense fund means the Education College Savings Plan Expense
7 Fund created in section 10 of this act 85-1807;

8 (6) Nebraska educational savings plan trust means the trust created
9 in section 7 of this act 85-1804;

10 (7) Nonqualified withdrawal refers to (a) a distribution from an
11 account to the extent it is not used to pay the qualified higher
12 education expenses of the beneficiary, or (b) a qualified rollover
13 permitted by section 529 of the Internal Revenue Code where the funds are
14 transferred to a qualified tuition program or a qualified program as
15 defined in section 77-1401 sponsored by another state or entity, ~~or (c) a~~
16 ~~distribution from an account to pay the costs of attending kindergarten~~
17 ~~through grade twelve~~;

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

29 (9) Participation agreement means an agreement between a participant
30 and the Nebraska educational savings plan trust entered into under
31 sections 5 to 20 of this act 85-1801 to 85-1817;

1 (10) Program fund means the Education College Savings Plan Program
2 Fund created in section 10 of this act 85-1807;

3 (11) Qualified higher education expenses means:

4 (a) For purposes of an eligible postsecondary educational
5 institution, the certified costs of tuition and fees, books, supplies,
6 and equipment required for enrollment or attendance at such an eligible
7 postsecondary educational institution. Reasonable room and board
8 expenses, based on the minimum amount applicable for such the eligible
9 postsecondary educational institution during the period of enrollment,
10 shall be included as qualified ~~higher~~ education expenses for those
11 students enrolled on at least a half-time basis at such eligible
12 postsecondary educational institution. In the case of a special needs
13 beneficiary, expenses for special needs services incurred in connection
14 with enrollment or attendance at such an eligible postsecondary
15 educational institution shall be included as qualified ~~higher~~ education
16 expenses. Expenses paid or incurred in 2009 or 2010 for the purchase of
17 computer technology or equipment or Internet access and related services,
18 subject to the limitations set forth in section 529 of the Internal
19 Revenue Code, shall be included as qualified ~~higher~~ education expenses.
20 Qualified ~~higher~~ education expenses does not include any amounts in
21 excess of those allowed by section 529 of the Internal Revenue Code; or

22 (b) For purposes of an elementary or secondary school, the expenses
23 for tuition in connection with enrollment or attendance at such
24 elementary or secondary school and does not include any amounts in excess
25 of ten thousand dollars per beneficiary per taxable year;

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

28 (13) Tuition, for purposes of an elementary or secondary school,
29 means the charges imposed for tuition in connection with enrollment or
30 attendance at such elementary or secondary school; and

31 (14) ~~(13)~~ Tuition and fees, for purposes of an eligible

1 postsecondary educational institution, means the quarter or semester
2 charges imposed to attend such an eligible postsecondary educational
3 institution.

4 Sec. 7. Section 85-1804, Revised Statutes Cumulative Supplement,
5 2020, is amended to read:

6 ~~85-1804~~ The Nebraska educational savings plan trust is created. The
7 State Treasurer is the trustee of the trust and as such is responsible
8 for the administration, operation, and maintenance of the program and has
9 all powers necessary to carry out and effectuate the purposes,
10 objectives, and provisions of sections 5 to 20 of this act ~~85-1801 to~~
11 ~~85-1817~~ pertaining to the administration, operation, and maintenance of
12 the trust and program, except that the state investment officer shall
13 have fiduciary responsibility to make all decisions regarding the
14 investment of the money in the administrative fund, expense fund, and
15 program fund, including the selection of all investment options and the
16 approval of all fees and other costs charged to trust assets except costs
17 for administration, operation, and maintenance of the trust as
18 appropriated by the Legislature, pursuant to the directions, guidelines,
19 and policies established by the Nebraska Investment Council. The State
20 Treasurer may adopt and promulgate rules and regulations to provide for
21 the efficient administration, operation, and maintenance of the trust and
22 program. The State Treasurer shall not adopt and promulgate rules and
23 regulations that in any way interfere with the fiduciary responsibility
24 of the state investment officer to make all decisions regarding the
25 investment of money in the administrative fund, expense fund, and program
26 fund. The State Treasurer or his or her designee shall have the power to:

