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1 **State of Arkansas**

2 **79th General Assembly**

3 **Regular Session, 1993**

# **A Bill**

**HOUSE BILL 1926**

4 **By: Representatives Collier, Hendrix, Bryan, Stephens, Bryant, Hinshaw, Bisbee, Von**  
5 **Gremp, Cash, Hawkins, Curran and Young**

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## **For An Act To Be Entitled**

9 "AN ACT TO PROVIDE FOR THE ASSESSMENT OF AN ANNUAL VENDING  
10 DEVICE DECAL FEE ON CERTAIN VENDING DEVICES OPERATED IN  
11 THE STATE OF ARKANSAS; TO FURTHER PROVIDE THAT THE PAYMENT  
12 OF SUCH ANNUAL VENDING DEVICE DECAL FEES SHALL BE MADE IN  
13 LIEU OF THE REQUIREMENT OF VENDING MACHINE OWNERS TO  
14 COLLECT AND REMIT THE GROSS RECEIPTS (SALES) TAXES  
15 PRESENTLY IMPOSED UPON THE GROSS RECEIPT OR GROSS PROCEEDS  
16 REALIZED BY THEM ON THE SALE OF GOODS AND SERVICES  
17 DISPENSED THROUGH VENDING DEVICES; TO FURTHER PROVIDE FOR  
18 PENALTIES FOR FAILURE TO PAY SUCH ANNUAL DECAL FEES; TO  
19 REQUIRE THE PURCHASE OF DECALS TO SELL AND DISTRIBUTE  
20 GOODS AND SERVICES BY VENDING DEVICES; AND FOR OTHER  
21 PURPOSES."

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## **Subtitle**

25 "THE VENDING DEVICES DECAL ACT."

26

27 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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29 SECTION 1. SHORT TITLE. This Act shall be known and cited as the  
30 "Vending Devices Decal Act of 1993."

31

32 SECTION 2. DEFINITIONS. As used in this Act, unless the context  
33 otherwise requires:

34 (a) "Person" means any individual partnership, association or  
35 corporation;

1 (b) "Coin-operated vending device" means any and all machines or devices  
2 which, upon the payment or insertion of a coin, token or similar object,  
3 dispenses tangible personal property, including, but not limited to, candies,  
4 gum, cold drinks, hot drinks, sandwiches, chips or other edible items,  
5 *cigarette lighters, prophylactics, ball point pens, or other nonedible items.*

6 This term shall not mean:

7 (1) amusement and game machines;

8 (2) devices used exclusively for the purpose of selling  
9 cigarettes, newspapers, magazines or postage stamps; or

10 (3) devices used for the purpose of selling services such as pay  
11 telephone booths, parking meters, gas and electric meters or other devices  
12 used in the distribution of such needful services;

13 (c) *"Coin-operated bulk vending device" means a machine or device*  
14 *containing unsorted merchandise which, upon insertion of a single coin,*  
15 *dispenses the merchandise in appropriately equal portions, at random and*  
16 *without selection by the customer. Such vending machine is a simple*  
17 *mechanical device capable of accepting a coin of only one denomination (either*  
18 *a penny, nickel, dime or quarter). Unsorted merchandise dispensed by such*  
19 *vending machine includes gum, candy, toys, novelties or similar merchandise;*  
20 *and*

21 (d) "Vending devices" means coin-operated vending devices and coin-  
22 operated bulk vending devices.

23

24 SECTION 3. AMOUNT OF ANNUAL VENDING DEVICE DECAL FEE PAYMENT - SPECIAL  
25 DECAL IN LIEU OF SALES TAX. (a) Every person who owns, leases, rents, or  
26 operates, and who makes available to the public for use and operation, vending  
27 devices described in this Act shall pay to the Director of the Department of  
28 Finance and Administration (for the benefit of the state and its  
29 municipalities and counties) the following Annual Vending Device Decal Fee for  
30 each such vending device, before such vending device can be placed within the  
31 state for use by members of the public:

