

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 13

Introduced by Blood, 3.

Read first time January 10, 2019

Committee: Revenue

1 A BILL FOR AN ACT relating to breast-feeding; to amend sections 28-806,
2 77-2701, 77-2701.04, 77-2701.41, 77-2711, 77-2713, and 77-27,223,
3 Reissue Revised Statutes of Nebraska; to exempt breast-feeding from
4 public indecency offenses; to provide a sales and use tax exemption
5 for breast pumps and related supplies as prescribed; to harmonize
6 provisions; to provide an operative date; and to repeal the original
7 sections.
8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-806, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 28-806 (1) A person, eighteen years of age or over, commits public
4 indecency if such person performs or procures, or assists any other
5 person to perform, in a public place and where the conduct may reasonably
6 be expected to be viewed by members of the public:

7 (a) An act of sexual penetration; or

8 (b) An exposure of the genitals of the body done with intent to
9 affront or alarm any person; or

10 (c) A lewd fondling or caressing of the body of another person of
11 the same or opposite sex.

12 (2) Public indecency is a Class II misdemeanor.

13 (3) It shall not be a violation of this section for an individual to
14 breast-feed a child in a public place.

15 Sec. 2. Section 77-2701, Reissue Revised Statutes of Nebraska, is
16 amended to read:

17 77-2701 Sections 77-2701 to 77-27,135.01, 77-27,222, 77-27,235,
18 77-27,236, and 77-27,238 and section 5 of this act shall be known and may
19 be cited as the Nebraska Revenue Act of 1967.

20 Sec. 3. Section 77-2701.04, Reissue Revised Statutes of Nebraska, is
21 amended to read:

22 77-2701.04 For purposes of sections 77-2701.04 to 77-2713 and
23 section 5 of this act, unless the context otherwise requires, the
24 definitions found in sections 77-2701.05 to 77-2701.55 shall be used.

25 Sec. 4. Section 77-2701.41, Reissue Revised Statutes of Nebraska, is
26 amended to read:

27 77-2701.41 Taxpayer means any person subject to a tax imposed by
28 sections 77-2701 to 77-2713 and section 5 of this act.

29 Sec. 5. (1) Sales and use taxes shall not be imposed on the gross
30 receipts from the sale, lease, or rental of and the storage, use, or
31 other consumption in this state of:

1 (a) A breast pump purchased by an individual for home use, including
2 repair and replacement parts for the breast pump;

3 (b) Breast pump collection and storage supplies purchased by an
4 individual for home use;

5 (c) A breast pump kit purchased by an individual for home use. If a
6 breast pump kit includes taxable items of tangible personal property, the
7 breast pump kit shall qualify for the exemption provided in this section
8 only if the sales price of the taxable items of tangible personal
9 property is ten percent or less of the total sales price of the breast
10 pump kit; or

11 (d) Nursing pads purchased by an individual for home use.

12 (2) For purposes of this section:

13 (a) Breast pump means an electrically or manually controlled pump
14 device used to express milk from a human breast;

15 (b) Breast pump collection and storage supplies means items of
16 tangible personal property used in conjunction with a breast pump to
17 collect breast milk and to store such milk until it is ready for
18 consumption. Breast pump collection and storage supplies includes: Breast
19 shields and breast shield connectors; breast pump tubes and tubing
20 adapters; breast pump valves and membranes; backflow protectors and
21 backflow protector adapters; bottles and bottle caps specific to the
22 operation of the breast pump; and breast milk storage bags. Breast pump
23 collection and storage supplies does not include: Bottles and bottle caps
24 not specific to the operation of the breast pump; breast pump travel bags
25 and other similar carrying accessories, including ice packs, labels, and
26 other similar products, unless sold as part of a breast pump kit; breast
27 pump cleaning supplies, unless sold as part of a breast pump kit; nursing
28 bras; breast shells; and creams, ointments, and other similar products
29 that relieve breastfeeding-related symptoms or conditions of the breasts;
30 and

31 (c) Breast pump kit means a pre-packaged set that contains one or

1 more of the following items: A breast pump; breast pump collection and
2 storage supplies; and other taxable items of tangible personal property
3 that are useful to initiate, support, or sustain breastfeeding using a
4 breast pump.