27 (1) Enter into agreements with any elementary or secondary school or
28 eligible postsecondary educational institution, the state, any federal or
29 other state agency, or any other entity to implement sections 5 to 20 of
30 this act ~~85-1801 to 85-1817~~, except agreements which pertain to the
31 investment of money in the administrative fund, expense fund, or program

1 fund;

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

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

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

10 (5) Procure insurance against any loss in connection with the
11 property, assets, or activities of the trust as provided in section
12 81-8,239.01;

13 (6) Enter into participation agreements with participants;

14 (7) Make payments to elementary or secondary schools or eligible
15 postsecondary educational institutions pursuant to participation
16 agreements on behalf of beneficiaries;

17 (8) Make distributions to participants upon the termination of
18 participation agreements pursuant to the provisions, limitations, and
19 restrictions set forth in sections 5 to 20 of this act ~~85-1801 to~~
20 ~~85-1817~~;

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

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

31 The Nebraska Investment Council may adopt and promulgate rules and

1 regulations to provide for the prudent investment of the assets of the
2 trust. The council or its designee also has the authority to select and
3 enter into agreements with individuals and entities to provide investment
4 advice and management of the assets held by the trust, establish
5 investment guidelines, objectives, and performance standards with respect
6 to the assets held by the trust, and approve any fees, commissions, and
7 expenses, which directly or indirectly affect the return on assets.

8 Sec. 8. Section 85-1805, Reissue Revised Statutes of Nebraska, is
9 amended to read:

10 ~~85-1805~~ Any advertising or promotional materials relating to the
11 Nebraska educational savings plan trust may include references to a
12 public office but shall not refer to an officeholder by name.

13 Sec. 9. Section 85-1806, Revised Statutes Cumulative Supplement,
14 2020, is amended to read:

15 ~~85-1806~~ The Nebraska educational savings plan trust may enter into
16 participation agreements with participants on behalf of beneficiaries
17 pursuant to the following terms and conditions:

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

1 applicable laws and regulations;

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

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

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

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

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

1 Sec. 10. Section 85-1807, Revised Statutes Cumulative Supplement,
2 2020, is amended to read:

3 ~~85-1807~~ (1) The State Treasurer shall deposit money received by the
4 Nebraska educational savings plan trust into three funds: The Education
5 ~~College~~ Savings Plan Program Fund, the Education ~~College~~ Savings Plan
6 Expense Fund, and the Education ~~College~~ Savings Plan Administrative Fund.
7 The State Treasurer shall deposit money received by the trust into the
8 appropriate fund. The State Treasurer and Accounting Administrator of the
9 Department of Administrative Services shall determine the state fund
10 types necessary to comply with section 529 of the Internal Revenue Code
11 and state policy. The money in the funds shall be invested by the state
12 investment officer pursuant to policies established by the Nebraska
13 Investment Council. The program fund, the expense fund, and the
14 administrative fund shall be separately administered. The Nebraska
15 educational savings plan trust shall be operated with no General Fund
16 appropriations.

17 (2) The Education ~~College~~ Savings Plan Program Fund is created. All
18 money paid in connection with participation agreements and all investment
19 income earned on such money shall be deposited as received into separate
20 accounts within the program fund. Contributions to the trust may only be
21 made in the form of cash. All funds generated in connection with
22 participation agreements shall be deposited into the appropriate accounts
23 within the program fund. A participant or beneficiary shall not provide
24 investment direction regarding program contributions or earnings held by
25 the trust. Money accrued in the program fund may be used for the benefit
26 of a beneficiary for payments to any elementary or secondary school or
27 eligible postsecondary educational institution, ~~but shall not be used to~~
28 ~~pay expenses associated with attending kindergarten through grade twelve.~~
29 Any money in the program fund available for investment shall be invested
30 by the state investment officer pursuant to the Nebraska Capital
31 Expansion Act and the Nebraska State Funds Investment Act.

