

LEGISLATURE OF NEBRASKA
ONE HUNDRED THIRD LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 439

Introduced by Gloor, 35; Campbell, 25.

Read first time January 22, 2013

Committee: Revenue

A BILL

1 FOR AN ACT relating to taxation; to amend sections 77-4008 and
2 77-4025, Reissue Revised Statutes of Nebraska, and
3 sections 71-5714, 71-7611, 77-2602, and 81-638, Revised
4 Statutes Cumulative Supplement, 2012; to change
5 provisions relating to taxation of cigarettes and other
6 tobacco products and distribution of proceeds; to state
7 intent; to create a fund; to harmonize provisions; to
8 provide an operative date; to repeal the original
9 sections; and to declare an emergency.
10 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 71-5714, Revised Statutes Cumulative
2 Supplement, 2012, is amended to read:

3 71-5714 (1) The Tobacco Prevention and Control Cash Fund
4 is created. The fund shall be used for a comprehensive statewide
5 tobacco-related public health program administered by the Department
6 of Health and Human Services which includes, but is not limited to
7 ~~(1)~~(a) community programs to reduce tobacco use, ~~(2)~~(b) chronic
8 disease programs, ~~(3)~~(c) school programs, ~~(4)~~(d) statewide
9 programs, ~~(5)~~(e) enforcement, ~~(6)~~(f) counter marketing, ~~(7)~~(g)
10 cessation programs, ~~(8)~~(h) surveillance and evaluation, and ~~(9)~~(i)
11 administration.

12 (2) The guidelines of the Centers for Disease Control and
13 Prevention of the United States Public Health Service of the United
14 States Department of Health and Human Services recommend a
15 significant amount of money be appropriated annually to the fund for
16 the comprehensive statewide tobacco-related public health program in
17 Nebraska. The distribution of the cigarette tax proceeds to the fund
18 pursuant to section 77-2602 brings the total of the fund closer to
19 the recommended level and the level at which it was originally funded
20 in 2000. This distribution is meant to supplement the existing
21 appropriations credited to the fund and not to replace such
22 appropriations.

23 (3) Transfers may be made from the fund to the General
24 Fund at the direction of the Legislature. Any money in the Tobacco
25 Prevention and Control Cash Fund available for investment shall be

1 invested by the state investment officer pursuant to the Nebraska
2 Capital Expansion Act and the Nebraska State Funds Investment Act.

3 ~~The State Treasurer shall transfer, on or before June 30,~~
4 ~~2010, as directed by the budget administrator of the budget division~~
5 ~~of the Department of Administrative Services, one million three~~
6 ~~hundred thousand dollars from the Tobacco Prevention and Control Cash~~
7 ~~Fund to the Health and Human Services Cash Fund.~~

8 Sec. 2. Section 71-7611, Revised Statutes Cumulative
9 Supplement, 2012, is amended to read:

10 71-7611 (1) The Nebraska Health Care Cash Fund is
11 created. The State Treasurer shall transfer (a) fifty-six million one
12 hundred thousand dollars no later than July 15, 2009, (b) fifty-nine
13 million one hundred thousand dollars on July 15, 2010, July 15, 2011,
14 and July 15, 2012, (c) fifty-six million one hundred forty-five
15 thousand dollars no later than July 15, 2013, (d) fifty-three million
16 one hundred ninety thousand dollars no later than July 15, 2014, and
17 (e) fifty million two hundred thirty-five thousand dollars beginning
18 July 15, 2015, and annually thereafter no later than July 15 from the
19 Nebraska Medicaid Intergovernmental Trust Fund and the Nebraska
20 Tobacco Settlement Trust Fund to the Nebraska Health Care Cash Fund,
21 except that such amount shall be reduced by the amount of the
22 unobligated balance in the Nebraska Health Care Cash Fund under this
23 subsection at the time the transfer is made. The state investment
24 officer upon consultation with the Nebraska Investment Council shall
25 advise the State Treasurer on the amounts to be transferred from the

1 Nebraska Medicaid Intergovernmental Trust Fund and from the Nebraska
2 Tobacco Settlement Trust Fund under this section in order to sustain
3 such transfers in perpetuity. The state investment officer shall
4 report electronically to the Legislature on or before October 1 of
5 every even-numbered year on the sustainability of such transfers.
6 Except as provided in subsection (4) of this section or as otherwise
7 provided by law, no more than the amount specified in this subsection
8 may be appropriated or transferred from the Nebraska Health Care Cash
9 Fund in any fiscal year.

