

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SEVENTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 115**

Introduced by McCollister, 20.

Read first time January 07, 2021

Committee:

- 1 A BILL FOR AN ACT relating to revenue and taxation; to amend sections
- 2 77-2704.24 and 77-27,132, Reissue Revised Statutes of Nebraska, and
- 3 section 71-7611, Revised Statutes Cumulative Supplement, 2020; to
- 4 impose sales and use taxes on candy and soft drinks; to distribute
- 5 sales tax proceeds to the Nebraska Health Care Cash Fund as
- 6 prescribed; to harmonize provisions; to provide an operative date;
- 7 and to repeal the original sections.
- 8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 71-7611, Revised Statutes Cumulative Supplement,  
2 2020, is amended to read:

3 71-7611 (1) The Nebraska Health Care Cash Fund is created. The State  
4 Treasurer shall transfer (a) sixty million three hundred thousand dollars  
5 on or before July 15, 2014, (b) sixty million three hundred fifty  
6 thousand dollars on or before July 15, 2015, (c) sixty million three  
7 hundred fifty thousand dollars on or before July 15, 2016, (d) sixty  
8 million seven hundred thousand dollars on or before July 15, 2017, (e)  
9 five hundred thousand dollars on or before May 15, 2018, (f) sixty-one  
10 million six hundred thousand dollars on or before July 15, 2018, (g)  
11 sixty-two million dollars on or before July 15, 2019, (h) sixty-one  
12 million four hundred fifty thousand dollars on or before July 15, 2020,  
13 and (i) sixty-one million one hundred thousand dollars on or before every  
14 July 15 thereafter from the Nebraska Medicaid Intergovernmental Trust  
15 Fund and the Nebraska Tobacco Settlement Trust Fund to the Nebraska  
16 Health Care Cash Fund, except that such amount shall be reduced by the  
17 amount of the unobligated balance in the Nebraska Health Care Cash Fund  
18 at the time the transfer is made. The state investment officer shall  
19 advise the State Treasurer on the amounts to be transferred first from  
20 the Nebraska Medicaid Intergovernmental Trust Fund until the fund balance  
21 is depleted and from the Nebraska Tobacco Settlement Trust Fund  
22 thereafter in order to sustain such transfers in perpetuity. The state  
23 investment officer shall report electronically to the Legislature on or  
24 before October 1 of every even-numbered year on the sustainability of  
25 such transfers. The Nebraska Health Care Cash Fund shall also include  
26 money received pursuant to sections section 77-2602 and 77-27,132. Except  
27 as otherwise provided by law, no more than the amounts specified in this  
28 subsection may be appropriated or transferred from the Nebraska Health  
29 Care Cash Fund in any fiscal year.

30 The State Treasurer shall transfer ten million dollars from the  
31 Nebraska Medicaid Intergovernmental Trust Fund to the General Fund on

1 June 28, 2018, and June 28, 2019.

2 Except as otherwise provided in subsection (6) of this section, it  
3 is the intent of the Legislature that no additional programs are funded  
4 through the Nebraska Health Care Cash Fund until funding for all programs  
5 with an appropriation from the fund during FY2012-13 are restored to  
6 their FY2012-13 levels.

7 (2) Any money in the Nebraska Health Care Cash Fund available for  
8 investment shall be invested by the state investment officer pursuant to  
9 the Nebraska Capital Expansion Act and the Nebraska State Funds  
10 Investment Act.

11 (3) The University of Nebraska and postsecondary educational  
12 institutions having colleges of medicine in Nebraska and their affiliated  
13 research hospitals in Nebraska, as a condition of receiving any funds  
14 appropriated or transferred from the Nebraska Health Care Cash Fund,  
15 shall not discriminate against any person on the basis of sexual  
16 orientation.

17 (4) The State Treasurer shall transfer fifty thousand dollars on or  
18 before July 15, 2016, from the Nebraska Health Care Cash Fund to the  
19 Board of Regents of the University of Nebraska for the University of  
20 Nebraska Medical Center. It is the intent of the Legislature that these  
21 funds be used by the College of Public Health for workforce training.

