

LEGISLATURE OF NEBRASKA
NINETY-NINTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 575

Introduced by Redfield, 12; Brown, 6; Jensen, 20

Read first time January 18, 2005

Committee: Revenue

A BILL

1 FOR AN ACT relating to labor; to amend section 77-2716, Reissue
2 Revised Statutes of Nebraska; to adopt the Long-Term Care
3 Savings Plan Act; to provide an income tax credit; to
4 harmonize provisions; and to repeal the original section.
5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 4 of this act shall be known
2 and may be cited as the Long-Term Care Savings Plan Act.

3 Sec. 2. For purposes of the Long-Term Care Savings Plan
4 Act:

5 (1) Financial institution means:

6 (a) Any bank, building and loan association, credit
7 union, savings and loan association, or savings bank chartered or
8 qualified to do business in this state, or any subsidiary of such
9 financial institution; or

10 (b) Any bank, bank holding company or subsidiary of a
11 bank holding company as defined in 12 U.S.C. 1841, as such section
12 existed on January 1, 2005, affiliate of a bank holding company as
13 defined in 12 U.S.C. 221a, as such section existed on January 1,
14 2005, building and loan association, credit union, industrial loan
15 and investment company, savings and loan association, or savings
16 bank which is not chartered to do business in this state but
17 maintains a permanent place of business in this state and actively
18 solicits deposits from residents of this state for an affiliate,
19 regardless of whether the affiliate maintains an office in this
20 state, in which event the deposits of the affiliate shall be deemed
21 deposits of such institution;

22 (2) Long-term care expense means the cost of long-term
23 care in a long-term care facility and the cost of care provided in
24 a person's home when the person receiving the care is unable to
25 perform multiple basic life functions independently; and

26 (3) Qualified individual means a person sixty-five years
27 of age or older or a disabled person who has a medical necessity
28 for long-term care.

1 Sec. 3. (1) The Nebraska long-term care savings plan is
2 created.

3 (2) The Department of Revenue shall select one or more
4 plan administrators for the Nebraska long-term care savings plan.
5 The plan administrator shall annually report to the department each
6 participant's contributions, investment earnings, and withdrawals
7 during the prior calendar year by January 31.

8 (3) Participants shall enter into participation
9 agreements with the plan administrator. All money paid by a
10 participant or by another person on behalf of the participant under
11 a participation agreement shall be deposited as received into the
12 participant's separate account. A maximum of one hundred
13 sixty-five thousand dollars may be deposited by a participant.
14 This dollar limit shall be adjusted for inflation by the method
15 provided in section 151 of the Internal Revenue Code of 1986, as
16 amended.

17 (4) Each participation agreement shall provide that the
18 agreement may be canceled or transferred to a spouse upon the terms
19 and conditions set by the plan administrator. If the participation
20 agreement is canceled or the Nebraska long-term care savings plan
21 program is terminated, a participant is entitled to receive the
22 principal amount of all contributions made by the participant under
23 the participation agreement plus the actual investment earnings on
24 the contributions, less any losses incurred on the investment. A
25 participant shall not receive a refund or distribution that is more
26 than the fair market value of his or her account on the applicable
27 liquidation date.

28 (5) A participant retains ownership of all deposits made

1 under a participation agreement up to the date of utilization. A
2 participant shall not utilize his or her account as security for a
3 loan.

4 (6) State income tax treatment of contributions and
5 investment earnings under a participation agreement shall be as
6 provided in section 77-2716.

7 Sec. 4. (1) A qualified individual may make withdrawals
8 from his or her account created under a participation agreement to
9 pay or reimburse long-term care expenses. A qualified individual
10 may withdraw an amount not to exceed the investment earnings on the
11 contributions for any purpose. Any withdrawals under this
12 subsection may be made without penalty.

13 (2) Except as permitted in subsection (1) of this
14 section, any person who makes a withdrawal from an account created
15 under a participation agreement for any reason other than payment
16 of a long-term care expense or death of the owner of the account
17 shall be subject to a ten-percent penalty on the amount withdrawn.
18 The Department of Revenue shall collect the penalty.