10 It is the intent of the Legislature that no additional
11 programs are funded through the Nebraska Health Care Cash Fund under
12 this subsection until funding for all programs with an appropriation
13 from the fund during FY2012-13 are restored to their FY2012-13
14 levels.

15 (2) Any money in the Nebraska Health Care Cash Fund
16 available for investment shall be invested by the state investment
17 officer pursuant to the Nebraska Capital Expansion Act and the
18 Nebraska State Funds Investment Act.

19 (3) The University of Nebraska and postsecondary
20 educational institutions having colleges of medicine in Nebraska and
21 their affiliated research hospitals in Nebraska, as a condition of
22 receiving any funds appropriated or transferred from the Nebraska
23 Health Care Cash Fund, shall not discriminate against any person on
24 the basis of sexual orientation.

25 (4) The Legislature may appropriate cigarette tax

1 proceeds placed in the Nebraska Health Care Cash Fund under section
2 77-2602 for programs to restore them to their FY2010-11 levels or for
3 new programs.

4 Sec. 3. The Legislature finds and declares that:

5 (1) Smoking kills more than twenty-two hundred residents
6 of Nebraska each year;

7 (2) The amount of annual health care costs in Nebraska
8 directly caused by smoking and tobacco use is five hundred thirty-
9 seven million dollars;

10 (3) For each five-dollar pack of cigarettes sold to a
11 resident of Nebraska in 2012, every resident of Nebraska paid nine
12 dollars and sixty-four cents to subsidize associated health care
13 costs;

14 (4) Tobacco price increases are the most effective way to
15 reduce tobacco use, especially among youth;

16 (5) The residents of Nebraska are the greatest resource
17 of the state; and

18 (6) Tobacco-related death and disease are tremendous
19 burdens on the health and welfare of each resident of Nebraska and of
20 the families of the state.

21 Sec. 4. Section 77-2602, Revised Statutes Cumulative
22 Supplement, 2012, is amended to read:

23 77-2602 (1) Every stamping agent engaged in distributing
24 or selling cigarettes at wholesale in this state shall pay to the Tax
25 Commissioner of this state a special privilege tax. This shall be in

1 addition to all other taxes. It shall be paid prior to or at the time
2 of the sale, gift, or delivery to the retail dealer in the several
3 amounts as follows: On each package of cigarettes containing not more
4 than twenty cigarettes, ~~sixty-four~~one dollar and thirty-six cents
5 per package; and on packages containing more than twenty cigarettes,
6 the same tax as provided on packages containing not more than twenty
7 cigarettes for the first twenty cigarettes in each package and a tax
8 of one-twentieth of the tax on the first twenty cigarettes on each
9 cigarette in excess of twenty cigarettes in each package.

10 (2) Beginning October 1, 2004, the State Treasurer shall
11 place the equivalent of ~~forty-nine~~fifty-nine cents of such tax in
12 the General Fund. The State Treasurer shall reduce the amount placed
13 in the General Fund under this subsection by the amount prescribed in
14 subdivision (3)(d) of this section. It is the intent of the
15 Legislature to appropriate the equivalent of five cents of such tax
16 from the amount placed in the General Fund to be used for the
17 Volunteer Emergency Responders Incentive Act if such act becomes law
18 as a result of action by the One Hundred Third Legislature. For
19 purposes of this section, the equivalent of a specified number of
20 cents of the tax shall mean that portion of the proceeds of the tax
21 equal to the specified number divided by the tax rate per package of
22 cigarettes containing not more than twenty cigarettes.

