LEGISLATIVE BILL 447

Introduced by Avery, 28.
Read first time January 22, 2013
Committee: Revenue

A BILL

FOR AN ACT relating to revenue and taxation; to amend section 77-2704.24, Reissue Revised Statutes of Nebraska, and section 77-27,132, Revised Statutes Cumulative Supplement, 2012; to provide for sales and use taxes on soft drinks; to change the distribution of sales tax proceeds; to create funds and a committee; to provide funding for various projects that assist children; to provide powers and duties; to provide an operative date; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,
Section 1. Section 77-2704.24, Reissue Revised Statutes of Nebraska, is amended to read:

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

(2) For purposes of this section:

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

(b) Dietary supplement means any product, other than tobacco, intended to supplement the diet that contains one or more of the following dietary ingredients: (i) A vitamin, (ii) a mineral, (iii) an herb or other botanical, (iv) an amino acid, (v) a dietary substance for use by humans to supplement the diet by increasing the total dietary intake, or (vi) a concentrate, metabolite, constituent, extract, or combination of any ingredients described in subdivisions (2)(b)(i) through (v) of this section; that is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form or, if not intended for ingestion in such a form, is not presented as conventional food and is not represented for use as a sole item of a meal or of the diet; and that is required to be labeled as a dietary supplement, identifiable by the supplemental facts box found on the label and as required pursuant to 21 C.F.R. 101.36, as such
regulation existed on January 1, 2003;

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

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

(e) Prepared food means:

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

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

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

      (B) Eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the federal Food and Drug Administration in chapter 3, part 401.11 of its Food Code, as it existed on January 1, 2003, so as to prevent food borne illnesses;
(C) Food sold by a seller whose proper primary North American Industry Classification System classification is manufacturing in sector 311, except subsector 3118, bakeries;

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

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

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

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

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

77-27,132 (1) There is hereby created a fund to be designated the Revenue Distribution Fund which shall be set apart and maintained by the Tax Commissioner. Revenue not required to be credited to the General Fund or any other specified fund may be credited to the Revenue Distribution Fund. Credits and refunds of such revenue shall be paid from the Revenue Distribution Fund. The balance of the amount credited, after credits and refunds, shall be allocated as provided by the statutes creating such revenue.
(2) The Tax Commissioner shall pay to a depository bank designated by the State Treasurer all amounts collected under the Nebraska Revenue Act of 1967. The Tax Commissioner shall present to the State Treasurer bank receipts showing amounts so deposited in the bank, and of the amounts so deposited the State Treasurer shall:

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

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

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

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

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

(2) Beginning January 1, 2014, and each January 1 thereafter, five hundred thousand dollars shall be transferred from the Nebraska Healthy Kids Fund to the University of Nebraska at Kearney Student Health Initiative Fund, which fund is hereby created. The University of Nebraska at Kearney Student Health Initiative Fund shall be used by the University of Nebraska at Kearney to develop and maintain a statewide data base for weight and fitness data on students in Nebraska public schools. Data for the statewide data base shall be gathered by school districts electing to participate in data collection. Such school districts shall report the data to the University of Nebraska at Kearney. The University of Nebraska at Kearney shall provide training and technical assistance to school districts on data collection practices. The University of Nebraska at Kearney shall use the statewide data base to prepare an annual report on obesity and fitness levels among students in Nebraska public schools, and such report shall be submitted to the Clerk of the Legislature and the State Department of Education on or before
December 31 of each year.

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

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

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

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

(B) The remaining amount shall be distributed to school districts on a pro rata basis based on the number of students in grades kindergarten through twelve in each school district as determined using the most recent fall school district membership
reports filed by school districts pursuant to section 79-528.

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

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

(B) The school district has obtained letters of support and involvement from outside public health entities, including, but not limited to, local public health departments, universities, or community-based nonprofit organizations;
(C) The school district has implemented a program consistent with the State Department of Education's Policy for Coordinated School Health; and

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

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

(4)(a) Beginning July 1, 2014, and each July 1 thereafter, after the transfer authorized in subsection (2) of this section is made, thirty percent of the remaining funds in the Nebraska Healthy Kids Fund shall be transferred to the Department of Health and Human Services Child Health Initiative Fund, which fund is hereby created. The Department of Health and Human Services Child Health Initiative Fund shall be administered by the Department of Health and Human Services. The department shall allocate the funds in the Department of Health and Human Services Child Health Initiative Fund to local public health departments according to the following
(i) Forty thousand dollars shall be allocated to each local public health department; and

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

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

(c) Local public health departments shall use the funds received under this section to organize community efforts relating to child health and obesity. At least fifty percent of the funding received under subdivision (4)(a)(ii) of this section shall be distributed to community-based organizations that work on issues relating to breast-feeding, child care, school-based health efforts, or other best practices to address childhood obesity. Each local public health department receiving funds under this section shall
report on activities funded under this section and the progress made
toward all goals regarding such activities on a yearly basis to the
University of Nebraska at Kearney for use in the statewide data base
established under subsection (2) of this section.

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

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

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

(c) The Department of Health and Human Services shall
adjust the dollar amount in subdivision (4)(a)(i) of this section on
July 1, 2015, and each July 1 thereafter. The adjusted amount shall be equal to the then current amount adjusted by the cumulative percentage change in the Consumer Price Index for All Urban Consumers published by the Federal Bureau of Labor Statistics for the one-year period preceding the adjustment date. The amount shall be rounded to the next highest one-thousand-dollar amount.

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

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

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

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

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

(4) For purposes of this section:

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

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

Sec. 5. (1) The Evidence-Based Practice Grant Fund
Committee is created. The committee shall be composed of the
following eight members:
(a) The Director of Children and Family Services of the Division of Children and Family Services of the Department of Health and Human Services, or his or her designee;

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

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

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

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

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

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

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

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

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

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

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