32 (1) For each coin-operated vending device requiring a coin or thing of  
33 value of more than twenty-five cents (25¢) for a sale, sixty dollars (\$60.00);

34 (2) For each coin-operated vending device requiring a coin or thing of  
35 value of twenty-five cents (25¢) or less for a sale, eleven dollars (\$11.00);

1           (3) For each coin-operated bulk vending device requiring a coin or thing  
2 of value of more than twenty-five cents (25¢) for a sale, five dollars  
3 (\$5.00); and

4           (4) For each coin-operated bulk vending device requiring a coin or thing  
5 of value of twenty-five cents (25¢) or less for a sale, two dollars (\$2.00).  
6 The Annual Vending Device Decal issued by the Director of the Department of  
7 Finance & Administration, after payment of the appropriate Annual Vending  
8 Device Decal Fee, shall bear on its face the year of its issue, and such  
9 annual decal must be affixed to each vending device in a place that is clearly  
10 visible to the user of such device before each such vending device may be  
11 placed for public use or operation in this state. Such Annual Vending Device  
12 Decal shall not be transferred from one (1) vending device to another, unless  
13 the person who is the owner, lessor, renter or operator of such vending device  
14 shall establish, to the satisfaction of the Director of the Department of  
15 Finance and Administration, that the vending device to which the Annual  
16 Vending Device Decal is to be transferred is a vending device that is  
17 replacing the vending device to which such annual decal was originally  
18 affixed.

19           (b) In those instances where it is shown to the satisfaction of the  
20 Director of the Department of Finance and Administration that a vending device  
21 (upon which an Annual Vending Device Decal Fee is otherwise due), will be  
22 placed in service for use by members of the general public for a definite (but  
23 limited) period of time that is less than one (1) year (such as where the  
24 vending device shall be placed for public use in connection with fairs,  
25 carnivals, and places of amusement that operate only during certain seasons of  
26 the year); the Director of the Department of Finance and Administration shall  
27 issue a Special Vending Device Decal and collect a Special Vending Device  
28 Decal Fee for such vending devices as hereinafter computed:

29                   (1) Such special decal may be issued for any number of thirty (30)  
30 day periods, less than a full year, and such special decal shall indicate on  
31 its face that it is a special decal (not an annual decal) and such special  
32 decal shall be for one (1) or more thirty (30) day periods, but such special  
33 decal shall state on its face the precise dates for which it has been issued  
34 and such special decal shall not be transferred from one (1) vending device to  
35 another.

1           (2) The Special Vending Device Decal Fee shall be computed and  
2 paid by the person who is the owner, lessor, renter, or operator of such  
3 vending device on the basis of one-tenth (1/10) of the Annual Vending Device  
4 Decal Fee charged by the Act for the type of vending device operated, for each  
5 thirty (30) day period for which such special decal is issued.

6           (3) In the event the mechanical vending device is made available  
7 to the public for a period beyond that for which the special decal is issued,  
8 then a full year's fee and penalty, as set out in Section 7 of this Act shall  
9 be due on such vending device from the person who is the owner, lessor, renter  
10 or operator of such vending device.

11           (c) The Annual or Special Vending Device Decal Fees required to be paid  
12 by subsections (a) and (b) of this section shall be paid by the person who is  
13 the owner, lessor, renter or operator of such vending device in lieu of the  
14 requirement that such person collect and remit the state and local Gross  
15 Receipts (Sales) Taxes levied pursuant to the provisions of the Arkansas Gross  
16 Receipts Act of 1941, as amended, A.C.A. § 26-52-101, et. seq.; or any  
17 provision of Chapters 74 and 75 of the A.C.A. of 1987, or any other provision  
18 of the A.C.A. of 1987 which provides for the levy of a local sales tax. Any  
19 gross receipts or gross proceeds received by a person who is the owner or  
20 operator of a vending device from the sale of any item of tangible personal  
21 property, through the vending device, where the Annual or Special Vending  
22 Device Decal Fees have been paid and such decals are affixed to the vending  
23 device, then it is the intent of the General Assembly that such gross proceeds  
24 or gross receipts shall not be subject to any state or local Gross Receipts  
25 (Sales) Taxes imposed in this state. These Annual and Special Vending Device  
26 Decal Fees shall be paid in addition to the fee prescribed by A.C.A. § 26-57-  
27 307. The exemption from payment of individual machine license fees prescribed  
28 by A.C.A. § 26-57-309, shall not apply to the Annual or Special Vending Device  
29 Decal Fees imposed by this Act.

