

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 591

Introduced by Bolz, 29; Coash, 27; Gloor, 35; Pansing Brooks, 28.
Read first time January 21, 2015

Committee: Revenue

1 A BILL FOR AN ACT relating to individuals with disabilities; to amend
2 section 72-1239.01, Reissue Revised Statutes of Nebraska, and
3 sections 68-1201 and 77-2716, Revised Statutes Cumulative
4 Supplement, 2014; to define terms; to create the achieving a better
5 life experience program; to provide powers and duties; to provide
6 for adjustments to taxable income; to harmonize provisions; and to
7 repeal the original sections.
8 Be it enacted by the people of the State of Nebraska,

1 Section 1. For purposes of sections 1 to 9 of this act:

2 (1) Account means an achieving a better life experience account
3 established under the program pursuant to sections 1 to 9 of this act for
4 the purposes of funding future qualified disability expenses of a
5 designated beneficiary;

6 (2) Contracting state means a contracting state as defined under
7 section 529A;

8 (3) Designated administrator means any corporation or other entity
9 whose powers and privileges are provided for in any general or special
10 law, whether for profit or not, designated or retained by the State
11 Treasurer for the purpose of administering, subject to the ongoing
12 supervision of the State Treasurer, all or any portion of the investment,
13 marketing, recordkeeping, administrative, or other functions of the
14 program;

15 (4) Designated beneficiary means the individual with a disability
16 named as the beneficiary of an account;

17 (5) Individual with a disability means an individual who is an
18 eligible individual as defined under section 529A;

19 (6) Program means the qualified program established by the State
20 Treasurer and administered by the State Treasurer and, to the extent so
21 delegated or contracted by the State Treasurer, one or more designated
22 administrators;

23 (7) Qualified disability expenses means qualified disability
24 expenses as defined under section 529A;

25 (8) Qualified program means a qualified ABLE program as defined
26 under section 529A; and

27 (9) Section 529A means section 529A of the Internal Revenue Code of
28 1986, as amended, and any regulations promulgated thereunder.

29 Sec. 2. The achieving a better life experience program is
30 established. The State Treasurer shall implement the program for purposes
31 of administering accounts established to encourage and assist individuals

1 and families in saving private funds for the purpose of supporting
2 individuals with disabilities. Under the program, one or more persons may
3 make contributions to an account to meet the qualified disability
4 expenses of the designated beneficiary of the account.

5 Sec. 3. Unless otherwise permitted under section 529A, the owner of
6 an account shall be the designated beneficiary of the account, except
7 that if the designated beneficiary of the account is a minor or has a
8 custodian or other fiduciary appointed for the purposes of managing such
9 beneficiary's financial affairs, a custodian or fiduciary for such
10 designated beneficiary may serve as the account owner if such form of
11 ownership is permitted or not prohibited under section 529A.

12 Sec. 4. Unless otherwise permitted under section 529A, the
13 designated beneficiary of an account shall be a resident of the state or
14 of a contracting state. The State Treasurer shall determine residency for
15 such purpose in such manner as may be required or permissible under
16 section 529A, or, in the absence of any guidance under section 529A, by
17 such other means as the State Treasurer shall consider advisable for
18 purposes of satisfying the requirements of section 529A.

19 Sec. 5. Any person may make contributions to an account to meet the
20 qualified disability expenses of the designated beneficiary of the
21 account if the account and contributions meet the other requirements of
22 sections 1 to 9 of this act and the rules and regulations adopted and
23 promulgated by the State Treasurer.

24 Sec. 6. The State Treasurer and, to the extent required by the
25 terms of such designation, any designated administrator shall operate the
26 program so that it constitutes a qualified ABLE program in compliance
27 with the requirements of section 529A.

28 Sec. 7. The State Treasurer and any designated administrator shall
29 provide investment options for the investment of amounts contributed to
30 an account. The Nebraska Investment Council may adopt and promulgate
31 rules and regulations to provide for the prudent investment of the assets

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

8 Sec. 8. Funds contributed to the program shall be held in trust by
9 the State Treasurer.

10 The State Treasurer may enter into participation agreements with
11 participants on behalf of beneficiaries pursuant to the following terms
12 and conditions:

13 (1) A participation agreement shall authorize a participant to make
14 contributions to an account which is established for the purpose of
15 supporting an individual with disabilities as allowed by section 529A. A
16 participant shall not be required to make an annual contribution on
17 behalf of a beneficiary, shall not be subject to minimum contribution
18 requirements, and shall not be required to maintain a minimum account
19 balance. The maximum contribution shall not exceed the amount allowed
20 under section 529A. The State Treasurer may set a maximum cumulative
21 contribution, as necessary, to maintain compliance with section 529A.
22 Participation agreements may be amended to provide for adjusted levels of
23 contributions based upon changed circumstances or to ensure compliance
24 with section 529A or any other applicable laws and regulations;