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

25 (a) First, beginning July 1, 1980, the State Treasurer

1 shall place the equivalent of one cent of such tax in the Nebraska
2 Outdoor Recreation Development Cash Fund. For fiscal year
3 distributions occurring after FY1998-99, the distribution under this
4 subdivision shall not be less than the amount distributed under this
5 subdivision for FY1997-98. Any money needed to increase the amount
6 distributed under this subdivision to the FY1997-98 amount shall
7 reduce the distribution to the General Fund;

8 (b) Second, beginning July 1, 1993, the State Treasurer
9 shall place the equivalent of ~~three~~six cents of such tax in the
10 Health and Human Services Cash Fund to carry out sections 81-637 to
11 81-640. For fiscal year distributions occurring after FY1998-99, the
12 distribution under this subdivision shall not be less than the amount
13 distributed under this subdivision for FY1997-98. Any money needed to
14 increase the amount distributed under this subdivision to the
15 FY1997-98 amount shall reduce the distribution to the General Fund;

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

24 (d) Fourth, until July 1, 2009, the State Treasurer shall
25 place in the Municipal Infrastructure Redevelopment Fund the sum of

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

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

12 ~~(f) Sixth, (e) Fifth, beginning July 1, 2001, and~~
13 ~~continuing until June 30, 2016, the State Treasurer shall place one~~
14 ~~million dollars each fiscal year in the City of the Primary Class~~
15 ~~Development Fund. If necessary, the State Treasurer shall reduce the~~
16 ~~distribution of tax proceeds to the General Fund pursuant to~~
17 ~~subsection (2) of this section by such amount required to fulfill the~~
18 ~~one million dollars to be distributed pursuant to this subdivision;~~

19 ~~(g) Seventh, (f) Sixth, beginning July 1, 2001, and~~
20 ~~continuing until June 30, 2016, the State Treasurer shall place one~~
21 ~~million five hundred thousand dollars each fiscal year in the City of~~
22 ~~the Metropolitan Class Development Fund. If necessary, the State~~
23 ~~Treasurer shall reduce the distribution of tax proceeds to the~~
24 ~~General Fund pursuant to subsection (2) of this section by such~~
25 ~~amount required to fulfill the one million five hundred thousand~~

1 dollars to be distributed pursuant to this subdivision; and

2 ~~(h) Eighth, beginning July 1, 2008, and continuing until~~
3 ~~June 30, 2009, the State Treasurer shall place the equivalent of two~~
4 ~~million fifty thousand dollars of such tax in the Nebraska Public~~
5 ~~Safety Communication System Cash Fund. Beginning (g) Seventh,~~
6 beginning July 1, 2009, and continuing until June 30, 2016, the State
7 Treasurer shall place the equivalent of two million five hundred
8 seventy thousand dollars of such tax in the Nebraska Public Safety
9 Communication System Cash Fund. Beginning July 1, 2016, and every
10 fiscal year thereafter, the State Treasurer shall place the
11 equivalent of five million seventy thousand dollars of such tax in
12 the Nebraska Public Safety Communication System Cash Fund. If
13 necessary, the State Treasurer shall reduce the distribution of tax
14 proceeds to the General Fund pursuant to subsection (2) of this
15 section by such amount required to fulfill the distribution pursuant
16 to this subdivision; -

17 (h) Eighth, beginning July 1, 2013, the State Treasurer
18 shall place the equivalent of thirty cents of such tax but not less
19 than twenty-eight million dollars each fiscal year in the Health Care
20 and Human Service Provider Rate Stabilization Fund for the purposes
21 described in section 8 of this act. If necessary, the State Treasurer
22 shall reduce the distribution of tax proceeds to the General Fund
23 pursuant to subsection (2) of this section by such amount required to
24 fulfill the distribution pursuant to this subdivision;

25 (i) Ninth, beginning July 1, 2013, the State Treasurer

1 shall place the equivalent of five and one-half cents of such tax but
2 not less than five million dollars each fiscal year in the Tobacco
3 Prevention and Control Cash Fund. If necessary, the State Treasurer
4 shall reduce the distribution of tax proceeds to the General Fund
5 pursuant to subsection (2) of this section by such amount required to
6 fulfill the distribution pursuant to this subdivision; and

7 (j) Tenth, beginning July 1, 2013, the State Treasurer
8 shall place the equivalent of twenty-three and one-half cents of such
9 tax but not less than twenty-three million five hundred thousand
10 dollars each fiscal year in the Nebraska Health Care Cash Fund. If
11 necessary, the State Treasurer shall reduce the distribution of tax
12 proceeds to the General Fund pursuant to subsection (2) of this
13 section by such amount required to fulfill the distribution pursuant
14 to this subdivision.

