

LEGISLATURE OF NEBRASKA
NINETY-EIGHTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 37

Introduced by Price, 26

Read first time January 9, 2003

Committee: Business and Labor

A BILL

1 FOR AN ACT relating to labor; to amend section 77-2716, Revised
2 Statutes Supplement, 2002; to adopt the Wage Replacement
3 Savings Plan Act; to harmonize provisions; and to repeal
4 the original section.

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

1 Section 1. Sections 1 to 11 of this act shall be known
2 and may be cited as the Wage Replacement Savings Plan Act.

3 Sec. 2. It is the intent of the Legislature to provide a
4 mechanism for wage replacement by employees who anticipate probable
5 or potential leaves of absence from work under the federal Family
6 and Medical Leave Act of 1993, 29 U.S.C. 2601 et seq. The federal
7 act grants up to twelve weeks of unpaid leave to an employee
8 because of nonwork related illness or to care for a newborn or
9 adopted child or a seriously ill family member. The federal act
10 applies to employees of businesses that employ fifty or more
11 employees. Most employees covered under the federal act have not
12 taken advantage of the law because they could not afford the loss
13 of wages. The Nebraska wage replacement savings plan trust created
14 in section 4 of this act would allow an employee, as a participant
15 in the trust, to deposit money into his or her account in the trust
16 which is accessed by the employer to provide wages to the employee
17 during an otherwise unpaid leave of absence under the federal act.
18 The participant's deposit into the trust shall be exempt from state
19 income tax up to certain limitations.

20 Sec. 3. A participant in the Nebraska wage replacement
21 savings plan trust shall be an eligible employee as defined in 29
22 U.S.C. 2611 of the federal Family and Medical Leave Act of 1993.

23 Sec. 4. The Nebraska wage replacement savings plan trust
24 is created. The State Treasurer is the trustee of the trust, is
25 responsible for the administration, operation, and maintenance of
26 the program, and has all powers necessary to administer, operate,
27 and maintain the trust and the wage replacement program of the Wage
28 Replacement Savings Plan Act. The State Treasurer or his or her

1 designee may contract for goods and services and engage personnel
2 as necessary, including consultants, actuaries, managers, legal
3 counsels, and auditors to render professional, managerial, and
4 technical assistance and advice regarding trust administration and
5 operation. The State Treasurer may establish, impose, and collect
6 administrative fees and reasonable service charges in connection
7 with the trust. The state investment officer shall invest the
8 money of the trust pursuant to policies established by the Nebraska
9 Investment Council.

10 Sec. 5. (1) The Nebraska wage replacement savings plan
11 trust shall enter into participation agreements with participants
12 which require a participant to invest a specific amount of money in
13 the trust as a lump sum or according to a stated payment schedule.
14 Participation agreements may be amended to enable participants to
15 increase or decrease the level of participation.

16 (2) Each participation agreement shall provide that the
17 agreement may be canceled upon the terms and conditions and upon
18 payment of applicable fees and costs stated in the rules and
19 regulations. If a participant cancels the participation agreement
20 prior to use of any of the money deposited, the State Treasurer
21 shall determine and collect a penalty by deducting the penalty from
22 the returned funds. Collected penalties shall be credited to the
23 administrative fund. If the participation agreement is cancelled
24 or the program created by the Wage Replacement Savings Plan Act is
25 terminated, a participant is entitled to receive the principal
26 amount of all contributions made by the participant under the
27 participation agreement plus the actual program fund investment
28 income earned on the contributions, less any losses incurred on the

1 investment. A participant shall not receive a refund or
2 distribution that is more than the fair market value of the
3 specific account on the applicable liquidation date.

4 Sec. 6. The State Treasurer shall segregate money
5 received by the Nebraska wage replacement savings plan trust into
6 the program fund and the administrative fund. All money paid by
7 participants under a participation agreement shall be deposited as
8 received into separate accounts within the program fund.

