

LEGISLATURE OF NEBRASKA  
ONE HUNDRED THIRD LEGISLATURE  
FIRST SESSION  
**LEGISLATIVE BILL 447**

Introduced by Avery, 28.

Read first time January 22, 2013

Committee: Revenue

A BILL

1 FOR AN ACT relating to revenue and taxation; to amend section  
2 77-2704.24, Reissue Revised Statutes of Nebraska, and  
3 section 77-27,132, Revised Statutes Cumulative  
4 Supplement, 2012; to provide for sales and use taxes on  
5 soft drinks; to change the distribution of sales tax  
6 proceeds; to create funds and a committee; to provide  
7 funding for various projects that assist children; to  
8 provide powers and duties; to provide an operative date;  
9 and to repeal the original sections.  
10 Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 77-2704.24, Reissue Revised Statutes  
2 of Nebraska, is amended to read:

3           77-2704.24 (1) Sales and use taxes shall not be imposed  
4 on the gross receipts from the sale, lease, or rental of and the  
5 storage, use, or other consumption in this state of food ~~or~~ and food  
6 ingredients except for prepared food and food sold through vending  
7 machines.

8           (2) For purposes of this section:

9           (a) Alcoholic beverages means beverages that are suitable  
10 for human consumption and contain one-half of one percent or more of  
11 alcohol by volume;

12           (b) Dietary supplement means any product, other than  
13 tobacco, intended to supplement the diet that contains one or more of  
14 the following dietary ingredients: (i) A vitamin, (ii) a mineral,  
15 (iii) an herb or other botanical, (iv) an amino acid, (v) a dietary  
16 substance for use by humans to supplement the diet by increasing the  
17 total dietary intake, or (vi) a concentrate, metabolite, constituent,  
18 extract, or combination of any ingredients described in subdivisions  
19 (2)(b)(i) through (v) of this section; that is intended for ingestion  
20 in tablet, capsule, powder, softgel, gelcap, or liquid form or, if  
21 not intended for ingestion in such a form, is not presented as  
22 conventional food and is not represented for use as a sole item of a  
23 meal or of the diet; and that is required to be labeled as a dietary  
24 supplement, identifiable by the supplemental facts box found on the  
25 label and as required pursuant to 21 C.F.R. 101.36, as such

1 regulation existed on January 1, 2003;

2 (c) Food and food ingredients means substances, whether  
3 in liquid, concentrated, solid, frozen, dried, or dehydrated form,  
4 that are sold for ingestion or chewing by humans and are consumed for  
5 their taste or nutritional value. Food and food ingredients does not  
6 include alcoholic beverages, dietary supplements, soft drinks, or  
7 tobacco;

8 (d) Food sold through vending machines means food that is  
9 dispensed from a machine or other mechanical device that accepts  
10 payment;

11 (e) Prepared food means:

12 (i) Food sold with eating utensils provided by the  
13 seller, including plates, knives, forks, spoons, glasses, cups,  
14 napkins, or straws. A plate does not include a container or packaging  
15 used to transport the food; and

16 (ii) Two or more food ingredients mixed or combined by  
17 the seller for sale as a single item and food sold in a heated state  
18 or heated by the seller, except:

19 (A) Food that is only cut, repackaged, or pasteurized by  
20 the seller;

21 (B) Eggs, fish, meat, poultry, and foods containing these  
22 raw animal foods requiring cooking by the consumer as recommended by  
23 the federal Food and Drug Administration in chapter 3, part 401.11 of  
24 its Food Code, as it existed on January 1, 2003, so as to prevent  
25 food borne illnesses;

1           (C) Food sold by a seller whose proper primary North  
2 American Industry Classification System classification is  
3 manufacturing in sector 311, except subsector 3118, bakeries;

4           (D) Food sold in an unheated state by weight or volume as  
5 a single item; and

6           (E) Bakery items, including bread, rolls, buns, biscuits,  
7 bagels, croissants, pastries, donuts, danish, cakes, tortes, pies,  
8 tarts, muffins, bars, cookies, and tortillas; and

9           (f) Soft drinks means nonalcoholic beverages that contain  
10 natural or artificial sweeteners. Soft drinks do not include  
11 beverages that contain primarily milk or milk products, soy, rice, or  
12 similar milk substitutes, or one hundred percent vegetable or fruit  
13 juice; and

14           ~~(f)~~(g) Tobacco means cigarettes, cigars, chewing or pipe  
15 tobacco, or any other item that contains tobacco.

