

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1341

Introduced by Wayne, 13.

Read first time January 17, 2024

Committee: Revenue

1 A BILL FOR AN ACT relating to hemp; to amend sections 2-503, 77-2701.48,
2 and 77-2704.09, Reissue Revised Statutes of Nebraska, and sections
3 77-2701.02 and 77-27,132, Revised Statutes Supplement, 2023; to
4 define and redefine terms; to impose a higher sales and use tax rate
5 on sales of consumable hemp products; to provide for the
6 distribution of tax revenue; to state intent regarding funding; to
7 harmonize provisions; and to repeal the original sections.
8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 2-503, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 2-503 For purposes of the Nebraska Hemp Farming Act:

4 (1) Acceptable hemp THC level has the same meaning as in 7 C.F.R.
5 990.1, as such section existed on January 1, 2020;

6 (2) Agriculture Improvement Act of 2018 means section 10113 of the
7 federal Agriculture Improvement Act of 2018, Public Law 115-334, and any
8 regulations adopted and promulgated under such section, as such section,
9 act, and regulations existed on January 1, 2020;

10 (3) Approved testing facility means a testing facility approved by
11 the department;

12 (4) Broker means a person who engages or participates in the
13 marketing of hemp by acting as an intermediary or negotiator between
14 prospective buyers and sellers;

15 (5) Commercial sale means the sale of products in the stream of
16 commerce, at retail, wholesale, and online;

17 (6) Commission means the Nebraska Hemp Commission;

18 (7)(a) Consumable hemp product means a finished product that
19 contains hemp and that has a delta-9 THC concentration of not more than
20 0.3 percent on a dry weight basis.

21 (b) Consumable hemp product does not include a product made from the
22 mature stalks of a plant of the genus cannabis, fiber produced from such
23 stalks, oil or cake made from the seeds of such plant, any other
24 compound, manufacture, salt, derivative, mixture, or preparation of such
25 mature stalks, the sterilized seed of such plant which is incapable of
26 germination, or cannabidiol contained in a drug product approved by the
27 federal Food and Drug Administration;

28 (8) ~~(7)~~ Cultivate or cultivating means planting, watering, growing,
29 and harvesting a hemp plant or crop. The presence of plants of the plant
30 Cannabis sativa L. growing as uncultivated, naturalized plants in the
31 environment is not cultivating hemp for purposes of the Nebraska Hemp

1 Farming Act;

2 (9) ~~(8)~~ Cultivator means a person who cultivates hemp;

3 (10) ~~(9)~~ Department means the Department of Agriculture;

4 (11) ~~(10)~~ Director means the Director of Agriculture or his or her
5 designee;

6 (12) ~~(11)~~ GPS coordinates means latitude and longitude coordinates
7 derived from a global positioning system;

8 (13) ~~(12)~~ Handle or handling means possessing or storing hemp plants
9 or hemp plant parts prior to cultivation, in the process of cultivation,
10 or after being harvested or dried but before processing. Handle or
11 handling also includes possessing or storing such hemp plants or hemp
12 plant parts in a vehicle for any period of time other than during its
13 actual transport from the premises of a person licensed to cultivate or
14 process hemp to the premises of another licensee. Handle or handling does
15 not include possessing, storing, or transporting finished hemp products
16 or hemp seeds;

17 (14)(a) ~~(13)~~ Hemp means the plant *Cannabis sativa* L. and any part of
18 such plant, including the viable seeds of such plant and all derivatives,
19 extracts, cannabinoids, isomers, acids, salts, and salts of isomers,
20 whether growing or not, with a delta-9 tetrahydrocannabinol concentration
21 of not more than 0.3 percent on a dry weight basis.

22 (b) Hemp includes a consumable hemp product.

23 (c) Hemp shall be considered an agricultural commodity.
24 Notwithstanding any other provision of law, hemp shall not be considered
25 a controlled substance under the Uniform Controlled Substances Act;

26 (15) ~~(14)~~ Licensee means an individual or a business entity
27 possessing a license issued by the department under the Nebraska Hemp
28 Farming Act, including authorized employees or agents of such licensee,
29 to cultivate, handle, process, or broker hemp;

30 (16) ~~(15)~~ Location ID means the unique identifier established by a
31 licensee for each unique set of GPS coordinates where hemp is cultivated,

1 handled, or processed;