22 (5) It is the intent of the Legislature that the cost of the staff  
23 and operating costs necessary to carry out the changes made by Laws 2018,  
24 LB439, and not covered by fees or federal funds shall be funded from the  
25 Nebraska Health Care Cash Fund for fiscal years 2018-19 and 2019-20.

26 (6) It is the intent of the Legislature to fund the grants to be  
27 awarded pursuant to section 75-1101 with the Nebraska Health Care Cash  
28 Fund for FY2019-20 and FY2020-21.

29 Sec. 2. Section 77-2704.24, Reissue Revised Statutes of Nebraska, is  
30 amended to read:

31 77-2704.24 (1) Sales and use taxes shall not be imposed on the gross

1 receipts from the sale, lease, or rental of and the storage, use, or  
2 other consumption in this state of food or food ingredients except for  
3 prepared food and food sold through vending machines.

4 (2) For purposes of this section:

5 (a) Alcoholic beverages means beverages that are suitable for human  
6 consumption and contain one-half of one percent or more of alcohol by  
7 volume;

8 (b) Candy means a preparation of sugar, honey, or other natural or  
9 artificial sweeteners in combination with chocolate, fruits, nuts, or  
10 other ingredients or flavorings in the form of bars, drops, or pieces.  
11 Candy shall not include any preparation containing flour and shall  
12 require no refrigeration;

13 (c) ~~(b)~~ Dietary supplement means any product, other than tobacco,  
14 intended to supplement the diet that contains one or more of the  
15 following dietary ingredients: (i) A vitamin, (ii) a mineral, (iii) an  
16 herb or other botanical, (iv) an amino acid, (v) a dietary substance for  
17 use by humans to supplement the diet by increasing the total dietary  
18 intake, or (vi) a concentrate, metabolite, constituent, extract, or  
19 combination of any ingredients described in subdivisions ~~(2)(c)(i)~~ ~~(2)(b)~~  
20 ~~(i)~~ through (v) of this section; that is intended for ingestion in  
21 tablet, capsule, powder, softgel, gelcap, or liquid form or, if not  
22 intended for ingestion in such a form, is not presented as conventional  
23 food and is not represented for use as a sole item of a meal or of the  
24 diet; and that is required to be labeled as a dietary supplement,  
25 identifiable by the supplemental facts box found on the label and as  
26 required pursuant to 21 C.F.R. 101.36, as such regulation existed on  
27 January 1, 2003;

28 (d) ~~(c)~~ Food and food ingredients means substances, whether in  
29 liquid, concentrated, solid, frozen, dried, or dehydrated form, that are  
30 sold for ingestion or chewing by humans and are consumed for their taste  
31 or nutritional value. Food and food ingredients does not include

1 alcoholic beverages, dietary supplements, ~~or~~ tobacco, candy, or soft  
2 drinks;

3 (e) ~~(d)~~ Food sold through vending machines means food that is  
4 dispensed from a machine or other mechanical device that accepts payment;

5 (f) ~~(e)~~ Prepared food means:

6 (i) Food sold with eating utensils provided by the seller, including  
7 plates, knives, forks, spoons, glasses, cups, napkins, or straws. A plate  
8 does not include a container or packaging used to transport the food; or

9 (ii) Two or more food ingredients mixed or combined by the seller  
10 for sale as a single item and food sold in a heated state or heated by  
11 the seller, except:

12 (A) Food that is only cut, repackaged, or pasteurized by the seller;

13 (B) Eggs, fish, meat, poultry, and foods containing these raw animal  
14 foods requiring cooking by the consumer as recommended by the federal  
15 Food and Drug Administration in chapter 3, part 401.11 of its Food Code,  
16 as it existed on January 1, 2003, so as to prevent food borne illnesses;

17 (C) Food sold by a seller whose proper primary North American  
18 Industry Classification System classification is manufacturing in sector  
19 311, except subsector 3118, bakeries;

20 (D) Food sold in an unheated state by weight or volume as a single  
21 item;

22 (E) Bakery items, including bread, rolls, buns, biscuits, bagels,  
23 croissants, pastries, donuts, danish, cakes, tortes, pies, tarts,  
24 muffins, bars, cookies, and tortillas; and

25 (F) Food that ordinarily requires additional cooking to finish the  
26 product to its desired final condition; ~~and~~

27 (g) Soft drinks means nonalcoholic beverages that contain natural or  
28 artificial sweeteners. Soft drinks do not include beverages that contain  
29 milk or milk products, soy, rice or similar milk substitutes, or greater  
30 than fifty percent of vegetable or fruit juice by volume; and

31 (h) ~~(f)~~ Tobacco means cigarettes, cigars, chewing or pipe tobacco,

1 or any other item that contains tobacco.