16           Sec. 2. Section 77-27,132, Revised Statutes Cumulative  
17 Supplement, 2012, is amended to read:

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

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

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

14           (b) For transactions occurring on or after July 1, 2013,  
15 and before July 1, 2033, of the proceeds of the sales and use taxes  
16 derived from transactions other than those listed in subdivision (2)  
17 (a) of this section from a sales tax rate of one-quarter of one  
18 percent, credit monthly eighty-five percent to the State Highway  
19 Capital Improvement Fund and fifteen percent to the Highway  
20 Allocation Fund; ~~and -~~

21           (c) After crediting the amounts required under  
22 subdivisions (2)(a) and (2)(b) of this section, of the remaining  
23 proceeds of the sales and use taxes derived from the sale of soft  
24 drinks as defined in section 77-2704.24, credit monthly sixty-seven  
25 percent to the Nebraska Healthy Kids Fund and thirty-three percent to

1 the Evidence-Based Practice Grant Fund.

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

4           Sec. 3. (1) The Nebraska Healthy Kids Fund is created.  
5 The fund shall consist of the proceeds of the sales and use taxes  
6 derived from the sale of soft drinks which are credited to the fund  
7 pursuant to section 77-27,132. Transfers shall be made from the  
8 Nebraska Healthy Kids Fund as provided in this section.

9           (2) Beginning January 1, 2014, and each January 1  
10 thereafter, five hundred thousand dollars shall be transferred from  
11 the Nebraska Healthy Kids Fund to the University of Nebraska at  
12 Kearney Student Health Initiative Fund, which fund is hereby created.  
13 The University of Nebraska at Kearney Student Health Initiative Fund  
14 shall be used by the University of Nebraska at Kearney to develop and  
15 maintain a statewide data base for weight and fitness data on  
16 students in Nebraska public schools. Data for the statewide data base  
17 shall be gathered by school districts electing to participate in data  
18 collection. Such school districts shall report the data to the  
19 University of Nebraska at Kearney. The University of Nebraska at  
20 Kearney shall provide training and technical assistance to school  
21 districts on data collection practices. The University of Nebraska at  
22 Kearney shall use the statewide data base to prepare an annual report  
23 on obesity and fitness levels among students in Nebraska public  
24 schools, and such report shall be submitted to the Clerk of the  
25 Legislature and the State Department of Education on or before

1 December 31 of each year.

2 (3) Beginning July 1, 2014, and each July 1 thereafter,  
3 after the transfer authorized in subsection (2) of this section is  
4 made, seventy percent of the remaining funds in the Nebraska Healthy  
5 Kids Fund shall be transferred to the State Department of Education  
6 Student Health Initiative Fund, which fund is hereby created. The  
7 State Department of Education Student Health Initiative Fund shall be  
8 administered by the State Department of Education and shall be used  
9 as follows:

10 (a) The first one hundred thousand dollars shall be used  
11 each year by the State Department of Education (i) to monitor  
12 compliance by school districts with the requirements of subdivision  
13 (3)(b)(ii) of this section, (ii) to define the qualifications for  
14 district wellness coordinators to be hired under subdivision (3)(b)  
15 (ii)(A) of this section, and (iii) to assist school districts in the  
16 development and implementation of school wellness policies required  
17 pursuant to subdivision (3)(b)(ii)(D) of this section; and

18 (b)(i) The remaining funds shall be distributed by July  
19 15 of each year to school districts based on the following formula:

20 (A) Ten thousand dollars shall be distributed to each  
21 school district; and

22 (B) The remaining amount shall be distributed to school  
23 districts on a pro rata basis based on the number of students in  
24 grades kindergarten through twelve in each school district as  
25 determined using the most recent fall school district membership

1 reports filed by school districts pursuant to section 79-528.