2 ~~(17)~~ ~~(16)~~ Lot means a contiguous area in a field, greenhouse, or
3 indoor growing structure containing the same variety or strain of hemp
4 throughout such area;

5 ~~(18)~~ ~~(17)~~ Measurement of uncertainty has the same meaning as in 7
6 C.F.R. 990.1, as such section existed on January 1, 2020;

7 ~~(19)~~ ~~(18)~~ Person means an individual, partnership, corporation,
8 limited liability company, association, postsecondary institution, or
9 other legal entity;

10 ~~(20)~~ ~~(19)~~ Postsecondary institution means a postsecondary
11 institution as defined in section 85-2403 that also meets the
12 requirements of 20 U.S.C. 1001, as such section existed on January 1,
13 2019;

14 ~~(21)~~ ~~(20)~~ Process or processing means converting hemp plants or
15 plant parts into a marketable form;

16 ~~(22)~~ ~~(21)~~ Processor-handler means a person who handles or processes
17 hemp;

18 ~~(23)~~ ~~(22)~~ Site means an area defined by the same legal description
19 in a field, greenhouse, or other outdoor area or indoor structure, or for
20 a mobile processor, such processor's primary place of business;

21 ~~(24)~~ ~~(23)~~ THC means tetrahydrocannabinol; and

22 ~~(25)~~ ~~(24)~~ USDA-licensed hemp producer means a person licensed by the
23 United States Department of Agriculture to produce hemp as provided in 7
24 C.F.R. part 990, subpart C, as such regulations existed on January 1,
25 2020.

26 Sec. 2. Section 77-2701.02, Revised Statutes Supplement, 2023, is
27 amended to read:

28 77-2701.02 Pursuant to section 77-2715.01:

29 (1) Until July 1, 1998, the rate of the sales tax levied pursuant to
30 section 77-2703 shall be five percent;

31 (2) Commencing July 1, 1998, and until July 1, 1999, the rate of the

1 sales tax levied pursuant to section 77-2703 shall be four and one-half
2 percent;

3 (3) Commencing July 1, 1999, and until the start of the first
4 calendar quarter after July 20, 2002, the rate of the sales tax levied
5 pursuant to section 77-2703 shall be five percent;

6 (4) Commencing on the start of the first calendar quarter after July
7 20, 2002, and until July 1, 2023, the rate of the sales tax levied
8 pursuant to section 77-2703 shall be five and one-half percent; and

9 (5) Commencing July 1, 2023, the rate of the sales tax levied
10 pursuant to section 77-2703 shall be five and one-half percent, except
11 that such rate shall be:

12 (a) Two ~~two~~ and three-quarters percent on transactions occurring
13 within a good life district as defined in section 77-4403; and -

14 (b) Seven and one-half percent for sales of consumable hemp products
15 as defined in section 2-503.

16 Sec. 3. Section 77-2701.48, Reissue Revised Statutes of Nebraska, is
17 amended to read:

18 77-2701.48 (1) Bundled transaction means the retail sale of two or
19 more products, except real property and services to real property, when
20 (a) the products are otherwise distinct and identifiable and (b) the
21 products are sold for one non-itemized price. Bundled transaction does
22 not include the sale of any products in which the sales price varies, or
23 is negotiable, based on the selection by the purchaser of the products
24 included in the transaction.

25 (2) Distinct and identifiable products do not include:

26 (a) Packaging, such as containers, boxes, sacks, bags, and bottles
27 or other materials such as wrapping, labels, tags, and instruction guides
28 that accompany the retail sale of the products and are incidental or
29 immaterial to the retail sale thereof. Examples of packaging that are
30 incidental or immaterial include grocery sacks, shoeboxes, dry cleaning
31 garment bags, and express delivery envelopes and boxes;

1 (b) A product provided free of charge with the required purchase of
2 another product. A product is provided free of charge if the sales price
3 of the product purchased does not vary depending on the inclusion of the
4 product provided free of charge; and

5 (c) Items included in the definition of sales price pursuant to
6 section 77-2701.35.

7 (3) One non-itemized price does not include a price that is
8 separately identified by product on binding sales or other supporting
9 sales-related documentation made available to the customer in paper or
10 electronic form, including, but not limited to, an invoice, bill of sale,
11 receipt, contract, service agreement, lease agreement, periodic notice of
12 rates and services, rate card, or price list.

