

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 459

Introduced by Cavanaugh, M., 6.

Read first time January 15, 2021

Committee:

1 A BILL FOR AN ACT relating to revenue and taxation; to amend sections
2 77-4001, 77-4002, 77-4007, and 77-4025, Reissue Revised Statutes of
3 Nebraska, and sections 71-7611 and 77-2602, Revised Statutes
4 Cumulative Supplement, 2020; to state intent regarding use of funds
5 in the Nebraska Health Care Cash Fund; to increase the cigarette tax
6 and distribute the tax proceeds as prescribed; to define and
7 redefine terms under the Tobacco Products Tax Act; to distribute
8 tobacco products tax proceeds as prescribed; to harmonize
9 provisions; to provide an operative date; to repeal the original
10 sections; and to declare an emergency.

11 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 77-4025. 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 (7) Of the additional revenue credited to the Nebraska Health Care
30 Cash Fund as a result of the changes made by this legislative bill, it is
31 the intent of the Legislature that:

1 (a) An additional two million dollars be appropriated from the
2 Nebraska Health Care Cash Fund to the Tobacco Prevention and Control
3 Program for fiscal year 2021-22 and each fiscal year thereafter;

4 (b) Thirty million dollars be appropriated from the Nebraska Health
5 Care Cash Fund to the Department of Labor for each of fiscal years
6 2021-22 and 2022-23 for the purposes of paying the upfront administrative
7 costs of any paid family and medical leave program that may be enacted by
8 the Legislature; and

9 (c) Twenty-six million dollars be appropriated from the Nebraska
10 Health Care Cash Fund to the Department of Health and Human Services for
11 fiscal year 2021-22 and each fiscal year thereafter for the purposes of
12 paying for maternal health care projects that may be enacted by the
13 Legislature.

14 Sec. 2. Section 77-2602, Revised Statutes Cumulative Supplement,
15 2020, is amended to read:

16 77-2602 (1) Every stamping agent engaged in distributing or selling
17 cigarettes at wholesale in this state shall pay to the Tax Commissioner
18 of this state a special privilege tax. This shall be in addition to all
19 other taxes. It shall be paid prior to or at the time of the sale, gift,
20 or delivery to the retail dealer in the several amounts as follows: On
21 each package of cigarettes containing not more than twenty cigarettes,
22 two dollars and fourteen ~~sixty-four~~ cents per package; and on packages
23 containing more than twenty cigarettes, the same tax as provided on
24 packages containing not more than twenty cigarettes for the first twenty
25 cigarettes in each package and a tax of one-twentieth of the tax on the
26 first twenty cigarettes on each cigarette in excess of twenty cigarettes
27 in each package.

28 (2) Beginning July 1, 2021 ~~October 1, 2004~~, the State Treasurer
29 shall place the equivalent of eighty-six and one-half ~~forty-nine~~ cents of
30 such tax in the General Fund. The State Treasurer shall reduce the amount
31 placed in the General Fund under this subsection by the amount prescribed

1 in subdivision (3)(d) of this section. For purposes of this section, the
2 equivalent of a specified number of cents of the tax shall mean that
3 portion of the proceeds of the tax equal to the specified number divided
4 by the tax rate per package of cigarettes containing not more than twenty
5 cigarettes.

6 (3) The State Treasurer shall distribute the remaining proceeds of
7 such tax in the following order:

8 (a) First, beginning July 1, 1980, the State Treasurer shall place
9 the equivalent of one cent of such tax in the Nebraska Outdoor Recreation
10 Development Cash Fund. For fiscal year distributions occurring after
11 FY1998-99, the distribution under this subdivision shall not be less than
12 the amount distributed under this subdivision for FY1997-98. Any money
13 needed to increase the amount distributed under this subdivision to the
14 FY1997-98 amount shall reduce the distribution to the General Fund;

15 (b) Second, beginning July 1, 1993, the State Treasurer shall place
16 the equivalent of three cents of such tax in the Health and Human
17 Services Cash Fund to carry out sections 81-637 to 81-640. For fiscal
18 year distributions occurring after FY1998-99, the distribution under this
19 subdivision shall not be less than the amount distributed under this
20 subdivision for FY1997-98. Any money needed to increase the amount
21 distributed under this subdivision to the FY1997-98 amount shall reduce
22 the distribution to the General Fund;