2 Sec. 3. Section 77-27,132, Reissue Revised Statutes of Nebraska, is  
3 amended to read:

4 77-27,132 (1) There is hereby created a fund to be designated the  
5 Revenue Distribution Fund which shall be set apart and maintained by the  
6 Tax Commissioner. Revenue not required to be credited to the General Fund  
7 or any other specified fund may be credited to the Revenue Distribution  
8 Fund. Credits and refunds of such revenue shall be paid from the Revenue  
9 Distribution Fund. The balance of the amount credited, after credits and  
10 refunds, shall be allocated as provided by the statutes creating such  
11 revenue.

12 (2) The Tax Commissioner shall pay to a depository bank designated  
13 by the State Treasurer all amounts collected under the Nebraska Revenue  
14 Act of 1967. The Tax Commissioner shall present to the State Treasurer  
15 bank receipts showing amounts so deposited in the bank, and of the  
16 amounts so deposited the State Treasurer shall:

17 (a) For transactions occurring on or after October 1, 2014, and  
18 before October 1, 2022, credit to the Game and Parks Commission Capital  
19 Maintenance Fund all of the proceeds of the sales and use taxes imposed  
20 pursuant to section 77-2703 on the sale or lease of motorboats as defined  
21 in section 37-1204, personal watercraft as defined in section 37-1204.01,  
22 all-terrain vehicles as defined in section 60-103, and utility-type  
23 vehicles as defined in section 60-135.01;

24 (b) Credit to the Highway Trust Fund all of the proceeds of the  
25 sales and use taxes derived from the sale or lease for periods of more  
26 than thirty-one days of motor vehicles, trailers, and semitrailers,  
27 except that the proceeds equal to any sales tax rate provided for in  
28 section 77-2701.02 that is in excess of five percent derived from the  
29 sale or lease for periods of more than thirty-one days of motor vehicles,  
30 trailers, and semitrailers shall be credited to the Highway Allocation  
31 Fund;

1 (c) For transactions occurring on or after July 1, 2013, and before  
2 July 1, 2033, of the proceeds of the sales and use taxes derived from  
3 transactions other than those listed in subdivisions (2)(a) and (b) of  
4 this section from a sales tax rate of one-quarter of one percent, credit  
5 monthly eighty-five percent to the State Highway Capital Improvement Fund  
6 and fifteen percent to the Highway Allocation Fund;~~and~~

7 (d) Of the proceeds of the sales and use taxes derived from  
8 transactions other than those listed in subdivisions (2)(a) and (b) of  
9 this section, credit to the Property Tax Credit Cash Fund the amount  
10 certified under section 77-27,237, if any such certification is made;  
11 and -

12 (e) Credit to the Nebraska Health Care Cash Fund the sales and use  
13 tax proceeds that are derived from the sale of candy and soft drinks, as  
14 such terms are defined in section 77-2704.24, excluding the amount of  
15 such proceeds that is required to be credited to the State Highway  
16 Capital Improvement Fund and the Highway Allocation Fund under  
17 subdivision (2)(c) of this section. The Tax Commissioner shall determine  
18 the amount to be credited to the Nebraska Health Care Cash Fund under  
19 this subdivision on an annual basis.

20 The balance of all amounts collected under the Nebraska Revenue Act  
21 of 1967 shall be credited to the General Fund.

22 Sec. 4. This act becomes operative on October 1, 2021.

23 Sec. 5. Original sections 77-2704.24 and 77-27,132, Reissue Revised  
24 Statutes of Nebraska, and section 71-7611, Revised Statutes Cumulative  
25 Supplement, 2020, are repealed.