1 (3) The Education College Savings Plan Administrative Fund is
2 created. Money from the trust transferred from the expense fund to the
3 administrative fund in an amount authorized by an appropriation from the
4 Legislature shall be utilized to pay for the costs of administering,
5 operating, and maintaining the trust, to the extent permitted by section
6 529 of the Internal Revenue Code. The administrative fund shall not be
7 credited with any money other than money transferred from the expense
8 fund in an amount authorized by an appropriation by the Legislature or
9 any interest income earned on the balances held in the administrative
10 fund. Any money in the administrative fund available for investment shall
11 be invested by the state investment officer pursuant to the Nebraska
12 Capital Expansion Act and the Nebraska State Funds Investment Act.

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

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

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

19 ~~(iii) On or before September 1, 2020, to transfer from the expense~~
20 ~~fund to the Department of Revenue Miscellaneous Receipts Fund fifty nine~~
21 ~~thousand five hundred dollars to defray the costs incurred to implement~~
22 ~~Laws 2020, LB1042; and~~

23 (iii) ~~(iv)~~ To transfer from the expense fund to the State Investment
24 Officer's Cash Fund an amount equal to the pro rata share of the budget
25 appropriated to the Nebraska Investment Council as permitted in section
26 72-1249.02, to cover reasonable expenses incurred for investment
27 management of the Nebraska educational savings plan trust. Annually and
28 prior to such transfer to the State Investment Officer's Cash Fund, the
29 State Treasurer shall report to the budget division of the Department of
30 Administrative Services and to the Legislative Fiscal Analyst the amounts
31 transferred during the previous fiscal year. The report submitted to the

1 Legislative Fiscal Analyst shall be submitted electronically.

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

5 Sec. 11. Section 85-1808, Revised Statutes Cumulative Supplement,
6 2020, is amended to read:

7 ~~85-1808~~ (1) A participant may cancel a participation agreement at
8 will by submitting a request to terminate the participation agreement.
9 Additionally, if a participant requests and obtains a nonqualified
10 withdrawal, the participation agreement shall be deemed canceled with
11 respect to the amount of the nonqualified withdrawal. A participation
12 agreement shall not be deemed canceled if a participant requests and
13 obtains a distribution of his or her entire account balance for qualified
14 ~~higher~~ education expenses and subsequently closes his or her account.
15 Furthermore, the State Treasurer shall have the power to terminate,
16 freeze, or suspend a participation agreement if he or she determines that
17 the participant provided false or misleading information to the detriment
18 of the Nebraska educational savings plan trust, if the participant's
19 account has a zero balance, or if the State Treasurer is unable to verify
20 the identity of the participant.

21 (2) If a participation agreement is canceled for any of the causes
22 listed in this subsection, the participant shall be entitled to receive
23 the principal amount of all contributions made by the participant under
24 the participation agreement plus the actual program fund investment
25 income earned on the contributions, less any losses incurred on the
26 investment, and such distribution will generally not be subject to
27 federal tax penalty:

28 (a) Death of the beneficiary if the distribution is paid to the
29 estate of the beneficiary or transferred to another beneficiary as set
30 forth in subsection (10) of section 12 of this act ~~85-1809~~;

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

1 (c) The beneficiary is awarded a scholarship as defined in section
2 529 of the Internal Revenue Code, but only to the extent the distribution
3 of earnings does not exceed the scholarship amount; or

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

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

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

23 Sec. 12. Section 85-1809, Revised Statutes Cumulative Supplement,
24 2020, is amended to read:

25 ~~85-1809~~ (1) A participant retains ownership of all contributions
26 made under a participation agreement up to the date of utilization for
27 payment of qualified ~~higher~~ education expenses for the beneficiary.
28 Notwithstanding any other provision of law, any amount credited to any
29 account is not susceptible to any levy, execution, judgment, or other
30 operation of law, garnishment, or other judicial enforcement, and the
31 amount is not an asset or property of either the participant or the

1 beneficiary for the purposes of any state insolvency or inheritance tax
2 laws. All income derived from the investment of the contributions made by
3 the participant shall be considered to be held in trust for the benefit
4 of the beneficiary.