19 Sec. 5. Section 77-2716, Reissue Revised Statutes of
20 Nebraska, is amended to read:

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

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

1 income taxes under the laws of the United States;

2 (b) There shall be subtracted that portion of the total
3 dividends and other income received from a regulated investment
4 company which is attributable to obligations described in
5 subdivision (a) of this subsection as reported to the recipient by
6 the regulated investment company;

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

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

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

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

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

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

24 (4) Federal adjusted gross income, or, for a fiduciary,
25 federal taxable income shall be modified to exclude the portion of
26 the income or loss received from a small business corporation with
27 an election in effect under subchapter S of the Internal Revenue
28 Code or from a limited liability company organized pursuant to the

1 Limited Liability Company Act that is not derived from or connected
2 with Nebraska sources as determined in section 77-2734.01.

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

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

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

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

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

28 (7) Federal adjusted gross income shall be modified to

1 exclude any amount repaid by the taxpayer for which a reduction in
2 federal tax is allowed under section 1341(a)(5) of the Internal
3 Revenue Code.

4 (8)(a) There shall be subtracted from federal adjusted
5 gross income an amount equal to the difference between the amount
6 qualified for calculation of a deduction as provided in section
7 162(1) of the Internal Revenue Code and the amount actually allowed
8 pursuant to section 162(1)(1) of the Internal Revenue Code.

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

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

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

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

28 (d) Federal adjusted gross income or, for corporations

1 and fiduciaries, federal taxable income shall be increased by the
2 amount resulting from the cancellation of a participation agreement
3 refunded to the taxpayer as a participant in the Nebraska
4 educational savings plan trust to the extent previously deducted as
5 a contribution to the trust.

6 (10) (a) For income tax returns filed after September 10,
7 2001, federal adjusted gross income or, for corporations and
8 fiduciaries, federal taxable income shall be increased by
9 eighty-five percent of any amount of any federal bonus depreciation
10 received under the federal Job Creation and Worker Assistance Act
11 of 2002 or the federal Jobs and Growth Tax Act of 2003, under
12 section 168(k) or section 1400L of the Internal Revenue Code of
13 1986, as amended, for assets placed in service after September 10,
14 2001, and before December 31, 2005.

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

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

26 (d) The amount of bonus depreciation added to federal
27 adjusted gross income or, for corporations and fiduciaries, federal
28 taxable income by this subsection shall be subtracted in a later

1 taxable year. Twenty percent of the total amount of bonus
2 depreciation added back by this subsection for tax years beginning
3 or deemed to begin before January 1, 2003, under the Internal
4 Revenue Code of 1986, as amended, may be subtracted in the first
5 taxable year beginning or deemed to begin on or after January 1,
6 2005, under the Internal Revenue Code of 1986, as amended, and
7 twenty percent in each of the next four following taxable years.
8 Twenty percent of the total amount of bonus depreciation added back
9 by this subsection for tax years beginning or deemed to begin on or
10 after January 1, 2003, may be subtracted in the first taxable year
11 beginning or deemed to begin on or after January 1, 2006, under the
12 Internal Revenue Code of 1986, as amended, and twenty percent in
13 each of the next four following taxable years.

14 (11) For taxable years beginning or deemed to begin on or
15 after January 1, 2003, under the Internal Revenue Code of 1986, as
16 amended, federal adjusted gross income or, for corporations and
17 fiduciaries, federal taxable income shall be increased by the
18 amount of any capital investment that is expensed under section 179
19 of the Internal Revenue Code of 1986, as amended, that is in excess
20 of twenty-five thousand dollars that is allowed under the federal
21 Jobs and Growth Tax Act of 2003. Twenty percent of the total
22 amount of expensing added back by this subsection for tax years
23 beginning or deemed to begin on or after January 1, 2003, may be
24 subtracted in the first taxable year beginning or deemed to begin
25 on or after January 1, 2006, under the Internal Revenue Code of
26 1986, as amended, and twenty percent in each of the next four
27 following tax years.

28 (12) (a) Federal adjusted gross income shall be reduced by

1 contributions, up to one thousand dollars, and any investment
2 earnings made as a participant in the Nebraska long-term care plan
3 under the Long-Term Care Savings Plan Act, to the extent not
4 deducted for federal income tax purposes.

5 (b) Federal adjusted gross income shall be increased by
6 the nonqualifying withdrawals made as a participant in the Nebraska
7 long-term care plan under the act to the extent previously deducted
8 as a contribution or as investment earnings.

9 Sec. 6. Original section 77-2716, Reissue Revised
10 Statutes of Nebraska, is repealed.