

**ASSEMBLY, No. 3363**

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**STATE OF NEW JERSEY**

**217th LEGISLATURE**

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INTRODUCED MARCH 3, 2016

**Sponsored by:**

**Assemblywoman VALERIE VAINIERI HUTTLE**

**District 37 (Bergen)**

**Assemblywoman GABRIELA M. MOSQUERA**

**District 4 (Camden and Gloucester)**

**SYNOPSIS**

Establishes Children's Health Promotion Fund.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 9/9/2016)**

1 AN ACT concerning healthy eating for low-income children,  
2 supplementing Title 54 of the Revised Statutes, and amending  
3 P.L.1980, c.150 and P.L.1966, c.30.

4  
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
6 *of New Jersey:*

7  
8 1. (New section) a. There is established in the Department of  
9 the Treasury a nonlapsing, revolving fund to be known as the  
10 "Children's Health Promotion Fund." This fund shall be the  
11 repository for monies provided pursuant to section 3 of P.L.1966,  
12 c.30 (C.54:32B-3) and section 14 of P.L.1980, c.150 (C.54:32B-  
13 8.2), and any other funds approved by the Department of Health.

14 b. The State Treasurer is the custodian of the fund and all  
15 disbursements from the fund shall be made by the State Treasurer  
16 upon vouchers signed by the Commissioner of Health or the  
17 commissioner's designee. The monies in the fund shall be invested  
18 and reinvested by the Director of the Division of Investment in the  
19 Department of the Treasury as are other trust funds in the custody  
20 of the State Treasurer, in the manner provided by law. Interest  
21 received on the monies in the fund shall be credited to the fund.

22 c. The monies deposited in the Children's Health Promotion  
23 Fund pursuant to subsection a. of this section shall be distributed by  
24 the Department of Health to establish and expand programs that:

25 (1) improve access to, and encourage the consumption of,  
26 healthy, safe, and affordable foods and beverages by low-income  
27 children;

28 (2) educate low-income children and their families on the  
29 importance of proper diet and physical activity in preventing  
30 childhood obesity; and

31 (3) raise public awareness about educational, community-based,  
32 and public health approaches that promote sound nutritional choices  
33 and an active and healthy lifestyle for low-income children and  
34 their families.

35  
36 2. Section 3 of P.L.1966, c.30 (C.54:32B-3) is amended to read  
37 as follows:

38 3. There is imposed and there shall be paid a tax of 7% upon:

39 (a) The receipts from every retail sale of tangible personal  
40 property or a specified digital product for permanent use or less  
41 than permanent use, and regardless of whether continued payment is  
42 required, except as otherwise provided in this act.

43 (b) The receipts from every sale, except for resale, of the  
44 following services:

**EXPLANATION** – Matter enclosed in bold-faced brackets **[thus]** in the above bill is  
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1       (1) Producing, fabricating, processing, printing or imprinting  
2 tangible personal property or a specified digital product, performed  
3 for a person who directly or indirectly furnishes the tangible  
4 personal property or specified digital product, not purchased by him  
5 for resale, upon which such services are performed.

6       (2) Installing tangible personal property or a specified digital  
7 product, or maintaining, servicing, repairing tangible personal  
8 property or a specified digital product not held for sale in the  
9 regular course of business, whether or not the services are  
10 performed directly or by means of coin-operated equipment or by  
11 any other means, and whether or not any tangible personal property  
12 or specified digital product is transferred in conjunction therewith,  
13 except (i) such services rendered by an individual who is engaged  
14 directly by a private homeowner or lessee in or about his residence  
15 and who is not in a regular trade or business offering his services to

16       (3) Storing all tangible personal property not held for sale in the  
17 regular course of business; the rental of safe deposit boxes or  
18 similar space; and the furnishing of space for storage of tangible  
19 personal property by a person engaged in the business of furnishing  
20 space for such storage.

21       "Space for storage" means secure areas, such as rooms, units,  
22 compartments or containers, whether accessible from outside or  
23 from within a building, that are designated for the use of a customer  
24 and wherein the customer has free access within reasonable  
25 business hours, or upon reasonable notice to the furnisher of space  
26 for storage, to store and retrieve property. Space for storage shall  
27 not include the lease or rental of an entire building, such as a  
28 warehouse or airplane hangar.

29       (4) Maintaining, servicing or repairing real property, other than  
30 a residential heating system unit serving not more than three  
31 families living independently of each other and doing their cooking  
32 on the premises, whether the services are performed in or outside of  
33 a building, as distinguished from adding to or improving such real  
34 property by a capital improvement, but excluding services rendered  
35 by an individual who is not in a regular trade or business offering  
36 his services to the public, and excluding garbage removal and sewer  
37 services performed on a regular contractual basis for a term not less  
38 than 30 days.