5 (2) If the program created by sections 5 to 20 of this act ~~85-1801~~
6 ~~to 85-1817~~ is terminated prior to payment of qualified higher education
7 expenses for the beneficiary, the participant is entitled to receive the
8 fair market value of the account established in the program.

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

15 (4) The elementary or secondary school or eligible postsecondary
16 educational institution shall obtain ownership of the payments made for
17 the qualified higher education expenses paid to the school or institution
18 at the time each payment is made to the school or institution.

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

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

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

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

1 established by the trustee.

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

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

12 Sec. 13. Section 85-1810, Revised Statutes Cumulative Supplement,
13 2020, is amended to read:

14 ~~85-1810~~ (1) A student loan program, student grant program, or other
15 program administered by any agency of the state, except as may be
16 otherwise provided by federal law or the provisions of any specific grant
17 applicable to the federal law, shall not take into account and shall not
18 consider amounts available for the payment of qualified higher education
19 expenses pursuant to the Nebraska educational savings plan trust in
20 determining need and eligibility for student aid.

21 (2) A government program administered by any agency of the state
22 that provides benefits or aid to individuals based on financial need,
23 except as may be otherwise provided by federal law or the provisions of
24 any specific grant applicable to the federal law, shall not take into
25 account and shall not consider contributions made to a participant's
26 account by the participant's employer in determining the income of such
27 participant.

28 Sec. 14. Section 85-1811, Reissue Revised Statutes of Nebraska, is
29 amended to read:

30 ~~85-1811~~ (1) The State Treasurer shall submit an annual audited
31 financial report, prepared in accordance with generally accepted

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

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

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

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

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

19 Sec. 15. Section 85-1812, Reissue Revised Statutes of Nebraska, is
20 amended to read:

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

26 (a) Pursuant to section 9 of this act ~~85-1806~~, a participant may
27 make contributions to an account which is established for the purpose of
28 meeting the qualified ~~higher~~ education expenses of the designated
29 beneficiary of the account;

30 (b) Pursuant to section 9 of this act ~~85-1806~~, a maximum
31 contribution level is established;

1 (c) Pursuant to section 10 of this act ~~85-1807~~, a separate account
2 is established for each beneficiary;

3 (d) Pursuant to section 10 of this act ~~85-1807~~, contributions may
4 only be made in the form of cash;

5 (e) Pursuant to section 10 of this act ~~85-1807~~, a participant or
6 beneficiary shall not provide investment direction regarding program
7 contributions or earnings held by the trust;

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

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

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

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

16 (g) Pursuant to section 12 of this act ~~85-1809~~, a participant shall
17 not pledge any interest in the trust as security for a loan.

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

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

23 Sec. 16. Section 85-1813, Revised Statutes Cumulative Supplement,
24 2020, is amended to read:

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

1 transferred or used by the state for any purposes other than the purposes
2 of the trust.

3 Sec. 17. Section 85-1814, Reissue Revised Statutes of Nebraska, is
4 amended to read:

5 ~~85-1814~~ Nothing in sections 5 to 17 of this act ~~85-1801 to 85-1813~~
6 shall be deemed to prohibit both resident and nonresident participants
7 and designated beneficiaries from being eligible to participate in and
8 benefit from the Nebraska educational savings plan trust and program. It
9 is the intent of the Legislature that funds and income credited to the
10 program fund are fully portable and may be used at any elementary or
11 secondary school or eligible postsecondary educational institution.

12 Sec. 18. Section 85-1815, Revised Statutes Cumulative Supplement,
13 2020, is amended to read:

14 ~~85-1815~~ (1) The Education College Savings Incentive Cash Fund is
15 created. The fund shall be administered by the State Treasurer and shall
16 be used to provide incentive payments under the Employer Matching
17 Contribution Incentive Program established in section 19 of this act
18 ~~85-1816~~ and to provide matching scholarships under the Education College
19 Savings Plan Low-Income Postsecondary Matching Scholarship Program
20 established in section 20 of this act ~~85-1817~~. The State Treasurer shall
21 accept contributions from any private individual or private entity and
22 shall credit all such contributions received to the Education College
23 Savings Incentive Cash Fund for the purpose of providing an ongoing
24 source of funding for the Education College Savings Plan Low-Income
25 Postsecondary Matching Scholarship Program. The matching contributions
26 for which incentive payments are made under the Employer Matching
27 Contribution Incentive Program and the matching scholarships provided
28 under the Education College Savings Plan Low-Income Postsecondary
29 Matching Scholarship Program shall not be used to pay expenses associated
30 with attending kindergarten through grade twelve.