25 (2) Beneficiaries designated in participation agreements shall meet
26 the requirements established by the trustee and section 529A;

27 (3) Payment of benefits provided under participation agreements
28 shall be made in a manner consistent with section 529A;

29 (4) The execution of a participation agreement by the State
30 Treasurer shall not guarantee in any way that expenses will be equal to
31 projections and estimates provided by the trust;

1 (5) A beneficiary under a participation agreement may be changed as
2 permitted under the rules and regulations adopted under sections 1 to 9
3 of this act and consistent with section 529A upon written request of the
4 participant as long as the substitute beneficiary is eligible for
5 participation. Participation agreements may otherwise be freely amended
6 throughout their term in order to enable participants to increase or
7 decrease the level of participation, change the designation of
8 beneficiaries, and carry out similar matters as authorized by rule and
9 regulation; and

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

14 Sec. 9. The State Treasurer may adopt and promulgate rules and
15 regulations, enter into contracts and agreements, charge fees and
16 expenses to the funds held under the program or to persons establishing
17 or owning accounts, make reports, retain designated administrators,
18 employees, experts, and consultants and do all other things necessary or
19 convenient to implement sections 1 to 9 of this act.

20 Sec. 10. Section 68-1201, Revised Statutes Cumulative Supplement,
21 2014, is amended to read:

22 68-1201 In determining eligibility for the program for aid to
23 dependent children pursuant to section 43-512, for the Supplemental
24 Nutrition Assistance Program administered by the State of Nebraska
25 pursuant to the federal Food and Nutrition Act of 2008, 7 U.S.C. 2011 et
26 seq., and for the child care subsidy program established pursuant to
27 section 68-1202, the following shall not be included in determining
28 assets or income:

29 (1) Assets in or income from an educational savings account, a
30 Coverdell educational savings account described in 26 U.S.C. 530, a
31 qualified tuition program established pursuant to 26 U.S.C. 529, or any

1 similar savings account or plan established to save for qualified higher
2 education expenses as defined in section 85-1802;

3 (2) Income from scholarships or grants related to postsecondary
4 education, whether merit-based, need-based, or a combination thereof;~~and~~

5 (3) Income from postsecondary educational work-study programs,
6 whether federally funded, funded by a postsecondary educational
7 institution, or funded from any other source; and -

8 (4) Assets in or income from an account as defined in section 1 of
9 this act.

10 Sec. 11. Section 72-1239.01, Reissue Revised Statutes of Nebraska,
11 is amended to read:

12 72-1239.01 (1)(a) The appointed members of the Nebraska Investment
13 Council shall have the responsibility for the investment management of
14 the assets of the retirement systems administered by the Public Employees
15 Retirement Board as provided in section 84-1503, ~~and~~ the assets of the
16 Nebraska educational savings plan trust created pursuant to sections
17 85-1801 to 85-1814, and the assets of the achieving a better life
18 experience program created pursuant to sections 1 to 9 of this act. The
19 appointed members shall be deemed fiduciaries with respect to the
20 investment of the assets of the retirement systems, ~~and~~ of the Nebraska
21 educational savings plan trust, and of the achieving a better life
22 experience program and shall be held to the standard of conduct of a
23 fiduciary specified in subsection (3) of this section. The nonvoting, ex
24 officio members of the council shall not be deemed fiduciaries.

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

1 experience program, as the case may be, for the exclusive purposes of
2 providing benefits to members, members' beneficiaries, participants, and
3 participants' beneficiaries and defraying reasonable expenses incurred
4 within the limitations and according to the powers, duties, and purposes
5 prescribed by law.

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

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

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

31 Sec. 12. Section 77-2716, Revised Statutes Cumulative Supplement,

1 2014, is amended to read:

2 77-2716 (1) The following adjustments to federal adjusted gross
3 income or, for corporations and fiduciaries, federal taxable income shall
4 be made for interest or dividends received:

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

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

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

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

28 (e)(i) Any amount subtracted under this subsection shall be reduced
29 by any interest on indebtedness incurred to carry the obligations or
30 securities described in this subsection or the investment in the
31 regulated investment company and by any expenses incurred in the

1 production of interest or dividend income described in this subsection to
2 the extent that such expenses, including amortizable bond premiums, are
3 deductible in determining federal taxable income.

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

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

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

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

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

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

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

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

19 (c) The result of the calculation in subdivision (b) of this
20 subsection shall be subtracted from the amount of federal taxable income
21 used in subdivision (a) of this subsection. The result of such
22 calculation, if greater than zero, shall be subtracted from federal
23 taxable income.