2 (ii) In order for a school district to keep the funds  
3 received pursuant to subdivision (3)(b)(i) of this section, the  
4 school district shall certify annually to the State Department of  
5 Education, within three months after receiving such funds, that the  
6 following requirements have been met:

7 (A) The school district has hired or contracted for a  
8 district wellness coordinator that meets the qualifications  
9 prescribed by the State Department of Education pursuant to  
10 subdivision (3)(a)(ii) of this section. The district wellness  
11 coordinator is encouraged to be a shared position contracted through  
12 a local public health department, a community health organization, or  
13 an educational service unit for small school districts, but, at a  
14 minimum, school districts with less than five thousand students shall  
15 have hired or contracted for a one-fifth full-time equivalent  
16 district wellness coordinator, school districts with at least five  
17 thousand but less than fifteen thousand students shall have hired or  
18 contracted for a one-half full-time equivalent district wellness  
19 coordinator, and school districts with at least fifteen thousand  
20 students shall have hired or contracted for one full-time equivalent  
21 district wellness coordinator;

22 (B) The school district has obtained letters of support  
23 and involvement from outside public health entities, including, but  
24 not limited to, local public health departments, universities, or  
25 community-based nonprofit organizations;

1           (C) The school district has implemented a program  
2 consistent with the State Department of Education's Policy for  
3 Coordinated School Health; and

4           (D) The school district has developed a school wellness  
5 policy which includes evaluation of student weight and fitness data.  
6 The school district shall report such data on a yearly basis to the  
7 University of Nebraska at Kearney for use in the statewide data base  
8 established under subsection (2) of this section.

9           (iii) If in any year a school district is unable to  
10 certify that the requirements of subdivision (3)(b)(ii) of this  
11 section have been met, such school district shall immediately return  
12 all funds received under this section for that year to the State  
13 Department of Education. The State Department of Education shall then  
14 remit any such funds to the State Treasurer for credit to the  
15 Department of Health and Human Services Child Health Initiative Fund.

16           (4)(a) Beginning July 1, 2014, and each July 1  
17 thereafter, after the transfer authorized in subsection (2) of this  
18 section is made, thirty percent of the remaining funds in the  
19 Nebraska Healthy Kids Fund shall be transferred to the Department of  
20 Health and Human Services Child Health Initiative Fund, which fund is  
21 hereby created. The Department of Health and Human Services Child  
22 Health Initiative Fund shall be administered by the Department of  
23 Health and Human Services. The department shall allocate the funds in  
24 the Department of Health and Human Services Child Health Initiative  
25 Fund to local public health departments according to the following

1 formula:

2 (i) Forty thousand dollars shall be allocated to each  
3 local public health department; and

4 (ii) The remaining amount shall be allocated to local  
5 public health departments on a pro rata basis based on the population  
6 served by the local public health department as determined using the  
7 most recent federal census figures available from the most recent  
8 federal decennial census.

9 (b) In order for a local public health department to  
10 receive the funds allocated pursuant to subdivision (4)(a) of this  
11 section, the local public health department shall have letters of  
12 support and involvement from a majority of the local school districts  
13 served by such local public health department. If a local public  
14 health department does not meet such requirement to receive its  
15 allocated funds, such funds shall instead be remitted to the State  
16 Treasurer for credit to the State Department of Education Student  
17 Health Initiative Fund.

18 (c) Local public health departments shall use the funds  
19 received under this section to organize community efforts relating to  
20 child health and obesity. At least fifty percent of the funding  
21 received under subdivision (4)(a)(ii) of this section shall be  
22 distributed to community-based organizations that work on issues  
23 relating to breast-feeding, child care, school-based health efforts,  
24 or other best practices to address childhood obesity. Each local  
25 public health department receiving funds under this section shall

1 report on activities funded under this section and the progress made  
2 toward all goals regarding such activities on a yearly basis to the  
3 University of Nebraska at Kearney for use in the statewide data base  
4 established under subsection (2) of this section.

5 (5) Any funds received by a school district pursuant to  
6 this section shall not be taken into account when determining state  
7 aid under the Tax Equity and Educational Opportunities Support Act.

8 (6)(a) The State Treasurer shall adjust the dollar amount  
9 in subsection (2) of this section on January 1, 2015, and each  
10 January 1 thereafter. The adjusted amount shall be equal to the then  
11 current amount adjusted by the cumulative percentage change in the  
12 Consumer Price Index for All Urban Consumers published by the Federal  
13 Bureau of Labor Statistics for the one-year period preceding the  
14 adjustment date. The amount shall be rounded to the next highest one-  
15 thousand-dollar amount.

16 (b) The State Department of Education shall adjust the  
17 dollar amounts in subdivisions (3)(a) and (3)(b)(i)(A) of this  
18 section on July 1, 2015, and each July 1 thereafter. The adjusted  
19 amounts shall be equal to the then current amounts adjusted by the  
20 cumulative percentage change in the Consumer Price Index for All  
21 Urban Consumers published by the Federal Bureau of Labor Statistics  
22 for the one-year period preceding the adjustment date. The amounts  
23 shall be rounded to the next highest one-thousand-dollar amounts.