5 Sec. 6. Section 77-2711, Reissue Revised Statutes of Nebraska, is
6 amended to read:

7 77-2711 (1)(a) The Tax Commissioner shall enforce sections
8 77-2701.04 to 77-2713 and section 5 of this act and may prescribe, adopt,
9 and enforce rules and regulations relating to the administration and
10 enforcement of such sections.

11 (b) The Tax Commissioner may prescribe the extent to which any
12 ruling or regulation shall be applied without retroactive effect.

13 (2) The Tax Commissioner may employ accountants, auditors,
14 investigators, assistants, and clerks necessary for the efficient
15 administration of the Nebraska Revenue Act of 1967 and may delegate
16 authority to his or her representatives to conduct hearings, prescribe
17 regulations, or perform any other duties imposed by such act.

18 (3)(a) Every seller, every retailer, and every person storing,
19 using, or otherwise consuming in this state property purchased from a
20 retailer shall keep such records, receipts, invoices, and other pertinent
21 papers in such form as the Tax Commissioner may reasonably require.

22 (b) Every such seller, retailer, or person shall keep such records
23 for not less than three years from the making of such records unless the
24 Tax Commissioner in writing sooner authorized their destruction.

25 (4) The Tax Commissioner or any person authorized in writing by him
26 or her may examine the books, papers, records, and equipment of any
27 person selling property and any person liable for the use tax and may
28 investigate the character of the business of the person in order to
29 verify the accuracy of any return made or, if no return is made by the
30 person, to ascertain and determine the amount required to be paid. In the
31 examination of any person selling property or of any person liable for

1 the use tax, an inquiry shall be made as to the accuracy of the reporting
2 of city sales and use taxes for which the person is liable under the
3 Local Option Revenue Act or sections 13-319, 13-324, and 13-2813 and the
4 accuracy of the allocation made between the various counties, cities,
5 villages, and municipal counties of the tax due. The Tax Commissioner may
6 make or cause to be made copies of resale or exemption certificates and
7 may pay a reasonable amount to the person having custody of the records
8 for providing such copies.

9 (5) The taxpayer shall have the right to keep or store his or her
10 records at a point outside this state and shall make his or her records
11 available to the Tax Commissioner at all times.

12 (6) In administration of the use tax, the Tax Commissioner may
13 require the filing of reports by any person or class of persons having in
14 his, her, or their possession or custody information relating to sales of
15 property, the storage, use, or other consumption of which is subject to
16 the tax. The report shall be filed when the Tax Commissioner requires and
17 shall set forth the names and addresses of purchasers of the property,
18 the sales price of the property, the date of sale, and such other
19 information as the Tax Commissioner may require.

20 (7) It shall be a Class I misdemeanor for the Tax Commissioner or
21 any official or employee of the Tax Commissioner, the State Treasurer, or
22 the Department of Administrative Services to make known in any manner
23 whatever the business affairs, operations, or information obtained by an
24 investigation of records and activities of any retailer or any other
25 person visited or examined in the discharge of official duty or the
26 amount or source of income, profits, losses, expenditures, or any
27 particular thereof, set forth or disclosed in any return, or to permit
28 any return or copy thereof, or any book containing any abstract or
29 particulars thereof to be seen or examined by any person not connected
30 with the Tax Commissioner. Nothing in this section shall be construed to
31 prohibit (a) the delivery to a taxpayer, his or her duly authorized

