

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 864

FINAL READING

Introduced by Gragert, 40; Hunt, 8.

Read first time January 07, 2022

Committee: Revenue

1 A BILL FOR AN ACT relating to the Nebraska educational savings plan
2 trust; to amend section 85-1812, Reissue Revised Statutes of
3 Nebraska, sections 85-1804 and 85-1809, Revised Statutes Cumulative
4 Supplement, 2020, and section 85-1802, Revised Statutes Supplement,
5 2021; to define and redefine terms; to authorize qualified education
6 loan payments as prescribed; to harmonize provisions; and to repeal
7 the original sections.
8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 85-1802, Revised Statutes Supplement, 2021, is
2 amended to read:

3 85-1802 For purposes of sections 85-1801 to 85-1817:

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

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

9 (3) Benefits means the payment of qualified higher education
10 expenses on behalf of a beneficiary or, in the case of a qualified
11 education loan payment, on behalf of a beneficiary or the sibling of a
12 beneficiary by the Nebraska educational savings plan trust ~~during the~~
13 ~~beneficiary's attendance at an eligible educational institution;~~

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

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

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

21 (7) Nonqualified withdrawal refers to (a) a distribution from an
22 account to the extent it is not used to pay the qualified higher
23 education expenses of the beneficiary or, in the case of a qualified
24 education loan payment, to the extent it is not used to pay the qualified
25 higher education expenses of the beneficiary or a sibling of the
26 beneficiary, (b) a qualified rollover permitted by section 529 of the
27 Internal Revenue Code where the funds are transferred to a qualified
28 tuition program sponsored by another state or entity, or (c) a
29 distribution from an account to pay the costs of attending kindergarten
30 through grade twelve;

31 (8) Participant or account owner means an individual, an

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

11 (9) Participation agreement means an agreement between a participant
12 and the Nebraska educational savings plan trust entered into under
13 sections 85-1801 to 85-1817;

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

16 (11) Qualified education loan payment means the payment of principal
17 or interest on a qualified education loan as defined in 26 U.S.C. 221(d),
18 as such section existed on January 1, 2022, of the beneficiary or a
19 sibling of the beneficiary as described in 26 U.S.C. 152(d)(2)(B), as
20 such section existed on January 1, 2022. For purposes of this
21 subdivision, the aggregate total of qualified education loan payments for
22 the qualified education loans of a single beneficiary or sibling shall
23 not exceed ten thousand dollars for all taxable years combined. The
24 aggregate total for qualified education loan payments for the qualified
25 education loans of a sibling of a beneficiary shall be calculated with
26 respect to such sibling and not with respect to the beneficiary and shall
27 include all qualified education loan payments for loans of such sibling,
28 including any qualified education loan payments for which such sibling is
29 the beneficiary or the sibling of a beneficiary;

30 (12) ~~(11)~~ Qualified higher education expenses means the certified
31 costs of tuition and fees, books, supplies, and equipment required (a)

1 for enrollment or attendance at an eligible educational institution or
2 (b) for costs incurred on or after January 1, 2021, for participation in
3 an apprenticeship program registered and certified with the United States
4 Secretary of Labor under 29 U.S.C. 50, as such section existed on January
5 1, 2021. Reasonable room and board expenses, based on the minimum amount
6 applicable for the eligible educational institution during the period of
7 enrollment, shall be included as qualified higher education expenses for
8 those students enrolled on at least a half-time basis. In the case of a
9 special needs beneficiary, expenses for special needs services incurred
10 in connection with enrollment or attendance at an eligible educational
11 institution shall be included as qualified higher education expenses.
12 Expenses paid or incurred on or after January 1, 2022, for the purchase
13 of computer technology or equipment or Internet access and related
14 services, subject to the limitations set forth in section 529 of the
15 Internal Revenue Code, shall be included as qualified higher education
16 expenses. Qualified higher education expenses includes qualified
17 education loan payments. Qualified higher education expenses does not
18 include any amounts in excess of those allowed by section 529 of the
19 Internal Revenue Code;

20 ~~(13)~~ ~~(12)~~ Section 529 of the Internal Revenue Code means such
21 section of the code and the regulations interpreting such section; and

22 ~~(14)~~ ~~(13)~~ Tuition and fees means the quarter or semester charges
23 imposed to attend an eligible educational institution.