9 Sec. 7. To utilize a participant's account in the
10 Nebraska wage replacement savings plan trust, a participant's
11 employer shall notify the State Treasurer that the participant is
12 taking leave under the federal Family and Medical Leave Act of
13 1993. The notice shall include the anticipated duration of the
14 leave, the amount of the gross wages earned by the employee per pay
15 period, and the dates of the paydays of the employee during the
16 anticipated leave. The State Treasurer shall cause payment of the
17 amount of the gross wages of the employee to be made to the
18 employer five days prior to the employee's payday, to the extent
19 the amount is available in the account of the participant in the
20 Nebraska wage replacement savings plan trust. The employer shall
21 use the payment for the participant's wages. The employer shall
22 notify the State Treasurer of any changes to the original
23 notification.

24 Sec. 8. (1) A participant retains ownership of all
25 contributions made to the Nebraska wage replacement savings plan
26 trust under a participation agreement up to the date of
27 utilization.

28 (2) A participant may transfer ownership rights in the

1 Nebraska wage replacement savings plan trust to another
2 participant. The transfer shall be made and the property
3 distributed in accordance with the rules and regulations or with
4 the terms of the participation agreement.

5 (3) The assets of the Nebraska wage replacement savings
6 plan trust shall at all times be preserved, invested, and expended
7 solely and only for the purposes of the trust and shall be held in
8 trust for the participants. No property rights in the trust shall
9 exist in favor of the state. The assets of the trust shall not be
10 transferred or used by the state for any purposes other than the
11 purposes of the trust.

12 Sec. 9. (1) Notwithstanding any other provision of law,
13 any amount credited to an account of the Nebraska wage replacement
14 savings plan trust is not susceptible to any levy, execution,
15 judgment, or other operation of law, garnishment, or other judicial
16 enforcement, and the amount is not an asset or property of the
17 participant for the purposes of any state insolvency laws.

18 (2) A participant shall not utilize any interest in the
19 Nebraska wage replacement savings plan trust as security for a
20 loan.

21 (3) State income tax treatment of the Nebraska wage
22 replacement savings plan trust shall be as provided in section
23 77-2716.

24 Sec. 10. (1) The State Treasurer shall submit an annual
25 audited financial report, prepared in accordance with generally
26 accepted accounting principles, on the operations of the Nebraska
27 wage replacement savings plan trust by November 1 to the Governor
28 and the Legislature. The State Treasurer shall have the audit made

1 by the Auditor of Public Accounts or by an independent certified
2 public accountant. The audit shall include direct and indirect
3 costs attributable to the use of outside consultants, independent
4 contractors, and any other persons who are not state employees.

5 (2) The annual audit shall be supplemented by all of the
6 following information prepared by the State Treasurer:

7 (a) Any related studies or evaluations prepared in the
8 preceding year;

9 (b) A summary of the wage replacements provided by the
10 trust, including the number of participants in the trust; and

11 (c) Any other information which is relevant in order to
12 make a full, fair, and effective disclosure of the operations of
13 the trust, including the investment performance of the funds.

14 Sec. 11. The State Treasurer shall adopt and promulgate
15 rules and regulations to implement the Wage Replacement Savings
16 Plan Act.

17 Sec. 12. Section 77-2716, Revised Statutes Supplement,
18 2002, is amended to read:

19 77-2716. (1) The following adjustments to federal
20 adjusted gross income or, for corporations and fiduciaries, federal
21 taxable income shall be made for interest or dividends received:

22 (a) There shall be subtracted interest or dividends
23 received by the owner of obligations of the United States and its
24 territories and possessions or of any authority, commission, or
25 instrumentality of the United States to the extent includable in
26 gross income for federal income tax purposes but exempt from state
27 income taxes under the laws of the United States;

28 (b) There shall be subtracted that portion of the total

1 dividends and other income received from a regulated investment
2 company which is attributable to obligations described in
3 subdivision (a) of this subsection as reported to the recipient by
4 the regulated investment company;

5 (c) There shall be added interest or dividends received
6 by the owner of obligations of the District of Columbia, other
7 states of the United States, or their political subdivisions,
8 authorities, commissions, or instrumentalities to the extent
9 excluded in the computation of gross income for federal income tax
10 purposes except that such interest or dividends shall not be added
11 if received by a corporation which is a regulated investment
12 company;

13 (d) There shall be added that portion of the total
14 dividends and other income received from a regulated investment
15 company which is attributable to obligations described in
16 subdivision (c) of this subsection and excluded for federal income
17 tax purposes as reported to the recipient by the regulated
18 investment company; and

19 (e) (i) Any amount subtracted under this subsection shall
20 be reduced by any interest on indebtedness incurred to carry the
21 obligations or securities described in this subsection or the
22 investment in the regulated investment company and by any expenses
23 incurred in the production of interest or dividend income described
24 in this subsection to the extent that such expenses, including
25 amortizable bond premiums, are deductible in determining federal
26 taxable income.