13 (4) A transaction that otherwise meets the definition of a bundled
14 transaction is not a bundled transaction if it is (a) the retail sale of
15 tangible personal property and a service where the tangible personal
16 property is essential to the use of the service, and is provided
17 exclusively in connection with the service, and the true object of the
18 transaction is the service, (b) the retail sale of services when one
19 service is provided that is essential to the use or receipt of a second
20 service and the first service is provided exclusively in connection with
21 the second service and the true object of the transaction is the second
22 service, or (c) a transaction that includes taxable products and
23 nontaxable products and the purchase price or sales price of the taxable
24 products is de minimus. De minimus means the seller's purchase price or
25 sales price of the taxable products is ten percent or less of the total
26 purchase price or sales price of the bundled products. Sellers shall use
27 either the purchase price or the sales price of the products to determine
28 if the taxable products are de minimus. Sellers may not use a combination
29 of the purchase price and sales price of the products to determine if the
30 taxable products are de minimus. Sellers shall use the full term of a
31 service contract to determine if the taxable products are de minimus.

1 (5) Bundled transaction does not include the retail sale of exempt
2 tangible personal property and taxable tangible personal property if (a)
3 the transaction includes food and food ingredients, drugs, durable
4 medical equipment, mobility enhancing equipment, over-the-counter drugs,
5 prosthetic devices, or medical supplies as such terms are defined in
6 section 77-2704.09 and (b) the seller's purchase price or sales price of
7 the taxable tangible personal property is fifty percent or less of the
8 total purchase price or sales price of the bundled tangible personal
9 property. Sellers may not use a combination of the purchase price and
10 sales price of the tangible personal property when making the fifty-
11 percent determination for a transaction.

12 Sec. 4. Section 77-2704.09, Reissue Revised Statutes of Nebraska, is
13 amended to read:

14 77-2704.09 (1) Sales and use taxes shall not be imposed on the gross
15 receipts from the sale, lease, or rental of and the storage, use, or
16 other consumption in this state of (a) insulin, (b) mobility enhancing
17 equipment and drugs, not including over-the-counter drugs, when sold for
18 a patient's use under a prescription, and (c) the following when sold for
19 a patient's use under a prescription and which are of the type eligible
20 for coverage under the medical assistance program established pursuant to
21 the Medical Assistance Act: Durable medical equipment; home medical
22 supplies; prosthetic devices; oxygen; and oxygen equipment.

23 (2) For purposes of this section:

24 (a)(i) ~~(a)~~ Drug means a compound, substance, preparation, and
25 component of a compound, substance, or preparation, other than food and
26 food ingredients, dietary supplements, or alcoholic beverages:

27 (A) ~~(i)~~ Recognized in the official United States Pharmacopoeia,
28 official Homeopathic Pharmacopoeia of the United States, or official
29 National Formulary, and any supplement to any of them;

30 (B) ~~(ii)~~ Intended for use in the diagnosis, cure, mitigation,
31 treatment, or prevention of disease; or

1 (C) ~~(iii)~~ Intended to affect the structure or any function of the
2 body; and

3 (ii) Drug does not include a consumable hemp product as defined in
4 section 2-503;

5 (b) Durable medical equipment means equipment which can withstand
6 repeated use, is primarily and customarily used to serve a medical
7 purpose, generally is not useful to a person in the absence of illness or
8 injury, is appropriate for use in the home, and is not worn in or on the
9 body. Durable medical equipment includes repair and replacement parts for
10 such equipment;

11 (c) Home medical supplies means supplies primarily and customarily
12 used to serve a medical purpose which are appropriate for use in the home
13 and are generally not useful to a person in the absence of illness or
14 injury;

15 (d) Mobility enhancing equipment means equipment which is primarily
16 and customarily used to provide or increase the ability to move from one
17 place to another, which is not generally used by persons with normal
18 mobility, and which is appropriate for use either in a home or a motor
19 vehicle. Mobility enhancing equipment includes repair and replacement
20 parts for such equipment. Mobility enhancing equipment does not include
21 any motor vehicle or equipment on a motor vehicle normally provided by a
22 motor vehicle manufacturer;

23 (e) Over-the-counter drug means a drug that contains a label that
24 identifies the product as a drug as required by 21 C.F.R. 201.66, as such
25 regulation existed on January 1, 2003. The over-the-counter drug label
26 includes a drug facts panel or a statement of the active ingredients with
27 a list of those ingredients contained in the compound, substance, or
28 preparation;