31 (2) The Education College Savings Incentive Cash Fund shall not be

1 considered an asset of the Nebraska educational savings plan trust.

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

5 Sec. 19. Section 85-1816, Revised Statutes Cumulative Supplement,
6 2020, is amended to read:

7 ~~85-1816~~ (1) The Employer Matching Contribution Incentive Program is
8 created. The program shall begin on January 1, 2022, and shall be
9 implemented and administered by the State Treasurer. The purpose of the
10 program is to encourage employers to make matching contributions by
11 providing incentive payments for such contributions.

12 (2) For purposes of this section:

13 (a) Employer means any individual, partnership, limited liability
14 company, association, corporation, business trust, legal representative,
15 or organized group of persons employing one or more employees at any one
16 time, but such term does not include the United States, the state, or any
17 political subdivision thereof; and

18 (b) Matching contribution means a contribution made by an employer
19 to an account established under the Nebraska educational savings plan
20 trust in an amount matching all or part of a contribution made to that
21 same account by an individual who resided in the State of Nebraska during
22 the most recently completed taxable year and is an employee of such
23 employer.

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

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

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

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

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

6 (5) If the State Treasurer determines that the employer qualifies
7 for an incentive payment under this section, the State Treasurer shall
8 approve the application and shall notify the employer of the approval.
9 The State Treasurer may approve applications until the annual limit
10 provided in subsection (6) of this section has been reached. An employer
11 whose application is approved shall receive an incentive payment equal to
12 twenty-five percent of the total matching contributions made during the
13 immediately preceding calendar year, not to exceed two thousand dollars
14 per contributing employee per year. An employer shall not receive an
15 incentive payment for a matching contribution if the employer claimed an
16 income tax deduction pursuant to subdivision (8)(b) of section 77-2716
17 for such matching contribution. Employers shall be limited to one
18 incentive payment per beneficiary. The matching contributions for which
19 incentive payments are made shall not be used to pay expenses associated
20 with attending kindergarten through grade twelve.

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

23 (7) On or before June 30, 2022, and on or before June 30 of each
24 year thereafter, the State Treasurer shall determine the total amount of
25 incentive payments approved for the year, shall transfer such amount from
26 the Education College Savings Plan Expense Fund or the Unclaimed Property
27 Escheat Trust Fund, as determined by the State Treasurer, to the
28 Education College Savings Incentive Cash Fund, and shall distribute such
29 incentive payments to the approved employers.

30 (8) The State Treasurer may adopt and promulgate rules and
31 regulations to carry out the Employer Matching Contribution Incentive

1 Program.

2 Sec. 20. Section 85-1817, Revised Statutes Cumulative Supplement,
3 2020, is amended to read:

4 ~~85-1817~~ (1) Beginning January 1, 2022, there is hereby established
5 the Education College Savings Plan Low-Income Postsecondary Matching
6 Scholarship Program. The purpose of the program is to encourage private
7 contributions to accounts established under the Nebraska educational
8 savings plan trust for the benefit of individuals with limited means. The
9 State Treasurer shall implement and administer the program.

10 (2) A participant shall be eligible for the program if the
11 beneficiary for whom private contributions are made is part of a family
12 whose household income for the most recently completed taxable year is
13 not more than two hundred fifty percent of the federal poverty level and
14 the beneficiary is a resident of the State of Nebraska.

15 (3) Applications for participation in the program shall be submitted
16 to the State Treasurer on forms prescribed by the State Treasurer. If the
17 requirements of subsection (2) of this section are met, the State
18 Treasurer shall approve the application and notify the applicant of the
19 approval. The State Treasurer may approve applications until the annual
20 limit provided in subsection (7) of this section has been reached.