24 Sec. 2. Section 85-1804, Revised Statutes Cumulative Supplement,
25 2020, is amended to read:

26 85-1804 The Nebraska educational savings plan trust is created. The
27 State Treasurer is the trustee of the trust and as such is responsible
28 for the administration, operation, and maintenance of the program and has
29 all powers necessary to carry out and effectuate the purposes,
30 objectives, and provisions of sections 85-1801 to 85-1817 pertaining to
31 the administration, operation, and maintenance of the trust and program,

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

16 (1) Enter into agreements with any eligible educational institution,
17 the state, any federal or other state agency, or any other entity to
18 implement sections 85-1801 to 85-1817, except agreements which pertain to
19 the investment of money in the administrative fund, expense fund, or
20 program fund;

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

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

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

29 (5) Procure insurance against any loss in connection with the
30 property, assets, or activities of the trust as provided in section
31 81-8,239.01;

1 (6) Enter into participation agreements with participants;

2 (7) Make payments to eligible educational institutions pursuant to
3 participation agreements on behalf of beneficiaries and make qualified
4 education loan payments on behalf of beneficiaries or their siblings;

5 (8) Make distributions to participants upon the termination of
6 participation agreements pursuant to the provisions, limitations, and
7 restrictions set forth in sections 85-1801 to 85-1817;

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

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

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

26 Sec. 3. Section 85-1809, Revised Statutes Cumulative Supplement,
27 2020, is amended to read:

28 85-1809 (1) A participant retains ownership of all contributions
29 made under a participation agreement up to the date of utilization for
30 payment of qualified higher education expenses for the beneficiary or, in
31 the case of a qualified education loan payment, for the beneficiary or a

1 sibling of the beneficiary. Notwithstanding any other provision of law,
2 any amount credited to any account is not susceptible to any levy,
3 execution, judgment, or other operation of law, garnishment, or other
4 judicial enforcement, and the amount is not an asset or property of
5 either the participant or the beneficiary for the purposes of any state
6 insolvency or inheritance tax laws. All income derived from the
7 investment of the contributions made by the participant shall be
8 considered to be held in trust for the benefit of the beneficiary.

9 (2) If the program created by sections 85-1801 to 85-1817 is
10 terminated prior to payment of qualified higher education expenses ~~for~~
11 ~~the beneficiary,~~ the participant is entitled to receive the fair market
12 value of the account established in the program.

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

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

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

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

31 (7) A participant shall not be entitled to utilize any interest in

1 the Nebraska educational savings plan trust as security for a loan.

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

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

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

16 Sec. 4. Section 85-1812, Reissue Revised Statutes of Nebraska, is
17 amended to read:

18 85-1812 (1) For federal income tax purposes, the Nebraska
19 educational savings plan trust shall be considered a qualified state
20 tuition program exempt from taxation pursuant to section 529 of the
21 Internal Revenue Code. The trust meets the requirements of section 529(b)
22 of the Internal Revenue Code as follows:

23 (a) Pursuant to section 85-1806, a participant may make
24 contributions to an account which is established for the purpose of
25 meeting the qualified higher education expenses of the designated
26 beneficiary of the account or, in the case of a qualified education loan
27 payment, the designated beneficiary of the account or a sibling of the
28 designated beneficiary;

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

31 (c) Pursuant to section 85-1807, a separate account is established

1 for each beneficiary;

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

4 (e) Pursuant to section 85-1807, a participant or beneficiary shall
5 not provide investment direction regarding program contributions or
6 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 or, in the case of a qualified education loan payment, the beneficiary or
10 a sibling of the beneficiary; (ii) made on account of the death of the
11 designated beneficiary if the distribution is not transferred to another
12 beneficiary or paid to the estate of the beneficiary; (iii) not made on
13 account of the permanent disability or mental incapacity of the
14 designated beneficiary; or (iv) made due to scholarship, allowance, or
15 payment receipt in excess of the scholarship, allowance, or payment
16 receipt; and

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

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

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

24 Sec. 5. Original section 85-1812, Reissue Revised Statutes of
25 Nebraska, sections 85-1804 and 85-1809, Revised Statutes Cumulative
26 Supplement, 2020, and section 85-1802, Revised Statutes Supplement, 2021,
27 are repealed.