1 representative, or his or her successors, receivers, trustees, executors,
2 administrators, assignees, or guarantors, if directly interested, of a
3 certified copy of any return or report in connection with his or her tax,
4 (b) the publication of statistics so classified as to prevent the
5 identification of particular reports or returns and the items thereof,
6 (c) the inspection by the Attorney General, other legal representative of
7 the state, or county attorney of the reports or returns of any taxpayer
8 when either (i) information on the reports or returns is considered by
9 the Attorney General to be relevant to any action or proceeding
10 instituted by the taxpayer or against whom an action or proceeding is
11 being considered or has been commenced by any state agency or the county
12 or (ii) the taxpayer has instituted an action to review the tax based
13 thereon or an action or proceeding against the taxpayer for collection of
14 tax or failure to comply with the Nebraska Revenue Act of 1967 is being
15 considered or has been commenced, (d) the furnishing of any information
16 to the United States Government or to states allowing similar privileges
17 to the Tax Commissioner, (e) the disclosure of information and records to
18 a collection agency contracting with the Tax Commissioner pursuant to
19 sections 77-377.01 to 77-377.04, (f) the disclosure to another party to a
20 transaction of information and records concerning the transaction between
21 the taxpayer and the other party, (g) the disclosure of information
22 pursuant to section 77-27,195 or 77-5731, or (h) the disclosure of
23 information to the Department of Labor necessary for the administration
24 of the Employment Security Law, the Contractor Registration Act, or the
25 Employee Classification Act.

26 (8) Notwithstanding the provisions of subsection (7) of this
27 section, the Tax Commissioner may permit the Postal Inspector of the
28 United States Postal Service or his or her delegates to inspect the
29 reports or returns of any person filed pursuant to the Nebraska Revenue
30 Act of 1967 when information on the reports or returns is relevant to any
31 action or proceeding instituted or being considered by the United States

1 Postal Service against such person for the fraudulent use of the mails to
2 carry and deliver false and fraudulent tax returns to the Tax
3 Commissioner with the intent to defraud the State of Nebraska or to evade
4 the payment of Nebraska state taxes.

5 (9) Notwithstanding the provisions of subsection (7) of this
6 section, the Tax Commissioner may permit other tax officials of this
7 state to inspect the tax returns, reports, and applications filed under
8 sections 77-2701.04 to 77-2713 and section 5 of this act, but such
9 inspection shall be permitted only for purposes of enforcing a tax law
10 and only to the extent and under the conditions prescribed by the rules
11 and regulations of the Tax Commissioner.

12 (10) Notwithstanding the provisions of subsection (7) of this
13 section, the Tax Commissioner may, upon request, provide the county board
14 of any county which has exercised the authority granted by section
15 81-3716 with a list of the names and addresses of the hotels located
16 within the county for which lodging sales tax returns have been filed or
17 for which lodging sales taxes have been remitted for the county's County
18 Visitors Promotion Fund under the Nebraska Visitors Development Act.

19 The information provided by the Tax Commissioner shall indicate only
20 the names and addresses of the hotels located within the requesting
21 county for which lodging sales tax returns have been filed for a
22 specified period and the fact that lodging sales taxes remitted by or on
23 behalf of the hotel have constituted a portion of the total sum remitted
24 by the state to the county for a specified period under the provisions of
25 the Nebraska Visitors Development Act. No additional information shall be
26 revealed.

27 (11)(a) Notwithstanding the provisions of subsection (7) of this
28 section, the Tax Commissioner shall, upon written request by the Auditor
29 of Public Accounts or the office of Legislative Audit, make tax returns
30 and tax return information open to inspection by or disclosure to the
31 Auditor of Public Accounts or employees of the office of Legislative

1 Audit for the purpose of and to the extent necessary in making an audit
2 of the Department of Revenue pursuant to section 50-1205 or 84-304.
3 Confidential tax returns and tax return information shall be audited only
4 upon the premises of the Department of Revenue. All audit workpapers
5 pertaining to the audit of the Department of Revenue shall be stored in a
6 secure place in the Department of Revenue.

7 (b) No employee of the Auditor of Public Accounts or the office of
8 Legislative Audit shall disclose to any person, other than another
9 Auditor of Public Accounts or office employee whose official duties
10 require such disclosure, any return or return information described in
11 the Nebraska Revenue Act of 1967 in a form which can be associated with
12 or otherwise identify, directly or indirectly, a particular taxpayer.

