

LEGISLATIVE BILL 750

Approved by the Governor April 17, 2001

Introduced by D. Pederson, 42; Brown, 6; Dierks, 40; Hilgert, 7; Price, 26; Quandahl, 31; Smith, 48; Tyson, 19

AN ACT relating to the college savings plan; to amend sections 85-1802, 85-1804, 85-1806, 85-1808, and 85-1809, Revised Statutes Supplement, 2000; to change provisions of the plan relating to costs, beneficiaries, and cancellation; to harmonize provisions; to repeal the original sections; and to declare an emergency.

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

Section 1. Section 85-1802, Revised Statutes Supplement, 2000, is amended to read:

85-1802. For purposes of sections 85-1801 to 85-1814:

(1) Administrative fund means the administrative fund created in section 85-1807;

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

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

(4) Endowment fund means the endowment fund created in section 85-1807;

(5) Higher education costs means the certified costs of tuition and fees, books, supplies, and equipment required for enrollment or attendance at an institution of higher education. Reasonable room and board expenses, based on the minimum amount applicable for the institution of higher education during the period of enrollment, shall be included as a higher education cost for those students enrolled on at least a half-time basis. Higher education costs shall not include any amounts in excess of those allowed by section 529 of the Internal Revenue Code;

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

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

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

(9) Participant means an individual, an individual's legal representative, or any other legal entity authorized to establish a savings account under section 529 of the Internal Revenue Code ~~and the regulations interpreting such section~~ who has entered into a participation agreement for the advance payment of higher education costs on behalf of a beneficiary;

(10) Participation agreement means an agreement between a participant and the Nebraska educational savings plan trust entered into under sections 85-1801 to 85-1814;

(11) Program fund means the program fund created in section 85-1807;

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

(13) Section 529 of the Internal Revenue Code means such section of the code and the regulations interpreting such section, as such section and regulations existed on the effective date of this act; and

~~(13)~~ (14) Tuition and fees means the quarter or semester charges imposed to attend an institution of higher education and required as a condition of enrollment.

Sec. 2. Section 85-1804, Revised Statutes Supplement, 2000, is amended to read:

85-1804. Unless held in abeyance as provided in section 85-1803, the Nebraska educational savings plan trust is created. The State Treasurer is the trustee of the trust, is responsible for the administration, operation, and maintenance of the program, and has all powers necessary to carry out and effectuate the purposes, objectives, and provisions of sections 85-1801 to 85-1814 pertaining to the administration, operation, and maintenance of the

trust and program, except that the state investment officer shall invest the money in the administrative fund, endowment fund, and program fund pursuant to policies established by the Nebraska Investment Council. The State Treasurer shall adopt and promulgate rules and regulations to implement sections 85-1801 to 85-1814 and to provide for the efficient administration, operation, and maintenance of the trust and program. The State Treasurer or his or her designee shall also have the power to:

(1) Enter into agreements with any institution of higher education, the state, any federal or other state agency, or any other entity to implement sections 85-1801 to 85-1814;

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

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

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

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

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

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

(8) Enter into participation agreements with participants;

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

(10) Make refunds to participants upon the termination of participation agreements pursuant to the provisions, limitations, and restrictions set forth in sections 85-1801 to 85-1814;

(11) Contract for goods and services and engage personnel as necessary, including consultants, actuaries, managers, legal counsels, and auditors for the purpose of rendering professional, managerial, and technical assistance and advice regarding trust administration and operation; and

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

Sec. 3. Section 85-1806, Revised Statutes Supplement, 2000, is amended to read:

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

(1) A participation agreement shall require a participant to agree to invest a specific amount of money in the trust ~~for a specific period of time~~ for the benefit of a specific beneficiary as allowed by section 529 of the Internal Revenue Code. A participant shall not be required to make an annual contribution on behalf of a beneficiary. ~~The minimum contribution per beneficiary per year, in a year in which a participant is making a contribution, shall be three hundred dollars, and the maximum contribution shall not exceed the amount allowed under section 529 of the Internal Revenue Code. and the regulations interpreting such section.~~ The State Treasurer may set a maximum cumulative contribution, as necessary, to maintain compliance with section 529 of the Internal Revenue Code. Participation agreements may be amended to provide for adjusted levels of contributions based upon changed circumstances or changes in educational plans or to ensure compliance with section 529 of the Internal Revenue Code or any other applicable laws and regulations;