30

31           SECTION 4. APPLICATION AND ISSUANCE OF DECAL - DISPLAY. (a) Any person  
32 owning, leasing, renting or operating a vending device in this state that is  
33 to be made available for use and operation by the general public shall apply  
34 to the Director of the Department of Finance and Administration for the  
35 issuance of an Annual or Special Vending Device Decal for such vending device

1 and shall, at the same time, pay to the Director of the Department of Finance  
2 and Administration the Annual or Special Vending Device Decal Fee provided for  
3 by this Act.

4 (b) The Director of the Department of Finance and Administration, upon  
5 receipt of full payment of the applicable decal fee (and upon approval of such  
6 application), shall issue to the person making such application an Annual or  
7 Special Vending Device Decal for the type of vending device or devices covered  
8 by such application and payment.

9 (c) The Annual or Special Vending Device Decals, and the application  
10 provided for herein, shall be in such form as prescribed by the Director of  
11 the Department of Finance and Administration and these decals and applications  
12 shall contain on their face such information and descriptions as shall be  
13 required by regulations adopted by the Director of the Department of Finance  
14 and Administration to properly and reasonably implement the provisions of this  
15 Act. Any number of vending devices may be included in one application.

16 (d) Before any vending device is put into operation or placed where the  
17 same may be used or operated by any member of the general public, and at all  
18 times when the vending device is being used or operated or made available to  
19 members of the general public for use or operation, an Annual or Special  
20 Vending Device Decal shall be firmly affixed to the vending device covered  
21 thereby, so that such decal shall be plainly visible to, and readable by, the  
22 members of the general public.

23

24 SECTION 5. DISTRIBUTION OF REVENUES. It is hereby declared to be the  
25 purpose of this Act to provide revenues for general government functions of  
26 the state, and its counties and municipalities, in lieu of the state and local  
27 Gross Receipts (Sales) Taxes that would otherwise be due and owing from the  
28 person who is the owner, lessor, renter or operator of such vending devices.  
29 For that purpose and to that end, it is expressly provided that the revenue  
30 derived by the Director of the Department of Finance and Administration from  
31 the sale of Annual or Special Vending Device Decal Fees, including penalties,  
32 shall be deposited by the Director into the Treasury of the State of Arkansas  
33 and credited, as follows:

34 (1) The Vending Device Decal Fees imposed by Section 3(a)(1), (2), (3)  
35 and (4) of this Act (or any proportionate amount thereof) shall be divided,

1 with ninety percent (90%) of such amount being deposited to the credit of the  
2 General Revenue Fund provided by A.C.A. § 19-5-202; with five percent (5%) of  
3 such amount being deposited to the credit of the Municipal Aid Fund provided  
4 by A.C.A. § 19-5-601 (such amount to be distributed to the municipalities of  
5 this state in the same manner, but in addition to, the moneys appropriated by  
6 the General Assembly for such Municipal Aid Fund); and with five percent (5%)  
7 of such amount being deposited to the credit of the County Aid Fund provided  
8 by A.C.A. § 19-5-602 (such amount to be distributed to the counties of this  
9 state in the same manner, but in addition to, the moneys appropriated by the  
10 General Assembly for the County Aid Fund).