13 (c) Any person who violates the provisions of this subsection shall
14 be guilty of a Class I misdemeanor. For purposes of this subsection,
15 employee includes a former Auditor of Public Accounts or office of
16 Legislative Audit employee.

17 (12) For purposes of this subsection and subsections (11) and (14)
18 of this section:

19 (a) Disclosure means the making known to any person in any manner a
20 tax return or return information;

21 (b) Return information means:

22 (i) A taxpayer's identification number and (A) the nature, source,
23 or amount of his or her income, payments, receipts, deductions,
24 exemptions, credits, assets, liabilities, net worth, tax liability, tax
25 withheld, deficiencies, overassessments, or tax payments, whether the
26 taxpayer's return was, is being, or will be examined or subject to other
27 investigation or processing or (B) any other data received by, recorded
28 by, prepared by, furnished to, or collected by the Tax Commissioner with
29 respect to a return or the determination of the existence or possible
30 existence of liability or the amount of liability of any person for any
31 tax, penalty, interest, fine, forfeiture, or other imposition or offense;

1 and

2 (ii) Any part of any written determination or any background file
3 document relating to such written determination; and

4 (c) Tax return or return means any tax or information return or
5 claim for refund required by, provided for, or permitted under sections
6 77-2701 to 77-2713 and section 5 of this act which is filed with the Tax
7 Commissioner by, on behalf of, or with respect to any person and any
8 amendment or supplement thereto, including supporting schedules,
9 attachments, or lists which are supplemental to or part of the filed
10 return.

11 (13) Notwithstanding the provisions of subsection (7) of this
12 section, the Tax Commissioner shall, upon request, provide any
13 municipality which has adopted the local option sales tax under the Local
14 Option Revenue Act with a list of the names and addresses of the
15 retailers which have collected the local option sales tax for the
16 municipality. The request may be made annually and shall be submitted to
17 the Tax Commissioner on or before June 30 of each year. The information
18 provided by the Tax Commissioner shall indicate only the names and
19 addresses of the retailers. The Tax Commissioner may provide additional
20 information to a municipality so long as the information does not include
21 any data detailing the specific revenue, expenses, or operations of any
22 particular business.

23 (14)(a) Notwithstanding the provisions of subsection (7) of this
24 section, the Tax Commissioner shall, upon written request, provide an
25 individual certified under subdivision (b) of this subsection
26 representing a municipality which has adopted the local option sales and
27 use tax under the Local Option Revenue Act with confidential sales and
28 use tax returns and sales and use tax return information regarding
29 taxpayers that possess a sales tax permit and the amounts remitted by
30 such permitholders at locations within the boundaries of the requesting
31 municipality or with confidential business use tax returns and business

1 use tax return information regarding taxpayers that file a Nebraska and
2 Local Business Use Tax Return and the amounts remitted by such taxpayers
3 at locations within the boundaries of the requesting municipality. Any
4 written request pursuant to this subsection shall provide the Department
5 of Revenue with no less than ten business days to prepare the sales and
6 use tax returns and sales and use tax return information requested. Such
7 returns and return information shall be viewed only upon the premises of
8 the department.

9 (b) Each municipality that seeks to request information under
10 subdivision (a) of this subsection shall certify to the Department of
11 Revenue one individual who is authorized by such municipality to make
12 such request and review the documents described in subdivision (a) of
13 this subsection. The individual may be a municipal employee or an
14 individual who contracts with the requesting municipality to provide
15 financial, accounting, or other administrative services.

16 (c) No individual certified by a municipality pursuant to
17 subdivision (b) of this subsection shall disclose to any person any
18 information obtained pursuant to a review under this subsection. An
19 individual certified by a municipality pursuant to subdivision (b) of
20 this subsection shall remain subject to this subsection after he or she
21 (i) is no longer certified or (ii) is no longer in the employment of or
22 under contract with the certifying municipality.

23 (d) Any person who violates the provisions of this subsection shall
24 be guilty of a Class I misdemeanor.

