

**ASSEMBLY, No. 3273**

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**STATE OF NEW JERSEY**

**219th LEGISLATURE**

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INTRODUCED FEBRUARY 25, 2020

**Sponsored by:**

**Assemblywoman VALERIE VAINIERI HUTTLE**

**District 37 (Bergen)**

**SYNOPSIS**

Establishes Children's Health Promotion Fund.

**CURRENT VERSION OF TEXT**

As introduced.



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:

45 (1) Producing, fabricating, processing, printing or imprinting  
46 tangible personal property or a specified digital product, performed

**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 for a person who directly or indirectly furnishes the tangible  
2 personal property or specified digital product, not purchased by him  
3 for resale, upon which such services are performed.

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

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

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

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

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

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

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

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

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

47 (10) Tattooing, including all permanent body art and permanent  
48 cosmetic make-up applications, except such services provided

1 pursuant to a doctor's prescription in conjunction with  
2 reconstructive breast surgery.

3 (11) Investigation and security services.

4 (12) Information services.

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

8 (14) Telephone answering services.

9 (15) Radio subscription services.

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

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

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

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

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

41 (3) For the purposes of this subsection:

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

45 "Prepared food" means:

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

47 B. two or more food ingredients mixed or combined by the  
48 seller for sale as a single item, but not including food that is only

1 cut, repackaged, or pasteurized by the seller, and eggs, fish, meat,  
2 poultry, and foods containing these raw animal foods requiring  
3 cooking by the consumer as recommended by the Food and Drug  
4 Administration in Chapter 3, part 401.11 of its Food Code so as to  
5 prevent food borne illnesses; **[or]**

6 C. food sold with eating utensils provided by the seller,  
7 including plates, knives, forks, spoons, glasses, cups, napkins, or  
8 straws. A plate does not include a container or packaging used to  
9 transport the food; or

10 D. bakery items, including bread, rolls, buns, biscuits, bagels,  
11 croissants, pastries, donuts, danish, cakes, tortes, pies, tarts,  
12 muffins, bars, cookies, and tortillas containing 30 or more grams of  
13 sugars;

14 provided however, that

15 (ii) "prepared food" does not include the following sold without  
16 eating utensils:

17 A. food sold by a seller whose proper primary NAICS  
18 classification is manufacturing in section 311, except subsector  
19 3118 (bakeries);

20 B. food sold in an unheated state by weight or volume as a  
21 single item; or

22 C. bakery items, including bread, rolls, buns, biscuits, bagels,  
23 croissants, pastries, donuts, danish, cakes, tortes, pies, tarts,  
24 muffins, bars, cookies, and tortillas containing less than 30 grams of  
25 sugars.

26 (d) The rent for every occupancy of a room or rooms in a hotel  
27 in this State, except that the tax shall not be imposed upon a  
28 permanent resident.

29 (e) (1) Any admission charge to or for the use of any place of  
30 amusement in the State, including charges for admission to race  
31 tracks, baseball, football, basketball or exhibitions, dramatic or  
32 musical arts performances, motion picture theaters, except charges  
33 for admission to boxing, wrestling, kick boxing or combative sports  
34 exhibitions, events, performances or contests which charges are  
35 taxed under any other law of this State or under section 20 of  
36 P.L.1985, c.83 (C.5:2A-20), and, except charges to a patron for  
37 admission to, or use of, facilities for sporting activities in which  
38 such patron is to be a participant, such as bowling alleys and  
39 swimming pools. For any person having the permanent use or  
40 possession of a box or seat or lease or a license, other than a season  
41 ticket, for the use of a box or seat at a place of amusement, the tax  
42 shall be upon the amount for which a similar box or seat is sold for  
43 each performance or exhibition at which the box or seat is used or  
44 reserved by the holder, licensee or lessee, and shall be paid by the  
45 holder, licensee or lessee.

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

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

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

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

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

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

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

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

(cf: P.L.2017, c.27, s.1)

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

14. a. Receipts from the following are exempt from the tax imposed under the "Sales and Use Tax Act:" sales of food and food ingredients and dietary supplements, sold for human consumption off the premises where sold but not including (1) candy, and (2) soft

1 drinks, all of which shall be subject to the retail sales and  
2 compensating use taxes.

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

6 c. As used in this section:

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

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

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

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

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

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

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

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

39 d. Notwithstanding the provisions of this section, in the case of  
40 candy and soft drinks containing 30 or more grams of sugar, the tax  
41 on such items, and any interest or penalties imposed by the Director  
42 of the Division of Taxation relating to that tax, shall be deposited  
43 by the State Treasurer into the Children's Health Promotion Fund  
44 established pursuant to section 1 of P.L. , c. (C. ) (pending  
45 before the Legislature as this bill).

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

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

5  
6       5. This act shall take effect immediately.

7  
8                               STATEMENT

9  
10       This bill establishes the "Children's Health Promotion Fund" in  
11 the Department of the Treasury. The fund would be a nonlapsing,  
12 revolving fund, the repository for the funds provided pursuant to  
13 section 3 of P.L.1966, c.30 (C.54:32B-3), section 14 of P.L.1980,  
14 c.150 (C.54:32B-8.2), and any other funds approved by the  
15 Department of Health (DOH).

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

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

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

38       The bill also amends section 3 of P.L.1966, c.30 (C.54:32B-3) to  
39 require that bakery items (bread, rolls, buns, biscuits, bagels,  
40 croissants, pastries, donuts, danish, cakes, tortes, pies, tarts,  
41 muffins, bars, cookies, and tortillas) containing 30 or more grams of  
42 sugars be subject to sales tax. Bakery items containing less than 30  
43 grams of sugar would continue to be exempt from sales tax, as  
44 currently provided by law.

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