

LEGISLATURE OF NEBRASKA
ONE HUNDRED SECOND LEGISLATURE
SECOND SESSION
LEGISLATIVE BILL 753

Introduced by Avery, 28.

Read first time January 04, 2012

Committee: Revenue

A BILL

1 FOR AN ACT relating to health care funding; to amend sections 71-7605
2 and 77-2704.24, Reissue Revised Statutes of Nebraska; to
3 create funds and provide funding for childhood obesity
4 prevention measures as prescribed; to provide powers and
5 duties of the Department of Revenue, the State Department
6 of Education, and the Department of Health and Human
7 Services; to provide for sales taxation of soft drinks as
8 prescribed; to harmonize provisions; to provide an
9 operative date; and to repeal the original sections.
10 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 71-7605, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 71-7605 Sections 71-7605 to 71-7611 and section 2 of this
4 act shall be known and may be cited as the Nebraska Health Care
5 Funding Act.

6 Sec. 2. (1) No later than August 1, 2013, and each August
7 1 thereafter, the Department of Revenue shall calculate the total
8 annual amount to be transferred pursuant to this section and shall
9 notify the State Treasurer of such amount. The total annual amount
10 shall equal the amount of sales and use taxes collected on the sale
11 of soft drinks as defined in section 77-2704.24 during the preceding
12 fiscal year minus the amount of such sales and use taxes that was
13 credited to the State Highway Capital Improvement Fund or the Highway
14 Allocation Fund pursuant to subdivision (2)(b) of section 77-27,132.
15 No later than September 1, 2013, and each September 1 thereafter, the
16 State Treasurer shall transfer ninety percent of the total annual
17 amount from the General Fund to the State Department of Education
18 Obesity Prevention Fund and shall transfer ten percent of the total
19 annual amount from the General Fund to the Department of Health and
20 Human Services Obesity Prevention Fund.

21 (2)(a) The State Department of Education Obesity
22 Prevention Fund is created. The fund shall consist of amounts
23 transferred under subsection (1) of this section and shall be
24 administered by the State Department of Education. The department
25 shall use the fund as follows:

1 (i) The first one hundred thousand dollars shall be used
2 to establish and maintain a statewide data base to monitor student
3 obesity and fitness; and

4 (ii) The remaining funds shall be distributed to school
5 districts to be used to assess student health, weight, and fitness,
6 to increase physical education and student physical activity, to
7 improve school meal programs, to coordinate school health programs,
8 to support school district wellness coordinators, and to provide
9 other evidence-based programs to prevent obesity and improve fitness.
10 Twenty percent of the funds distributed under this subdivision shall
11 be distributed in equal amounts to each school district. Eighty
12 percent of the funds distributed under this subdivision shall be
13 distributed proportionally based on the school district's average
14 daily membership as defined in section 79-1003.

15 (b) Any money in the State Department of Education
16 Obesity Prevention Fund available for investment shall be invested by
17 the state investment officer pursuant to the Nebraska Capital
18 Expansion Act and the Nebraska State Funds Investment Act.

19 (3)(a) The Department of Health and Human Services
20 Obesity Prevention Fund is created. The fund shall consist of amounts
21 transferred under subsection (1) of this section and shall be
22 administered by the Department of Health and Human Services. The
23 department shall use the fund to distribute amounts to local public
24 health departments as defined in section 71-1626 to support programs
25 to improve and promote good health habits, healthy eating, and

1 physical activity for children in child care settings.

2 (b) Any money in the Department of Health and Human
3 Services Obesity Prevention Fund available for investment shall be
4 invested by the state investment officer pursuant to the Nebraska
5 Capital Expansion Act and the Nebraska State Funds Investment Act.

6 Sec. 3. Section 77-2704.24, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 77-2704.24 (1) Sales and use taxes shall not be imposed
9 on the gross receipts from the sale, lease, or rental of and the
10 storage, use, or other consumption in this state of food or food
11 ingredients except for prepared food and food sold through vending
12 machines.

13 (2) For purposes of this section:

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

17 (b) Dietary supplement means any product, other than
18 tobacco, intended to supplement the diet that contains one or more of
19 the following dietary ingredients: (i) A vitamin, (ii) a mineral,
20 (iii) an herb or other botanical, (iv) an amino acid, (v) a dietary
21 substance for use by humans to supplement the diet by increasing the
22 total dietary intake, or (vi) a concentrate, metabolite, constituent,
23 extract, or combination of any ingredients described in subdivisions
24 (2)(b)(i) through (v) of this section; that is intended for ingestion
25 in tablet, capsule, powder, softgel, gelcap, or liquid form or, if

1 not intended for ingestion in such a form, is not presented as
2 conventional food and is not represented for use as a sole item of a
3 meal or of the diet; and that is required to be labeled as a dietary
4 supplement, identifiable by the supplemental facts box found on the
5 label and as required pursuant to 21 C.F.R. 101.36, as such
6 regulation existed on January 1, 2003;

7 (c) Food and food ingredients means substances, whether
8 in liquid, concentrated, solid, frozen, dried, or dehydrated form,
9 that are sold for ingestion or chewing by humans and are consumed for
10 their taste or nutritional value. Food and food ingredients does not
11 include alcoholic beverages, dietary supplements, soft drinks, or
12 tobacco;

13 (d) Food sold through vending machines means food that is
14 dispensed from a machine or other mechanical device that accepts
15 payment;

16 (e) Prepared food means:

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

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

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

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

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

9 (D) Food sold in an unheated state by weight or volume as
10 a single item; and

11 (E) Bakery items, including bread, rolls, buns, biscuits,
12 bagels, croissants, pastries, donuts, danish, cakes, tortes, pies,
13 tarts, muffins, bars, cookies, and tortillas; ~~and~~

14 (f) Soft drinks means nonalcoholic beverages that contain
15 natural or artificial sweeteners. Soft drinks do not include
16 beverages that contain milk or milk products, soy, rice, or similar
17 milk substitutes, or one hundred percent vegetable or fruit juice;
18 and

19 ~~(f)-(g)~~ Tobacco means cigarettes, cigars, chewing or pipe
20 tobacco, or any other item that contains tobacco.

21 Sec. 4. This act becomes operative on October 1, 2012.

22 Sec. 5. Original sections 71-7605 and 77-2704.24, Reissue
23 Revised Statutes of Nebraska, are repealed.