25 (e) The Department of Revenue shall not be held liable by any person
26 for an impermissible disclosure by a municipality or any agent or
27 employee thereof of any information obtained pursuant to a review under
28 this subsection.

29 (15) In all proceedings under the Nebraska Revenue Act of 1967, the
30 Tax Commissioner may act for and on behalf of the people of the State of
31 Nebraska. The Tax Commissioner in his or her discretion may waive all or

1 part of any penalties provided by the provisions of such act or interest
2 on delinquent taxes specified in section 45-104.02, as such rate may from
3 time to time be adjusted.

4 (16)(a) The purpose of this subsection is to set forth the state's
5 policy for the protection of the confidentiality rights of all
6 participants in the system operated pursuant to the streamlined sales and
7 use tax agreement and of the privacy interests of consumers who deal with
8 model 1 sellers.

9 (b) For purposes of this subsection:

10 (i) Anonymous data means information that does not identify a
11 person;

12 (ii) Confidential taxpayer information means all information that is
13 protected under a member state's laws, regulations, and privileges; and

14 (iii) Personally identifiable information means information that
15 identifies a person.

16 (c) The state agrees that a fundamental precept for model 1 sellers
17 is to preserve the privacy of consumers by protecting their anonymity.
18 With very limited exceptions, a certified service provider shall perform
19 its tax calculation, remittance, and reporting functions without
20 retaining the personally identifiable information of consumers.

21 (d) The governing board of the member states in the streamlined
22 sales and use tax agreement may certify a certified service provider only
23 if that certified service provider certifies that:

24 (i) Its system has been designed and tested to ensure that the
25 fundamental precept of anonymity is respected;

26 (ii) Personally identifiable information is only used and retained
27 to the extent necessary for the administration of model 1 with respect to
28 exempt purchasers;

29 (iii) It provides consumers clear and conspicuous notice of its
30 information practices, including what information it collects, how it
31 collects the information, how it uses the information, how long, if at

1 all, it retains the information, and whether it discloses the information
2 to member states. Such notice shall be satisfied by a written privacy
3 policy statement accessible by the public on the web site of the
4 certified service provider;

5 (iv) Its collection, use, and retention of personally identifiable
6 information is limited to that required by the member states to ensure
7 the validity of exemptions from taxation that are claimed by reason of a
8 consumer's status or the intended use of the goods or services purchased;
9 and

10 (v) It provides adequate technical, physical, and administrative
11 safeguards so as to protect personally identifiable information from
12 unauthorized access and disclosure.

13 (e) The state shall provide public notification to consumers,
14 including exempt purchasers, of the state's practices relating to the
15 collection, use, and retention of personally identifiable information.

16 (f) When any personally identifiable information that has been
17 collected and retained is no longer required for the purposes set forth
18 in subdivision (16)(d)(iv) of this section, such information shall no
19 longer be retained by the member states.

20 (g) When personally identifiable information regarding an individual
21 is retained by or on behalf of the state, it shall provide reasonable
22 access by such individual to his or her own information in the state's
23 possession and a right to correct any inaccurately recorded information.

24 (h) If anyone other than a member state, or a person authorized by
25 that state's law or the agreement, seeks to discover personally
26 identifiable information, the state from whom the information is sought
27 should make a reasonable and timely effort to notify the individual of
28 such request.

29 (i) This privacy policy is subject to enforcement by the Attorney
30 General.

31 (j) All other laws and regulations regarding the collection, use,

1 and maintenance of confidential taxpayer information remain fully
2 applicable and binding. Without limitation, this subsection does not
3 enlarge or limit the state's authority to:

4 (i) Conduct audits or other reviews as provided under the agreement
5 and state law;

6 (ii) Provide records pursuant to the federal Freedom of Information
7 Act, disclosure laws with governmental agencies, or other regulations;

8 (iii) Prevent, consistent with state law, disclosure of confidential
9 taxpayer information;

10 (iv) Prevent, consistent with federal law, disclosure or misuse of
11 federal return information obtained under a disclosure agreement with the
12 Internal Revenue Service; and

13 (v) Collect, disclose, disseminate, or otherwise use anonymous data
14 for governmental purposes.