27 (ii) Any amount added under this subsection shall be
28 reduced by any expenses incurred in the production of such income

1 to the extent disallowed in the computation of federal taxable
2 income.

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

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

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

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

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

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

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

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

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

1 Revenue Code.

2 (8) (a) There shall be subtracted from federal adjusted
3 gross income an amount equal to the difference between the amount
4 qualified for calculation of a deduction as provided in section
5 162(1) of the Internal Revenue Code and the amount actually allowed
6 pursuant to section 162(1)(1) of the Internal Revenue Code.

7 (b) For an individual who itemized deductions on his or
8 her federal return, the maximum amount subtracted under subdivision
9 (8) (a) of this section shall be seven and one-half percent of
10 federal adjusted gross income.

11 (9) (a) Federal adjusted gross income or, for corporations
12 and fiduciaries, federal taxable income shall be reduced, to the
13 extent included, by income from interest, earnings, and state
14 contributions received from the Nebraska educational savings plan
15 trust created in sections 85-1801 to 85-1814.

16 (b) Federal adjusted gross income or, for corporations
17 and fiduciaries, federal taxable income shall be reduced, to the
18 extent not deducted for federal income tax purposes, by the amount
19 of any gift, grant, or donation made to the Nebraska educational
20 savings plan trust for deposit in the endowment fund of the trust.

21 (c) Federal adjusted gross income or, for corporations
22 and fiduciaries, federal taxable income shall be reduced by any
23 contributions as a participant in the Nebraska educational savings
24 plan trust, not to exceed five hundred dollars per married filing
25 separate return or one thousand dollars for any other return.

26 (d) Federal adjusted gross income or, for corporations
27 and fiduciaries, federal taxable income shall be increased by the
28 amount resulting from the cancellation of a participation agreement

1 refunded to the taxpayer as a participant in the Nebraska
2 educational savings plan trust to the extent previously deducted as
3 a contribution to the trust.

4 (10) (a) For income tax returns filed after September 10,
5 2001, federal adjusted gross income or, for corporations and
6 fiduciaries, federal taxable income shall be increased by
7 eighty-five percent of any amount of bonus depreciation received
8 under the federal Job Creation and Worker Assistance Act of 2002,
9 under section 168(k) or section 1400L of the Internal Revenue Code
10 of 1986, as amended, for assets placed in service after September
11 10, 2001, and before September 11, 2004.

12 (b) For a partnership, limited liability company,
13 cooperative, including any cooperative exempt from income taxes
14 under section 521 of the Internal Revenue Code of 1986, as amended,
15 subchapter S corporation, or joint venture, the increase shall be
16 distributed to the partners, members, shareholders, patrons, or
17 beneficiaries in the same manner as income is distributed for use
18 against their income tax liabilities.

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

23 (d) The amount of bonus depreciation added to federal
24 adjusted gross income or, for corporations and fiduciaries, federal
25 taxable income by this subsection shall be subtracted in a later
26 taxable year. Twenty percent of the total amount of bonus
27 depreciation added back by this subsection may be subtracted in the
28 first taxable year beginning or deemed to begin on or after January

1 1, 2005, under the Internal Revenue Code of 1986, as amended, and
2 twenty percent in each of the next four following taxable years.

3 (11) (a) Federal adjusted gross income or, for
4 corporations and fiduciaries, federal taxable income shall be
5 reduced by any contributions as a participant in the Nebraska wage
6 replacement savings plan trust, not to exceed five hundred dollars
7 per married filing separate return or one thousand dollars for any
8 other return.

9 (b) Federal adjusted gross income or, for corporations
10 and fiduciaries, federal taxable income shall be increased by the
11 amount resulting from the cancellation of a participation agreement
12 refunded to the taxpayer as a participant in the Nebraska wage
13 replacement savings plan trust to the extent previously deducted as
14 a contribution to the trust.

15 Sec. 13. Original section 77-2716, Revised Statutes
16 Supplement, 2002, is repealed.