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

19 (5) The Legislature hereby finds and determines that the
20 projects funded from the Municipal Infrastructure Redevelopment Fund
21 and the Building Renewal Allocation Fund are of critical importance
22 to the State of Nebraska. It is the intent of the Legislature that
23 the allocations and appropriations made by the Legislature to such
24 funds or, in the case of allocations for the Municipal Infrastructure
25 Redevelopment Fund, to the particular municipality's account not be

1 reduced until all contracts and securities relating to the
2 construction and financing of the projects or portions of the
3 projects funded from such funds or accounts of such funds are
4 completed or paid or, in the case of the Municipal Infrastructure
5 Redevelopment Fund, the earlier of such date or July 1, 2009, and
6 that until such time any reductions in the cigarette tax rate made by
7 the Legislature shall be simultaneously accompanied by equivalent
8 reductions in the amount dedicated to the General Fund from cigarette
9 tax revenue. Any provision made by the Legislature for distribution
10 of the proceeds of the cigarette tax for projects or programs other
11 than those to (a) the General Fund, (b) the Nebraska Outdoor
12 Recreation Development Cash Fund, (c) the Health and Human Services
13 Cash Fund, (d) the Municipal Infrastructure Redevelopment Fund, (e)
14 the Building Renewal Allocation Fund, ~~(f) the Information Technology~~
15 ~~Infrastructure Fund,~~ ~~(g)~~ (f) the City of the Primary Class
16 Development Fund, ~~(h)~~ (g) the City of the Metropolitan Class
17 Development Fund, ~~and~~ ~~(i)~~ (h) the Nebraska Public Safety
18 Communication System Cash Fund, (i) the Health Care and Human Service
19 Provider Rate Stabilization Fund, (j) the Tobacco Prevention and
20 Control Cash Fund, and (k) the Nebraska Health Care Cash Fund shall
21 not be made a higher priority than or an equal priority to any of the
22 programs or projects specified in subdivisions (a) through ~~(i)~~ (k) of
23 this subsection.

24 Sec. 5. Section 77-4008, Reissue Revised Statutes of
25 Nebraska, is amended to read:

1 77-4008 (1)(a) A tax is hereby imposed upon the first
2 owner of tobacco products to be sold in this state.

3 (b) The tax on snuff shall be forty-four cents per ounce
4 and a proportionate tax at the like rate on all fractional parts of
5 an ounce. Such tax shall be computed based on the net weight as
6 listed by the manufacturer.

7 (c) The tax on tobacco products other than snuff shall be
8 ~~twenty~~thirty-one percent of (i) the purchase price of such tobacco
9 products paid by the first owner or (ii) the price at which a first
10 owner who made, manufactured, or fabricated the tobacco product sells
11 the items to others.

12 (d) The tax on tobacco products shall be in addition to
13 all other taxes.

14 (2) Whenever any person who is licensed under section
15 77-4009 purchases tobacco products from another person licensed under
16 section 77-4009, the seller shall be liable for the payment of the
17 tax.

18 (3) Amounts collected pursuant to this section shall be
19 used and distributed pursuant to section 77-4025.

20 Sec. 6. Section 77-4025, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 77-4025 There is hereby created a cash fund in the
23 Department of Revenue to be known as the Tobacco Products
24 Administration Cash Fund. All revenue collected or received by the
25 Tax Commissioner from the license fees and taxes imposed by the

1 Tobacco Products Tax Act shall be remitted to the State Treasurer for
2 credit to the Tobacco Products Administration Cash Fund. All costs
3 required for administration of the Tobacco Products Tax Act shall be
4 paid from such fund. Credits and refunds allowed under the act shall
5 be paid from the Tobacco Products Administration Cash Fund. ~~Any~~
6 Except as otherwise provided in section 81-638, any receipts, after
7 credits and refunds, in excess of the amounts sufficient to cover the
8 costs of administration may be transferred to the General Fund at the
9 direction of the Legislature. Any money in the Tobacco Products
10 Administration Cash Fund available for investment shall be invested
11 by the state investment officer pursuant to the Nebraska Capital
12 Expansion Act and the Nebraska State Funds Investment Act.