23 (c) Third, beginning October 1, 2002, and continuing until all the
24 purposes of the Deferred Building Renewal Act have been fulfilled, the
25 State Treasurer shall place the equivalent of seven cents of such tax in
26 the Building Renewal Allocation Fund. The distribution under this
27 subdivision shall not be less than the amount distributed under this
28 subdivision for FY1997-98. Any money needed to increase the amount
29 distributed under this subdivision to the FY1997-98 amount shall reduce
30 the distribution to the General Fund;

31 (d) Fourth, until July 1, 2009, the State Treasurer shall place in

1 the Municipal Infrastructure Redevelopment Fund the sum of five hundred
2 twenty thousand dollars each fiscal year to carry out the Municipal
3 Infrastructure Redevelopment Fund Act. The Legislature shall appropriate
4 the sum of five hundred twenty thousand dollars each year for fiscal year
5 2003-04 through fiscal year 2008-09;

6 (e) Fifth, beginning July 1, 2001, and continuing until June 30,
7 2008, the State Treasurer shall place the equivalent of two cents of such
8 tax in the Information Technology Infrastructure Fund. The distribution
9 under this subdivision shall not be less than two million fifty thousand
10 dollars. Any money needed to increase the amount distributed under this
11 subdivision to two million fifty thousand dollars shall reduce the
12 distribution to the General Fund;

13 (f) Sixth, beginning July 1, 2008, and continuing until June 30,
14 2009, the State Treasurer shall place the equivalent of two million fifty
15 thousand dollars of such tax in the Nebraska Public Safety Communication
16 System Cash Fund. Beginning July 1, 2009, and continuing until June 30,
17 2016, the State Treasurer shall place the equivalent of two million five
18 hundred seventy thousand dollars of such tax in the Nebraska Public
19 Safety Communication System Cash Fund. Beginning July 1, 2016, and every
20 fiscal year thereafter, the State Treasurer shall place the equivalent of
21 three million eight hundred twenty thousand dollars of such tax in the
22 Nebraska Public Safety Communication System Cash Fund. If necessary, the
23 State Treasurer shall reduce the distribution of tax proceeds to the
24 General Fund pursuant to subsection (2) of this section by such amount
25 required to fulfill the distribution pursuant to this subdivision; and

26 (g) Seventh, beginning July 1, 2021 ~~2016~~, and every fiscal year
27 thereafter, the State Treasurer shall place the equivalent of one dollar
28 and twelve and one-half cents of such tax plus an additional one million
29 two hundred fifty thousand dollars of such tax in the Nebraska Health
30 Care Cash Fund. If necessary, the State Treasurer shall reduce the
31 distribution of tax proceeds to the General Fund pursuant to subsection

1 (2) of this section by such amount required to fulfill the distribution
2 pursuant to this subdivision.

3 (4) If, after distributing the proceeds of such tax pursuant to
4 subsections (2) and (3) of this section, any proceeds of such tax remain,
5 the State Treasurer shall place such remainder in the Nebraska Capital
6 Construction Fund.

7 (5) The Legislature hereby finds and determines that the projects
8 funded from the Municipal Infrastructure Redevelopment Fund and the
9 Building Renewal Allocation Fund are of critical importance to the State
10 of Nebraska. It is the intent of the Legislature that the allocations and
11 appropriations made by the Legislature to such funds or, in the case of
12 allocations for the Municipal Infrastructure Redevelopment Fund, to the
13 particular municipality's account not be reduced until all contracts and
14 securities relating to the construction and financing of the projects or
15 portions of the projects funded from such funds or accounts of such funds
16 are completed or paid or, in the case of the Municipal Infrastructure
17 Redevelopment Fund, the earlier of such date or July 1, 2009, and that
18 until such time any reductions in the cigarette tax rate made by the
19 Legislature shall be simultaneously accompanied by equivalent reductions
20 in the amount dedicated to the General Fund from cigarette tax revenue.
21 Any provision made by the Legislature for distribution of the proceeds of
22 the cigarette tax for projects or programs other than those to (a) the
23 General Fund, (b) the Nebraska Outdoor Recreation Development Cash Fund,
24 (c) the Health and Human Services Cash Fund, (d) the Municipal
25 Infrastructure Redevelopment Fund, (e) the Building Renewal Allocation
26 Fund, (f) the Information Technology Infrastructure Fund, (g) the
27 Nebraska Public Safety Communication System Cash Fund, and (h) the
28 Nebraska Health Care Cash Fund shall not be made a higher priority than
29 or an equal priority to any of the programs or projects specified in
30 subdivisions (a) through (h) of this subsection.