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

27 (8)(a) Federal adjusted gross income or, for corporations and
28 fiduciaries, federal taxable income shall be reduced, to the extent
29 included, by income from interest, earnings, and state contributions
30 received from the Nebraska educational savings plan trust created in
31 sections 85-1801 to 85-1814 and the achieving a better life experience

1 program created in sections 1 to 9 of this act.

2 (b) Federal adjusted gross income or, for corporations and
3 fiduciaries, federal taxable income shall be reduced by any contributions
4 as a participant in the Nebraska educational savings plan trust or in the
5 achieving a better life experience program created in sections 1 to 9 of
6 this act, to the extent not deducted for federal income tax purposes, but
7 not to exceed five thousand dollars per married filing separate return or
8 ten thousand dollars for any other return. With respect to a qualified
9 rollover within the meaning of section 529 of the Internal Revenue Code
10 from another state's plan, any interest, earnings, and state
11 contributions received from the other state's educational savings plan
12 which is qualified under section 529 of the code shall qualify for the
13 reduction provided in this subdivision. For contributions by a custodian
14 of a custodial account including rollovers from another custodial
15 account, the reduction shall only apply to funds added to the custodial
16 account after January 1, 2014.

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

22 (9)(a) For income tax returns filed after September 10, 2001, for
23 taxable years beginning or deemed to begin before January 1, 2006, under
24 the Internal Revenue Code of 1986, as amended, federal adjusted gross
25 income or, for corporations and fiduciaries, federal taxable income shall
26 be increased by eighty-five percent of any amount of any federal bonus
27 depreciation received under the federal Job Creation and Worker
28 Assistance Act of 2002 or the federal Jobs and Growth Tax Act of 2003,
29 under section 168(k) or section 1400L of the Internal Revenue Code of
30 1986, as amended, for assets placed in service after September 10, 2001,
31 and before December 31, 2005.

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

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

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

27 (10) For taxable years beginning or deemed to begin on or after
28 January 1, 2003, and before January 1, 2006, under the Internal Revenue
29 Code of 1986, as amended, federal adjusted gross income or, for
30 corporations and fiduciaries, federal taxable income shall be increased
31 by the amount of any capital investment that is expensed under section

1 179 of the Internal Revenue Code of 1986, as amended, that is in excess
2 of twenty-five thousand dollars that is allowed under the federal Jobs
3 and Growth Tax Act of 2003. Twenty percent of the total amount of
4 expensing added back by this subsection for tax years beginning or deemed
5 to begin on or after January 1, 2003, may be subtracted in the first
6 taxable year beginning or deemed to begin on or after January 1, 2006,
7 under the Internal Revenue Code of 1986, as amended, and twenty percent
8 in each of the next four following tax years.

9 (11)(a) Federal adjusted gross income shall be reduced by
10 contributions, up to two thousand dollars per married filing jointly
11 return or one thousand dollars for any other return, and any investment
12 earnings made as a participant in the Nebraska long-term care savings
13 plan under the Long-Term Care Savings Plan Act, to the extent not
14 deducted for federal income tax purposes.

15 (b) Federal adjusted gross income shall be increased by the
16 withdrawals made as a participant in the Nebraska long-term care savings
17 plan under the act by a person who is not a qualified individual or for
18 any reason other than transfer of funds to a spouse, long-term care
19 expenses, long-term care insurance premiums, or death of the participant,
20 including withdrawals made by reason of cancellation of the participation
21 agreement or termination of the plan, to the extent previously deducted
22 as a contribution or as investment earnings.

23 (12) There shall be added to federal adjusted gross income for
24 individuals, estates, and trusts any amount taken as a credit for
25 franchise tax paid by a financial institution under sections 77-3801 to
26 77-3807 as allowed by subsection (5) of section 77-2715.07.

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

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

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

5 (14) For taxable years beginning or deemed to begin on or after
6 January 1, 2015, under the Internal Revenue Code of 1986, as amended, an
7 individual may make a one-time election within two calendar years after
8 the date of his or her retirement from the military to exclude income
9 received as a military retirement benefit by the individual to the extent
10 included in federal adjusted gross income and as provided in this
11 subsection. The individual may elect to exclude forty percent of his or
12 her military retirement benefit income for seven consecutive taxable
13 years beginning with the year in which the election is made or may elect
14 to exclude fifteen percent of his or her military retirement benefit
15 income for all taxable years beginning with the year in which he or she
16 turns sixty-seven years of age. For purposes of this subsection, military
17 retirement benefit means retirement benefits that are periodic payments
18 attributable to service in the uniformed services of the United States
19 for personal services performed by an individual prior to his or her
20 retirement.

21 Sec. 13. Original section 72-1239.01, Reissue Revised Statutes of
22 Nebraska, and sections 68-1201 and 77-2716, Revised Statutes Cumulative
23 Supplement, 2014, are repealed.