13 Sec. 7. Section 81-638, Revised Statutes Cumulative
14 Supplement, 2012, is amended to read:

15 81-638 (1) The Legislature shall appropriate for each
16 year from the Health and Human Services Cash Fund to the department
17 an amount derived from one cent of the cigarette tax imposed by
18 section 77-2602, less any amount appropriated from the fund
19 specifically to the University of Nebraska Eppley Institute for
20 Research in Cancer and Allied Diseases. The department shall, after
21 deducting expenses incurred in the administration of such funds,
22 distribute such funds exclusively for grants and contracts for
23 research of cancer and smoking diseases, for funding the cancer
24 registry prescribed in sections 81-642 to 81-650, and for associated
25 expenses due to the establishment and maintenance of such cancer

1 registry. Not more than two hundred thousand dollars shall be
2 appropriated for funding the cancer registry and associated expenses.
3 The University of Nebraska may receive such grants and contracts, and
4 other postsecondary institutions having colleges of medicine located
5 in the State of Nebraska may receive such contracts.

6 (2) The Legislature shall appropriate for each year from
7 the Health and Human Services Cash Fund to the department for cancer
8 research an amount derived from ~~two~~five and one-half cents of the
9 cigarette tax imposed by section 77-2602 to be used exclusively for
10 grants and contracts for research on cancer and smoking diseases. No
11 amount shall be appropriated or used pursuant to this subsection for
12 the operation and associated expenses of the cancer registry. Not
13 more than one-half of the funds appropriated pursuant to this
14 subsection shall be distributed to the University of Nebraska Medical
15 Center for research in cancer and allied diseases and the University
16 of Nebraska Eppley Institute for Research in Cancer and Allied
17 Diseases. The remaining funds available pursuant to this subsection
18 shall be distributed for contracts with other postsecondary
19 educational institutions having colleges of medicine located in
20 Nebraska which have cancer research programs for the purpose of
21 conducting research in cancer and allied diseases.

22 (3) Any contract between the department and another
23 postsecondary educational institution for cancer research under
24 subsection (2) of this section shall provide that:

25 (a) Any money appropriated for such contract shall only

1 be used for cancer research and shall not be used to support any
2 other program in the institution;

3 (b) Full and detailed reporting of the expenditure of all
4 funds under the contract is required. The report shall include, but
5 not be limited to, separate accounting for personal services,
6 equipment purchases or leases, and supplies. Such reports shall be
7 made available electronically to the Legislature; and

8 (c) No money appropriated for such contract shall be
9 spent for travel, building construction, or any other purpose not
10 directly related to the research that is the subject of the contract.

11 Sec. 8. The Health Care and Human Service Provider Rate
12 Stabilization Fund is created. The fund shall consist of money
13 credited to the fund pursuant to section 77-2602, any gifts, grants,
14 or donations from any source, and any other funds appropriated by the
15 Legislature. The fund shall be used to support reimbursement of
16 service providers through service rates within, but not limited to,
17 the Medical Assistance Act, the Children's Health Insurance Program,
18 the Nebraska Behavioral Health Services Act, and the Nebraska
19 Community Aging Services Act. The money credited to the fund pursuant
20 to section 77-2602 shall be used to the greatest extent possible to
21 leverage federal funds for provider rate reimbursement under such
22 acts. The Legislature finds that, in order to provide Nebraska
23 residents who participate in the medical assistance program with
24 appropriate access to health care providers, provider rates need to
25 be adequate and stable in order to attract and maintain the number

1 and variety of health care providers necessary to maintain an
2 adequate health care provider network. Any money in the fund
3 available for investment shall be invested by the state investment
4 officer pursuant to the Nebraska Capital Expansion Act and the
5 Nebraska State Funds Investment Act.

6 Sec. 9. This act becomes operative on July 1, 2013.

7 Sec. 10. Original sections 77-4008 and 77-4025, Reissue
8 Revised Statutes of Nebraska, and sections 71-5714, 71-7611, 77-2602,
9 and 81-638, Revised Statutes Cumulative Supplement, 2012, are
10 repealed.

11 Sec. 11. Since an emergency exists, this act takes effect
12 when passed and approved according to law.