(2) Beneficiaries designated in participation agreements ~~may be designated from date of birth up to, but not including, their eighteenth birthday~~ shall meet the requirements established by the trustee and section 529 of the Internal Revenue Code;

(3) Payment of benefits provided under participation agreements ~~must begin not later than the first full fall academic quarter or semester of enrollment at an institution of higher education following the thirtieth birthday or high school graduation of the beneficiary, whichever is later~~ shall be made in a manner consistent with section 529 of the Internal Revenue Code;

(4) The execution of a participation agreement by the trust shall not guarantee in any way that higher education costs will be equal to

projections and estimates provided by the trust or that the beneficiary named in any participation agreement will (a) be admitted to an institution of higher education, (b) if admitted, be determined a resident for tuition purposes by the institution of higher education, (c) be allowed to continue attendance at the institution of higher education following admission, or (d) graduate from the institution of higher education;

(5) A beneficiary under a participation agreement may be changed as permitted under the rules and regulations adopted under sections 85-1801 to 85-1814 and consistent with section 529 of the Internal Revenue Code upon written request of the participant ~~prior to the date of admission of the beneficiary to an institution of higher education~~ as long as the substitute beneficiary is eligible for participation. Participation agreements may otherwise be freely amended throughout their term in order to enable participants to increase or decrease the level of participation, change the designation of beneficiaries, and carry out similar matters as authorized by rule and regulation; and

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

Sec. 4. Section 85-1808, Revised Statutes Supplement, 2000, is amended to read:

85-1808. (1) A participant may cancel a participation agreement at will. The trustee shall determine and collect a refund penalty by deducting the refund penalty from the returned funds. Collected refund penalties shall be deposited in the administrative fund. Endowment fund money credited to the program account shall be forfeited and returned to the endowment fund. If the participation agreement is canceled by a participant prior to the expiration of two years from the date of original execution of the participation agreement, the participant shall receive one hundred percent of the principal amount of all contributions made by the participant or the fair market value of the participant's account, whichever is less, but any program fund investment income or endowment fund money which has been credited to the participant's account which exceeds the principal amount of all contributions made by the participant shall be retained by the Nebraska educational savings plan trust to cover administration expenses. After a participation agreement has been in effect for two years, a participant shall be entitled to the return upon cancellation of the agreement of the principal amount of all contributions made by the participant plus actual program fund investment income on the contributions, but not endowment fund money, less a refund penalty to be levied by the trust. The penalty shall be deposited in the administrative fund.

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

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

In the event of cancellation of a participation agreement for any of the causes listed in this subsection, the participant shall be entitled to receive the principal amount of all contributions made by the participant under the participation agreement plus the actual program fund investment income earned on the contributions, less any losses incurred on the investment, but not endowment fund money. Notwithstanding any other provisions of this section, under no circumstances shall a participant or beneficiary receive a refund or distribution that is more than the fair market value of the specific account on the applicable liquidation date.

Sec. 5. Section 85-1809, Revised Statutes Supplement, 2000, is amended to read:

85-1809. (1) A participant retains ownership of all contributions made under a participation agreement up to the date of utilization for payment of higher education costs for the beneficiary. Notwithstanding any other provision of law, any amount credited to any account is not susceptible to any levy, execution, judgment, or other operation of law, garnishment, or other judicial enforcement, and the amount is not an asset or property of either the participant or the beneficiary for the purposes of any state insolvency laws. All income derived from the investment of the contributions made by the participant shall be considered to be held in trust for the benefit of the

beneficiary.

(2) If the program created by sections 85-1801 to 85-1814 is terminated prior to payment of higher education costs for the beneficiary, the participant is entitled to a full refund of all contributions made under the participation agreement and all investment income credited on all the contributions. No right to receive investment income shall exist in cases of voluntary participant termination except as provided in section 85-1808 receive the fair market value of the account established in the program, less any assessed refund penalty.

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

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

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

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

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

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

Sec. 6. Original sections 85-1802, 85-1804, 85-1806, 85-1808, and 85-1809, Revised Statutes Supplement, 2000, are repealed.

Sec. 7. Since an emergency exists, this act takes effect when passed and approved according to law.