15 Sec. 7. Section 77-2713, Reissue Revised Statutes of Nebraska, is
16 amended to read:

17 77-2713 (1) Any person required under the provisions of sections
18 77-2701.04 to 77-2713 and section 5 of this act to collect, account for,
19 or pay over any tax imposed by the Nebraska Revenue Act of 1967 who
20 willfully fails to collect or truthfully account for or pay over such tax
21 and any person who willfully attempts in any manner to evade any tax
22 imposed by such provisions of such act or the payment thereof shall, in
23 addition to other penalties provided by law, be guilty of a Class IV
24 felony.

25 (2) Any person who willfully aids or assists in, procures, counsels,
26 or advises the preparation or presentation of a false or fraudulent
27 return, affidavit, claim, or document under or in connection with any
28 matter arising under sections 77-2701.04 to 77-2713 and section 5 of this
29 act shall, whether or not such falsity or fraud is with the knowledge or
30 consent of the person authorized or required to present such return,
31 affidavit, claim, or document, be guilty of a Class IV felony.

1 (3) A person who engages in business as a retailer in this state
2 without a permit or permits or after a permit has been suspended and each
3 officer of any corporation which so engages in business shall be guilty
4 of a Class IV misdemeanor. Each day of such operation shall constitute a
5 separate offense.

6 (4) Any person who gives a resale certificate to the seller for
7 property which he or she knows, at the time of purchase, is purchased for
8 the purpose of use rather than for the purpose of resale, lease, or
9 rental by him or her in the regular course of business shall be guilty of
10 a Class IV misdemeanor.

11 (5) Any violation of the provisions of sections 77-2701.04 to
12 77-2713 and section 5 of this act, except as otherwise provided, shall be
13 a Class IV misdemeanor.

14 (6) Any prosecution under sections 77-2701.04 to 77-2713 and section
15 5 of this act shall be instituted within three years after the commission
16 of the offense. If such offense is the failure to do an act required by
17 any of such sections to be done before a certain date, a prosecution for
18 such offense may be commenced not later than three years after such date.
19 The failure to do any act required by sections 77-2701.04 to 77-2713 and
20 section 5 of this act shall be deemed an act committed in part at the
21 principal office of the Tax Commissioner. Any prosecution under the
22 provisions of the Nebraska Revenue Act of 1967 may be conducted in any
23 county where the person or corporation to whose liability the proceeding
24 relates resides or has a place of business or in any county in which such
25 criminal act is committed. The Attorney General shall have concurrent
26 jurisdiction with the county attorney in the prosecution of any offenses
27 under the provisions of the Nebraska Revenue Act of 1967.

28 Sec. 8. Section 77-27,223, Reissue Revised Statutes of Nebraska, is
29 amended to read:

30 77-27,223 A county may raise revenue by levying and collecting a
31 license or occupation tax on any person, partnership, limited liability

1 company, corporation, or business engaged in the sale of admissions to
2 recreational, cultural, entertainment, or concert events that are subject
3 to sales tax under sections 77-2701.04 to 77-2713 and section 5 of this
4 act that occur outside any incorporated municipality, but within the
5 boundary limits of the county. The tax shall be uniform in respect to the
6 class upon which it is imposed. The tax shall be based upon a certain
7 percentage of gross receipts from sales in the county of the person,
8 partnership, limited liability company, corporation, or business, and may
9 include sales of other goods and services at such locations and events,
10 not to exceed one and one-half percent. A county may not impose the tax
11 on sales that are within an incorporated city or village. No county shall
12 levy and collect a license or occupation tax under this section unless
13 approved by a majority of those voting on the question at a special,
14 primary, or general election.

15 Sec. 9. This act becomes operative on October 1, 2019.

16 Sec. 10. Original sections 28-806, 77-2701, 77-2701.04, 77-2701.41,
17 77-2711, 77-2713, and 77-27,223, Reissue Revised Statutes of Nebraska,
18 are repealed.