24 (c) The Department of Health and Human Services shall  
25 adjust the dollar amount in subdivision (4)(a)(i) of this section on

1 July 1, 2015, and each July 1 thereafter. The adjusted amount shall  
2 be equal to the then current amount adjusted by the cumulative  
3 percentage change in the Consumer Price Index for All Urban Consumers  
4 published by the Federal Bureau of Labor Statistics for the one-year  
5 period preceding the adjustment date. The amount shall be rounded to  
6 the next highest one-thousand-dollar amount.

7 (7) Any money in the Nebraska Healthy Kids Fund, the  
8 University of Nebraska at Kearney Student Health Initiative Fund, the  
9 State Department of Education Student Health Initiative Fund, or the  
10 Department of Health and Human Services Child Health Initiative Fund  
11 available for investment shall be invested by the state investment  
12 officer pursuant to the Nebraska Capital Expansion Act and the  
13 Nebraska State Funds Investment Act.

14 (8) For purposes of this section, local public health  
15 department shall have the same meaning as in section 71-1626.

16 Sec. 4. (1) The Evidence-Based Practice Grant Fund is  
17 created. The fund shall be administered by the Department of Health  
18 and Human Services and shall consist of the proceeds of the sales and  
19 use taxes derived from the sale of soft drinks which are credited to  
20 the fund pursuant to section 77-27,132. Any money in the fund  
21 available for investment shall be invested by the state investment  
22 officer pursuant to the Nebraska Capital Expansion Act and the  
23 Nebraska State Funds Investment Act.

24 (2) The fund shall be used to provide grants for  
25 expanding evidence-based practices for prevention and intervention

1 services for at-risk children in Nebraska. The grants shall be used  
2 (a) to help communities understand what programs and interventions  
3 are effective for a diverse child welfare population, (b) to help  
4 system and cross-system initiatives identify appropriate outcome  
5 targets and share successful programs, (c) to provide program  
6 templates for results that have been yielded from specific  
7 interventions, and (d) to provide templates for innovation and  
8 improvement that communities can develop through implementation and  
9 fidelity to programs that have been proven effective.

10 (3) Grants from the Evidence-Based Practice Grant Fund  
11 will be awarded by the Evidence-Based Practice Grant Fund Committee  
12 and shall be distributed and administered by the Department of Health  
13 and Human Services.

14 (4) For purposes of this section:

15 (a) At-risk children means any child or youth whose  
16 mental health, substance abuse, or behavioral issues have resulted,  
17 or may potentially result in, the child or youth being provided care  
18 by or being under the supervision of the child welfare system or  
19 juvenile justice system; and

20 (b) Evidence-based practice means a practice that is  
21 based on the best research evidence and clinical experiences and is  
22 consistent with family and client values.

23 Sec. 5. (1) The Evidence-Based Practice Grant Fund  
24 Committee is created. The committee shall be composed of the  
25 following eight members:

1           (a) The Director of Children and Family Services of the  
2 Division of Children and Family Services of the Department of Health  
3 and Human Services, or his or her designee;

4           (b) The Director of Behavioral Health of the Division of  
5 Behavioral Health of the Department of Health and Human Services, or  
6 his or her designee;

7           (c) The chief medical officer as designated in section  
8 81-3115, or his or her designee;

9           (d) The chairperson of the Nebraska Children's  
10 Commission;

11           (e) The vice-chairperson of the Nebraska Children's  
12 Commission;

13           (f) The Commissioner of Education, or his or her  
14 designee;

15           (g) The probation administrator of the Office of  
16 Probation Administration, or his or her designee; and

17           (h) The director of the Nebraska Center for Research on  
18 Children, Youth, Families and Schools, or his or her designee.

19           (2) The committee shall make award decisions for grants  
20 from the Evidence-Based Practice Grant Fund as provided in section 4  
21 of this act.

22           (3) Members of the committee shall not receive any  
23 compensation for their services but shall be reimbursed for their  
24 actual and necessary expenses as provided in sections 81-1174 to  
25 81-1177. The reimbursement shall be paid from the Evidence-Based

1 Practice Grant Fund.

2                   Sec. 6. This act becomes operative on October 1, 2013.

3                   Sec. 7. Original section 77-2704.24, Reissue Revised  
4 Statutes of Nebraska, and section 77-27,132, Revised Statutes  
5 Cumulative Supplement, 2012, are repealed.