

# ARKANSAS SENATE

## 84th General Assembly - Second Extraordinary Session, 2003 Amendment Form

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### Subtitle of House Bill No. 1030

"TO PROVIDE ADDITIONAL REVENUE TO FUND THE EDUCATIONAL SYSTEM, TO INCREASE SALES AND WHOLESALE VENDING TAX, AND TO IMPOSE SALES TAX ON CERTAIN SERVICES."

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### Amendment No. 1 to House Bill No. 1030.

Amend House Bill No. 1030 as engrossed, H2/2/04 (version: 02-02-2004 13:58):

Page 1, line 15 after "FUND;" and before "AND" add "TO REDUCE THE SALES AND USE TAX RATE ON FOOD AND FOOD INGREDIENTS WHEN SALES AND USE TAX REVENUES FROM OUT-OF-STATE VENDORS WITHOUT PHYSICAL PRESENCE IN ARKANSAS HAVE SUFFICIENTLY INCREASED;"

AND

Delete the Subtitle and substitute the following:  
"TO PROVIDE ADDITIONAL REVENUE TO FUND THE EDUCATIONAL SYSTEM, TO INCREASE SALES AND WHOLESALE VENDING TAX, TO IMPOSE SALES TAX ON CERTAIN SERVICES; AND TO REDUCE THE SALES AND USE TAX RATE ON FOOD AND FOOD INGREDIENTS."

AND

Immediately following Section 11 add the following additional Sections:

"SECTION 12. Title 26, Chapter 52, Subchapter 3, is amended to add a new section to read as follows:

26-52-316. Food and food ingredients.

(a) As used in this section:

(1) "Alcoholic beverages" means beverages that are suitable for human consumption and contain one-half of one percent (0.5%) or more of alcohol by volume;

(2) "Dietary supplement" means any product, other than tobacco, intended to supplement the diet that:

(A) Contains one (1) 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 ingredient described in this subdivision (a)(2)(A);

(B) 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 represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and

(C) Is required to be labeled as a dietary supplement, identifiable by the "Supplemental Facts" box found on the label and as required by 21 C.F.R § 101.36;

(3)(A) "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.

(B) "Food and food ingredients" does not include alcoholic beverages, dietary supplements, prepared foods, food sold through vending machines, or tobacco;

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

(5)(A) "Prepared food" means:

(i) Food sold in a heated state or heated by the seller;

(ii) Two (2) or more food ingredients mixed or combined by the seller for sale as a single item; or

(iii)(a) Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws.

(b) As used in subdivision (a)(5)(A)(iii)(a) of this section, "plate" does not include a container or packaging used to transport the food.

(B) "Prepared food" does not include:

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

(ii) Eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the Food and Drug Administration in Chapter 3, Part 401.11 of its Food Code, so as to prevent food-borne illnesses; and

(6) "Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.

(b)(1) The Director of the Department of Finance and Administration shall determine if:

(A) Federal law authorizes the collection of sales and use tax by the state from some or all of the sellers who:

(i) Have no physical presence in the State of Arkansas; and

(ii) Sell taxable goods and services to Arkansas purchasers;

(B) Collecting sales and use tax from these sellers would increase the net available general revenues needed to fund state agencies, services, and programs; and

(C)(i) During a consecutive six-month period, the amount of net available general revenues attributable to the collection of sales and use tax from sellers with no physical presence in the Arkansas is equal to or greater than one hundred fifty percent (150%) of sales and use tax collected under §§ 26-52-301, 26-52-302(a) and (b), 26-53-106, and 26-53-107(a) and (b) on food and food ingredients during the same six-month period.

(ii) The director will make the determination under subdivision (b)(1)(C)(i) of this section on a monthly basis following the determination that the conditions under subdivision (b)(1)(A) of this section have been met.

(2) When the director finds that all of the conditions in subdivision (b)(1) of this section have been met, then the gross receipts or gross proceeds levied under §§ 26-52-301 and 26-52-302(a) and (b) upon the gross receipts or gross proceeds derived from the sale of food and food ingredients shall be levied at the rate of zero percent (0%) beginning on the first day of the second calendar month following the determination of the director.

(c) The gross receipts or gross proceeds derived from the sale of food and food ingredients shall continue to be subject to the taxes levied under § 26-52-302(c).

(d) The gross receipts or gross proceeds derived from the sale of food and food ingredients shall continue to be subject to the tax levied under Arkansas Constitution, Amendment 75, § 2.

(e) The gross receipts or gross proceeds derived from the sale of food and food ingredients shall continue to be subject to all municipal and county gross receipts taxes.

SECTION 13. Arkansas Code Title 26, Chapter 53, Subchapter 1 is amended to add a new section to read as follows:

26-53-145. Food and food ingredients.

(a)(1) The Director of the Department of Finance and Administration shall determine if:

(A) Federal law authorizes the collection of sales and use tax by the state from some or all of the sellers who:

(i) Have no physical presence in the State of Arkansas; and

(ii) Make sales of taxable goods and services to Arkansas purchasers;

(B) Collecting sales and use tax from these sellers would increase the net available general revenues needed to fund state agencies, services, and programs; and

(C)(i) During a consecutive six-month period, the amount of net available general revenues attributable to the collection of sales and use tax from sellers with no physical presence in the State of Arkansas is equal to or greater than one hundred fifty percent (150%) of sales and use tax collected under §§ 26-52-301, 26-52-302(a) and (b), 26-53-106 and 26-53-107(a) and (b) on food and food ingredients.

(ii) The director will make the determination under subdivision (a)(1)(C)(i) of this section on a monthly basis following the determination that the conditions under subdivision (a)(1)(A) of this section have been met.

(2) When the director finds that all of the conditions in

subdivision (a)(1) of this section have been met, then the compensating use taxes levied under §§ 26-53-106 and 26-53-107(a) and (b) shall be levied at the rate of zero percent (0%) on the sales price of food and food ingredients beginning on the first day of the second calendar month following the determination of the director.

(b) The compensating use tax levied under § 26-53-107(c) shall continue to apply to the sales price of food and food ingredients.

(c) The compensating use tax levied under Arkansas Constitution, Amendment 75, § 2 shall continue to apply to the sales price of food and food ingredients.

(d) All municipal and county use taxes shall continue to apply to the sales price of food and food ingredients.

(e) "Food and food ingredients" has the same meaning as provided in § 26-52-316(a)."

AND

Appropriately renumber the Sections of the bill

The Amendment was read the first time, rules suspended and read the second time and \_\_\_\_\_

By: Senator Baker  
JDF/CDS - 02-03-2004 08:33  
CDS712

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Secretary