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

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

28 (a) One hundred percent of the participant's contribution if the
29 beneficiary for whom the contribution is made is part of a family whose
30 household income for the most recently completed taxable year is more
31 than two hundred percent of the federal poverty level but not more than

1 two hundred fifty percent of the federal poverty level, not to exceed one
2 thousand dollars annually; or

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

8 (6) Between January 1 and January 31 of each year, the State
9 Treasurer shall transfer the amount necessary to meet the matching
10 obligations of this section for the preceding calendar year, minus the
11 amount of any private contributions received pursuant to subsection (1)
12 of section 18 of this act ~~85-1815~~ during the preceding calendar year,
13 from the Education College Savings Plan Expense Fund or the Unclaimed
14 Property Escheat Trust Fund, as determined by the State Treasurer, to the
15 Education College Savings Incentive Cash Fund. The State Treasurer shall
16 transfer from the Education College Savings Incentive Cash Fund to the
17 Education College Savings Plan Program Fund the amount necessary to meet
18 the matching obligations of this section for the preceding calendar year.
19 The Nebraska educational savings plan trust shall own all scholarships
20 awarded under this section. Neither the participant nor the beneficiary
21 shall have any ownership rights to or interest in, title to, or power or
22 control over such scholarships. Scholarship funds disbursed shall only be
23 used to pay the qualified ~~higher~~ education expenses associated with
24 attending an eligible postsecondary educational institution located in
25 this state and shall not be used to pay expenses associated with
26 attending kindergarten through grade twelve. Any disbursement of such
27 scholarships shall be made before the beneficiary reaches thirty years of
28 age. Once the beneficiary reaches thirty years of age, any unused
29 scholarship funds shall be transferred to the Meadowlark Endowment Fund.

30 (7) The State Treasurer may approve a total of two hundred fifty
31 thousand dollars of scholarships each calendar year under the Education

1 College Savings Plan Low-Income Postsecondary Matching Scholarship
2 Program.

3 Sec. 21. Section 85-2802, Revised Statutes Cumulative Supplement,
4 2020, is amended to read:

5 85-2802 For purposes of the Meadowlark Act:

6 (1) Eligible postsecondary educational institution has the same
7 meaning as in section 6 of this act ~~85-1802~~;

8 (2) Nebraska educational savings plan trust has the same meaning as
9 in section 6 of this act ~~85-1802~~;

10 (3) Qualified ~~higher~~ education expenses has the same meaning as in
11 subdivision (11)(a) of section 6 of this act ~~section 85-1802~~;

12 (4) Qualified individual means an individual born on or after
13 January 1, 2020, who is a resident of this state at the time of birth;
14 and

15 (5) Qualified private contribution means a contribution from an
16 individual or private entity which is made for the purpose of providing a
17 source of funding for the Meadowlark Program established in section
18 85-2804.

19 Sec. 22. Section 85-2803, Revised Statutes Cumulative Supplement,
20 2020, is amended to read:

21 85-2803 (1) There is hereby established in the state treasury a
22 trust fund to be known as the Meadowlark Endowment Fund. The fund shall
23 be administered by the State Treasurer and shall consist of qualified
24 private contributions and any amounts appropriated or transferred to the
25 fund by the Legislature. No General Funds shall be transferred to the
26 Meadowlark Endowment Fund. Any money in the fund available for investment
27 shall be invested by the state investment officer pursuant to the
28 Nebraska Capital Expansion Act and the Nebraska State Funds Investment
29 Act. No portion of the principal of the fund shall be expended for any
30 purpose except investment pursuant to this subsection.

31 (2) The State Treasurer may accept qualified private contributions

1 and shall credit all such contributions received either to the Meadowlark
2 Endowment Fund or to accounts opened under the Meadowlark Program, at the
3 direction of the donor. Such contributions shall not be used to pay
4 expenses associated with attending kindergarten through grade twelve.