39       (5) Mail processing services for printed advertising material,  
40 except for mail processing services in connection with distribution  
41 of printed advertising material to out-of-State recipients.

42       (6) (Deleted by amendment, P.L.1995, c.184).

43       (7) Utility service provided to persons in this State, any right or  
44 power over which is exercised in this State.

45       (8) Tanning services, including the application of a temporary  
46 tan provided by any means.

47       (9) Massage, bodywork or somatic services, except such  
48 services provided pursuant to a doctor's prescription.

1       (10) Tattooing, including all permanent body art and permanent  
2       cosmetic make-up applications, except such services provided  
3       pursuant to a doctor's prescription in conjunction with  
4       reconstructive breast surgery.

5       (11) Investigation and security services.

6       (12) Information services.

7       (13) Transportation services originating in this State and  
8       provided by a limousine operator, as permitted by law, except such  
9       services provided in connection with funeral services.

10      (14) Telephone answering services.

11      (15) Radio subscription services.

12      Wages, salaries and other compensation paid by an employer to  
13      an employee for performing as an employee the services described  
14      in this subsection are not receipts subject to the taxes imposed  
15      under this subsection (b).

16      Services otherwise taxable under paragraph (1) or (2) of this  
17      subsection (b) are not subject to the taxes imposed under this  
18      subsection, where the tangible personal property or specified digital  
19      product upon which the services were performed is delivered to the  
20      purchaser outside this State for use outside this State.

21      (c) (1) Receipts from the sale of prepared food in or by  
22      restaurants, taverns, or other establishments in this State, or by  
23      caterers, including in the amount of such receipts any cover,  
24      minimum, entertainment or other charge made to patrons or  
25      customers, except for meals especially prepared for and delivered to  
26      homebound elderly, age 60 or older, and to disabled persons, or  
27      meals prepared and served at a group-sitting at a location outside of  
28      the home to otherwise homebound elderly persons, age 60 or older,  
29      and otherwise homebound disabled persons, as all or part of any  
30      food service project funded in whole or in part by government or as  
31      part of a private, nonprofit food service project available to all such  
32      elderly or disabled persons residing within an area of service  
33      designated by the private nonprofit organization; and

34      (2) Receipts from sales of food and beverages sold through  
35      vending machines, at the wholesale price of such sale, which shall  
36      be defined as 70% of the retail vending machine selling price,  
37      except sales of milk, which shall not be taxed. Nothing herein  
38      contained shall affect other sales through coin-operated vending  
39      machines taxable pursuant to subsection (a) above or the exemption  
40      thereto provided by section 21 of P.L.1980, c.105 (C.54:32B-8.9).

41      The tax imposed by this subsection (c) shall not apply to food or  
42      drink which is sold to an airline for consumption while in flight.

43      (3) For the purposes of this subsection:

44      "Food and beverages sold through vending machines" means  
45      food and beverages dispensed from a machine or other mechanical  
46      device that accepts payment; and

47      "Prepared food" means:

48      (i) A. food sold in a heated state or heated by the seller; or

- 1       B. two or more food ingredients mixed or combined by the  
2 seller for sale as a single item, but not including food that is only  
3 cut, repackaged, or pasteurized by the seller, and eggs, fish, meat,  
4 poultry, and foods containing these raw animal foods requiring  
5 cooking by the consumer as recommended by the Food and Drug  
6 Administration in Chapter 3, part 401.11 of its Food Code so as to  
7 prevent food borne illnesses; **[or]**
- 8       C. food sold with eating utensils provided by the seller,  
9 including plates, knives, forks, spoons, glasses, cups, napkins, or  
10 straws. A plate does not include a container or packaging used to  
11 transport the food; or
- 12       D. bakery items, including bread, rolls, buns, biscuits, bagels,  
13 croissants, pastries, donuts, danish, cakes, tortes, pies, tarts,  
14 muffins, bars, cookies, and tortillas containing 30 or more grams of  
15 sugars;  
16 provided however, that
- 17       (ii) "prepared food" does not include the following sold without  
18 eating utensils:
- 19       A. food sold by a seller whose proper primary NAICS  
20 classification is manufacturing in section 311, except subsector  
21 3118 (bakeries);
- 22       B. food sold in an unheated state by weight or volume as a  
23 single item; or
- 24       C. bakery items, including bread, rolls, buns, biscuits, bagels,  
25 croissants, pastries, donuts, danish, cakes, tortes, pies, tarts,  
26 muffins, bars, cookies, and tortillas containing less than 30 grams of  
27 sugars.
- 28       (d) The rent for every occupancy of a room or rooms in a hotel  
29 in this State, except that the tax shall not be imposed upon a  
30 permanent resident.
- 31       (e) (1) Any admission charge to or for the use of any place of  
32 amusement in the State, including charges for admission to race  
33 tracks, baseball, football, basketball or exhibitions, dramatic or  
34 musical arts performances, motion picture theaters, except charges  
35 for admission to boxing, wrestling, kick boxing or combative sports  
36 exhibitions, events, performances or contests which charges are  
37 taxed under any other law of this State or under section 20 of  
38 P.L.1985, c.83 (C.5:2A-20), and, except charges to a patron for  
39 admission to, or use of, facilities for sporting activities in which  
40 such patron is to be a participant, such as bowling alleys and  
41 swimming pools. For any person having the permanent use or  
42 possession of a box or seat or lease or a license, other than a season  
43 ticket, for the use of a box or seat at a place of amusement, the tax  
44 shall be upon the amount for which a similar box or seat is sold for  
45 each performance or exhibition at which the box or seat is used or  
46 reserved by the holder, licensee or lessee, and shall be paid by the  
47 holder, licensee or lessee.