29 (f) Oxygen equipment means oxygen cylinders, cylinder transport
30 devices including sheaths and carts, cylinder studs and support devices,
31 regulators, flowmeters, tank wrenches, oxygen concentrators, liquid

1 oxygen base dispensers, liquid oxygen portable dispensers, oxygen tubing,
2 nasal cannulas, face masks, oxygen humidifiers, and oxygen fittings and
3 accessories;

4 (g) Prescription means an order, formula, or recipe issued in any
5 form of oral, written, electronic, or other means of transmission by a
6 duly licensed practitioner authorized under the Uniform Credentialing
7 Act; and

8 (h) Prosthetic devices means a replacement, corrective, or
9 supportive device worn on or in the body to artificially replace a
10 missing portion of the body, prevent or correct physical deformity or
11 malfunction, or support a weak or deformed portion of the body, and
12 includes any supplies used with such device and repair and replacement
13 parts.

14 Sec. 5. Section 77-27,132, Revised Statutes Supplement, 2023, is
15 amended to read:

16 77-27,132 (1) There is hereby created a fund to be designated the
17 Revenue Distribution Fund which shall be set apart and maintained by the
18 Tax Commissioner. Revenue not required to be credited to the General Fund
19 or any other specified fund may be credited to the Revenue Distribution
20 Fund. Credits and refunds of such revenue shall be paid from the Revenue
21 Distribution Fund. The balance of the amount credited, after credits and
22 refunds, shall be allocated as provided by the statutes creating such
23 revenue.

24 (2) The Tax Commissioner shall pay to a depository bank designated
25 by the State Treasurer all amounts collected under the Nebraska Revenue
26 Act of 1967. The Tax Commissioner shall present to the State Treasurer
27 bank receipts showing amounts so deposited in the bank, and of the
28 amounts so deposited the State Treasurer shall:

29 (a) For transactions occurring on or after October 1, 2014, and
30 before October 1, 2027, credit to the Game and Parks Commission Capital
31 Maintenance Fund all of the proceeds of the sales and use taxes imposed

1 pursuant to section 77-2703 on the sale or lease of motorboats as defined
2 in section 37-1204, personal watercraft as defined in section 37-1204.01,
3 all-terrain vehicles as defined in section 60-103, and utility-type
4 vehicles as defined in section 60-135.01;

5 (b) Credit to the Highway Trust Fund all of the proceeds of the
6 sales and use taxes derived from the sale or lease for periods of more
7 than thirty-one days of motor vehicles, trailers, and semitrailers,
8 except that the proceeds equal to any sales tax rate provided for in
9 section 77-2701.02 that is in excess of five percent derived from the
10 sale or lease for periods of more than thirty-one days of motor vehicles,
11 trailers, and semitrailers shall be credited to the Highway Allocation
12 Fund;

13 (c) For transactions occurring on or after July 1, 2013, and before
14 July 1, 2042, of the proceeds of the sales and use taxes derived from
15 transactions other than those listed in subdivisions (2)(a), (b), ~~and~~
16 (e), and (f) of this section from a sales tax rate of one-quarter of one
17 percent, credit monthly eighty-five percent to the Highway Trust Fund and
18 fifteen percent to the Highway Allocation Fund;

19 (d) Of the proceeds of the sales and use taxes derived from
20 transactions other than those listed in subdivisions (2)(a), (b), ~~and~~
21 (e), and (f) of this section, credit to the Property Tax Credit Cash Fund
22 the amount certified under section 77-27,237, if any such certification
23 is made; ~~and~~

24 (e) For transactions occurring on or after July 1, 2023, credit to
25 the Department of Transportation Aeronautics Capital Improvement Fund all
26 of the proceeds of the sales and use taxes imposed pursuant to section
27 77-2703 on the sale or lease of aircraft as defined in section 3-101;
28 and -

29 (f) Credit two percent of the proceeds of the sales and use taxes
30 imposed pursuant to section 77-2703 on the sale of consumable hemp
31 products as defined in section 2-503 to the XXX Fund. It is the intent of

1 the Legislature that the XXX Fund shall be used to fund treatment for
2 post-traumatic stress disorder.

3 The balance of all amounts collected under the Nebraska Revenue Act
4 of 1967 shall be credited to the General Fund.

5 Sec. 6. Original sections 2-503, 77-2701.48, and 77-2704.09,
6 Reissue Revised Statutes of Nebraska, and sections 77-2701.02 and
7 77-27,132, Revised Statutes Supplement, 2023, are repealed.