5 (3) On or before April 1 of each year, the State Treasurer shall
6 determine the total amount of qualified private contributions received
7 under subsection (2) of this section in the previous calendar year and
8 shall transfer an equal amount from the Education College Savings Plan
9 Expense Fund or the Unclaimed Property Escheat Trust Fund, as determined
10 by the State Treasurer, to the Meadowlark Endowment Fund or to accounts
11 opened under the Meadowlark Program. For any amount transferred from the
12 Education College Savings Plan Expense Fund or the Unclaimed Property
13 Escheat Trust Fund that is not being transferred to the Meadowlark
14 Endowment Fund, the State Treasurer shall evenly distribute such amount
15 to the accounts opened under the Meadowlark Program in the previous
16 calendar year.

17 Sec. 23. Section 85-2804, Revised Statutes Cumulative Supplement,
18 2020, is amended to read:

19 85-2804 (1) The Meadowlark Program is created. The program shall be
20 administered by the State Treasurer. The purpose of the program is to
21 promote access to postsecondary educational opportunities by providing
22 funds to qualified individuals to help pay the qualified ~~higher~~ education
23 expenses associated with attendance at an eligible postsecondary
24 educational institution located in this state.

25 (2) Any qualified individual shall be eligible to participate in the
26 Meadowlark Program. No later than March 1 of each year, the Department of
27 Health and Human Services shall transmit information to the State
28 Treasurer which is necessary to administer the program and to establish
29 whether the children born in the previous calendar year are qualified
30 individuals. Such information shall include, but not be limited to, the
31 full name and residential address of each child's parent or legal

1 guardian and the birthdate of each child. Costs associated with the
2 transfer of information by the Department of Health and Human Services
3 shall be paid from the Education College Savings Plan Expense Fund.

4 (3) Following receipt of the information described in subsection (2)
5 of this section, the State Treasurer shall send a notification explaining
6 the Meadowlark Program to the parent or legal guardian of each qualified
7 individual. The State Treasurer shall provide such parent or legal
8 guardian with the opportunity to exclude his or her child from the
9 program. Any child who is not excluded shall be deemed to be enrolled in
10 the program. Upon enrollment into the program, the child shall have an
11 account opened for him or her under the Nebraska educational savings plan
12 trust.

13 (4) On or before April 1 of each year, the State Treasurer shall
14 determine (a) the number of accounts opened under the Meadowlark Program
15 in the previous calendar year and (b) the amount of investment income
16 generated by the Meadowlark Endowment Fund in the previous calendar year.
17 The State Treasurer shall evenly distribute the investment income from
18 the previous calendar year to the accounts opened in the previous
19 calendar year.

20 (5) The Nebraska educational savings plan trust shall own all
21 accounts opened under the Meadowlark Program. Neither the qualified
22 individual nor his or her parent or legal guardian shall have any
23 ownership rights or interest in, title to, or power or control over such
24 an account.

25 (6) Any disbursement from an account opened under the Meadowlark
26 Program shall be made before the qualified individual reaches thirty
27 years of age. Once a qualified individual reaches thirty years of age,
28 any unused funds in his or her account shall be transferred to the
29 Meadowlark Endowment Fund.

30 (7) Funds disbursed from an account opened under the Meadowlark
31 Program shall only be used to pay the qualified ~~higher~~ education expenses

1 associated with attending an eligible postsecondary educational
2 institution located in this state and shall not be used to pay expenses
3 associated with attending kindergarten through grade twelve.

4 (8) The State Treasurer shall take measures to ensure the security
5 and confidentiality of the information received under subsection (2) of
6 this section.

7 Sec. 24. This act becomes operative on January 1, 2022.

8 Sec. 25. Original sections 68-1201, 85-1801, 85-1805, 85-1811,
9 85-1812, and 85-1814, Reissue Revised Statutes of Nebraska, and sections
10 72-1239.01, 77-3,110, 77-2716, 85-1802, 85-1804, 85-1806, 85-1807,
11 85-1808, 85-1809, 85-1810, 85-1813, 85-1815, 85-1816, 85-1817, 85-2802,
12 85-2803, and 85-2804, Revised Statutes Cumulative Supplement, 2020, are
13 repealed.