1 (2) The amount paid as charge of a roof garden, cabaret or other  
2 similar place in this State, to the extent that a tax upon such charges  
3 has not been paid pursuant to subsection (c) hereof.

4 (f) (1) The receipts from every sale, except for resale, of  
5 intrastate, interstate, or international telecommunications services  
6 and ancillary services sourced to this State in accordance with  
7 section 29 of P.L.2005, c.126 (C.54:32B-3.4).

8 (2) (Deleted by amendment, P.L.2008, c.123)

9 (g) (Deleted by amendment, P.L.2008, c.123)

10 (h) Charges in the nature of initiation fees, membership fees or  
11 dues for access to or use of the property or facilities of a health and  
12 fitness, athletic, sporting or shopping club or organization in this  
13 State, except for: (1) membership in a club or organization whose  
14 members are predominantly age 18 or under; and (2) charges in the  
15 nature of membership fees or dues for access to or use of the  
16 property or facilities of a health and fitness, athletic, sporting or  
17 shopping club or organization that is exempt from taxation pursuant  
18 to paragraph (1) of subsection (a) of section 9 of P.L.1966, c.30  
19 (C.54:32B-9), or that is exempt from taxation pursuant to paragraph  
20 (1) or (2) of subsection (b) of section 9 of P.L.1966, c.30 and that  
21 has complied with subsection (d) of section 9 of P.L.1966, c.30.

22 (i) The receipts from parking, storing or garaging a motor  
23 vehicle, excluding charges for the following: residential parking;  
24 employee parking, when provided by an employer or at a facility  
25 owned or operated by the employer; municipal parking, storing or  
26 garaging; receipts from charges or fees imposed pursuant to section  
27 3 of P.L.1993, c.159 (C.5:12-173.3) or pursuant to an agreement  
28 between the Casino Reinvestment Development Authority and a  
29 casino operator in effect on the date of enactment of P.L.2007,  
30 c.105; and receipts from parking, storing or garaging a motor  
31 vehicle subject to tax pursuant to any other law or ordinance.

32 For the purposes of this subsection, "municipal parking, storing or  
33 garaging" means any motor vehicle parking, storing or garaging  
34 provided by a municipality or county, or a parking authority  
35 thereof.

36 (j) Notwithstanding the provisions of this section, the tax  
37 imposed on all bakery items listed in sub-subparagraph (D) of  
38 subparagraph (i) of paragraph (3) of this section, and any interest or  
39 penalties imposed by the Director of the Division of Taxation  
40 relating to that tax, shall be deposited by the State Treasurer into the  
41 Children's Health Promotion Fund established pursuant to section 1  
42 of P.L. , c. (C. ) (pending before the Legislature as this  
43 bill).

44 (cf: P.L.2013, c.193)

45  
46 3. Section 14 of P.L.1980, c.150 (C.54:32B-8.2) is amended to  
47 read as follows

1 14. a. Receipts from the following are exempt from the tax  
2 imposed under the "Sales and Use Tax Act:" sales of food and food  
3 ingredients and dietary supplements, sold for human consumption  
4 off the premises where sold but not including (1) candy, and (2) soft  
5 drinks, all of which shall be subject to the retail sales and  
6 compensating use taxes.

7 b. The exemption in this section is not applicable to prepared  
8 food subject to tax under subsection (c) of section 3 of the Sales and  
9 Use Tax Act (C.54:32B-3).