31 Sec. 3. Section 77-4001, Reissue Revised Statutes of Nebraska, is

1 amended to read:

2 77-4001 Sections 77-4001 to 77-4025 and section 5 of this act shall
3 be known and may be cited as the Tobacco Products Tax Act.

4 Sec. 4. Section 77-4002, Reissue Revised Statutes of Nebraska, is
5 amended to read:

6 77-4002 For purposes of the Tobacco Products Tax Act, unless the
7 context otherwise requires, the definitions found in sections 77-4003 to
8 77-4007 and section 5 of this act shall be used.

9 Sec. 5. Electronic nicotine delivery system has the same meaning as
10 in section 28-1418.01.

11 Sec. 6. Section 77-4007, Reissue Revised Statutes of Nebraska, is
12 amended to read:

13 77-4007 Tobacco products shall mean (1) cigars, (2) cheroots, (3)
14 stogies, (4) periques, (5) granulated, plug cut, crimp cut, ready rubbed,
15 and other smoking tobacco, (6) snuff, (7) snuff flour, (8) cavendish, (9)
16 plug and twist tobacco, (10) fine cut and other chewing tobacco, (11)
17 shorts, refuse scraps, clippings, cuttings, and sweepings of tobacco, ~~and~~
18 (12) other kinds and forms of tobacco, prepared in such manner as to be
19 suitable for chewing or smoking in a pipe or otherwise or both for
20 chewing and smoking, and (13) electronic nicotine delivery systems,
21 except that tobacco products shall not mean cigarettes as defined in
22 section 77-2601.

23 Sec. 7. Section 77-4025, Reissue Revised Statutes of Nebraska, is
24 amended to read:

25 77-4025 (1) There is hereby created a cash fund in the Department
26 of Revenue to be known as the Tobacco Products Administration Cash Fund.
27 Except as otherwise provided in subsection (2) of this section, all ~~All~~
28 revenue collected or received by the Tax Commissioner from the license
29 fees and taxes imposed by the Tobacco Products Tax Act shall be remitted
30 to the State Treasurer for credit to the Tobacco Products Administration
31 Cash Fund. All costs required for administration of the Tobacco Products

1 Tax Act shall be paid from such fund. Credits and refunds allowed under
2 the act shall be paid from the Tobacco Products Administration Cash Fund.
3 Any receipts in the Tobacco Products Administration Cash Fund, after
4 credits and refunds, in excess of the amounts sufficient to cover the
5 costs of administration may be transferred to the General Fund at the
6 direction of the Legislature. Any money in the Tobacco Products
7 Administration Cash Fund available for investment shall be invested by
8 the state investment officer pursuant to the Nebraska Capital Expansion
9 Act and the Nebraska State Funds Investment Act.

10 (2) All revenue collected or received by the Tax Commissioner from
11 the taxes imposed by the Tobacco Products Tax Act on electronic nicotine
12 delivery systems shall be remitted to the State Treasurer for credit to
13 the Nebraska Health Care Cash Fund.

14 Sec. 8. This act becomes operative on July 1, 2021.

15 Sec. 9. Original sections 77-4001, 77-4002, 77-4007, and 77-4025,
16 Reissue Revised Statutes of Nebraska, and sections 71-7611 and 77-2602,
17 Revised Statutes Cumulative Supplement, 2020, are repealed.

18 Sec. 10. Since an emergency exists, this act takes effect when
19 passed and approved according to law.