10 c. As used in this section:

11 "Candy" means a preparation of sugar, honey, or other natural or  
12 artificial sweeteners in combination with chocolate, fruits, nuts or  
13 other ingredients or flavorings in the form of bars, drops, or  
14 pieces~~["~~. "Candy" does not include~~"]~~, and includes any preparation  
15 containing flour or requiring refrigeration;

16 "Dietary supplement" means any product, other than tobacco,  
17 intended to supplement the diet, that:

18 (1) contains one or more of the following dietary ingredients: a  
19 vitamin; a mineral; an herb or other botanical; an amino acid; a  
20 dietary substance for use by humans to supplement the diet by  
21 increasing the total dietary intake; a concentrate, metabolite,  
22 constituent, extract, or combination of any ingredient described  
23 herein;

24 (2) is intended for ingestion in tablet, capsule, powder, softgel,  
25 gelcap, or liquid form, or if not intended for ingestion in such a  
26 form, is not represented as conventional food and is not represented  
27 for use as a sole item of a meal or of the diet; and

28 (3) is required to be labeled as a dietary supplement, identifiable  
29 by the "Supplemental Facts" box found on the label and as required  
30 pursuant to 21 C.F.R. s.101.36;

31 "Food and food ingredients" means substances, whether in  
32 liquid, concentrated, solid, frozen, dried, or dehydrated form, that  
33 are sold for ingestion or chewing by humans and are consumed for  
34 their taste or nutritional value. "Food and food ingredients" does  
35 not include alcoholic beverages or tobacco;

36 "Soft drinks" means non-alcoholic beverages that contain natural  
37 or artificial sweeteners. "Soft drinks" does not include beverages  
38 that contain: milk or milk products; soy, rice or similar milk  
39 substitutes; or greater than fifty percent of vegetable or fruit juice  
40 by volume; and

41 "Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or  
42 any other item that contains tobacco.

43 d. Notwithstanding the provisions of this section, in the case of  
44 candy and soft drinks containing 30 or more grams of sugar, the tax  
45 on such items, and any interest or penalties imposed by the Director  
46 of the Division of Taxation relating to that tax, shall be deposited  
47 by the State Treasurer into the Children's Health Promotion Fund

1 established pursuant to section 1 of P.L. , c. (C. ) (pending  
2 before the Legislature as this bill).

3 (cf: P.L.2008, c.123, s.7)

4  
5 4. (New section). The Commissioner of Health, pursuant to the  
6 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
7 seq.), shall adopt rules and regulations necessary to effectuate the  
8 purposes of this act.

9  
10 5. This act shall take effect immediately.

11  
12  
13 STATEMENT

14  
15 This bill establishes the "Children's Health Promotion Fund" in  
16 the Department of the Treasury. The fund would be a nonlapsing,  
17 revolving fund, the repository for the funds provided pursuant to  
18 section 3 of P.L.1966, c.30 (C.54:32B-3), section 14 of P.L.1980,  
19 c.150 (C.54:32B-8.2), and any other funds approved by the  
20 Department of Health (DOH).

21 The State Treasurer would be the custodian of the Children's  
22 Health Promotion Fund, and interest received on the monies in the  
23 fund would be credited to the fund. The monies in the fund would  
24 be provided through the collection of taxes imposed on bakery  
25 items, candy, and soft drinks containing 30 or more grams of sugar.

26 The monies deposited in the fund pursuant to the provisions of  
27 the bill would be distributed by DOH to establish and expand  
28 programs that: improve access to, and encourage the consumption  
29 of, healthy, safe, and affordable foods and beverages by low-income  
30 children; educate low-income children and their families on the  
31 importance of proper diet and physical activity in preventing  
32 childhood obesity; and raise public awareness about educational,  
33 community-based, and public health approaches that promote sound  
34 nutritional choices and an active and healthy lifestyle for low-  
35 income children and their families.

36 The bill amends section 3 of P.L.1966, c.30 (C.54:32B-3) and  
37 section 14 of P.L.1980, c.150 (C.54:32B-8.2) to require taxes  
38 imposed on bakery items, candy, and soft drinks containing 30 or  
39 more grams of sugar, and any interest or penalties imposed by the  
40 Director of the Division of Taxation relating to the taxes, to be  
41 deposited by the State Treasurer into the Children's Health  
42 Promotion Fund.

43 The bill also amends section 3 of P.L.1966, c.30 (C.54:32B-3) to  
44 require that bakery items (bread, rolls, buns, biscuits, bagels,  
45 croissants, pastries, donuts, danish, cakes, tortes, pies, tarts,  
46 muffins, bars, cookies, and tortillas) containing 30 or more grams of  
47 sugars be subject to sales tax. Bakery items containing less than 30



1 grams of sugar would continue to be exempt from sales tax, as  
2 currently provided by law.

3 Finally, the bill amends section 14 of P.L.1980, c.150  
4 (C.54:32B-8.2) to mandate that receipts for the sale of candy  
5 prepared containing flour or candy requiring refrigeration and  
6 containing 30 or more grams of sugar would be subject to sales tax.