11

12 SECTION 6. TAXABLE YEAR - DECAL FOR REMAINDER OF YEAR. For the purpose  
13 of the Annual or Special Vending Device Decal issued under Section 4 of this  
14 Act, the decal fee year shall begin on the first day of July and end on the  
15 last day of the following June. This decal fee year shall be divided into two  
16 (2) halves. The Director of the Department of Finance and Administration  
17 shall in each instance issue Annual Vending Device Decals for the remainder of  
18 the decal year upon payment of the Annual Vending Device Decal Fee on the  
19 basis of the full amount of the Annual Vending Device Decal Fee being paid for  
20 any annual decal applied for between July 1 and December 31 of the decal fee  
21 year; and in return for the payment of an amount of one-half (1/2) of such  
22 Annual Vending Device Decal Fee, for any such annual decal applied for between  
23 January 1 and June 30 of the decal fee year.

24

25 SECTION 7. OPERATION WITHOUT DECAL - FEE AND CIVIL PENALTY. Any person  
26 who is the owner, lessor, renter or operator of a vending device who places a  
27 vending device in use or operation, or in a place available to the members of  
28 the general public for use and operation, without a valid and current Annual  
29 or Special Vending Device Decal being affixed, as required by Sections 3 and 4  
30 of this Act, shall be liable for the decal fee on such vending device in the  
31 full amount of an Annual Vending Device Decal Fee, as levied by this Act, and,  
32 in addition thereto, such person shall also be liable to pay to the Director  
33 of the Department of Finance and Administration a penalty in the amount of one  
34 hundred dollars (\$100), per vending device that is placed in operation that is  
35 not in compliance with the provisions of this Act.

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2 SECTION 8. OPERATING VENDING DEVICE WITHOUT VENDING DEVICE DECAL  
3 AFFIXED - CRIMINAL PENALTY. Any person who is the owner, lessor, renter or  
4 operator of a vending device who places such vending device in operation in  
5 this state for the use or operation by members of the public, without first  
6 attaching either the Annual or Special Vending Device Decal provided for  
7 herein shall be guilty of a Class C misdemeanor and, upon conviction, shall be  
8 punished by a fine not exceeding one hundred dollars (\$100) or by imprisonment  
9 in the county jail for a period not exceeding thirty (30) days, or by both  
10 such fine and imprisonment, as provided by A.C.A. § § 5-4-201 and 5-4-401.

11

12 SECTION 9. PROHIBITED DEVICES NOT LEGALIZED - FEES NOT REFUNDED.  
13 Nothing in this Act shall be construed to legalize any coin operated device  
14 that may be prohibited by any of the other statutes of this state. The  
15 Director of the Department of Finance and Administration may assume that any  
16 vending device described in any application made under this Act, and for which  
17 an Annual or Special Vending Device Decal Fee is paid, is lawful and no claim  
18 for refund of any such Annual or Special Vending Device Decal Fee shall be  
19 allowed based upon the inability of the owner, lessor, renter or operator of  
20 such coin-operated device to operate such vending device, because of any other  
21 applicable law of this state.

22

23 SECTION 10. REQUIREMENTS TO OBTAIN VENDING DEVICE DECAL. To obtain an  
24 Annual or Special Vending Device Decal, so as to be able to operate a vending  
25 device in this state, an applicant for such vending device decal shall comply  
26 with the following requirements. The applicant:

27 (1) must not be a convicted felon or a corporation whose president or  
28 principal shareholder(s) is (are) a convicted felon(s); and

29 (2) must have obtained from the Director of the Department of Finance  
30 and Administration an Arkansas Sales Tax Permit.

31

32 SECTION 11. FIRST YEAR PAYMENT OPTION. *For the first taxable year that*  
33 *the Annual or Special Vending Device Decal Fee is applicable, the person who*  
34 *is the owner, lessor, renter or operator of vending devices that are subject*  
35 *to registration and payment of such decal fees shall register all such devices*

1 with the Director of the Department of Finance and Administration, but, at the  
2 option of such person, may elect to pay one-half (1/2) of the decal fee for  
3 each vending device on or before July 1, 1993, and the balance of such decal  
4 fee on or before January 1, 1994. Thereafter, the entire Annual or Special  
5 Vending Device Decal Fee shall be due from the person who is the owner,  
6 lessor, renter or operator of such vending devices on or before July 1, of the  
7 applicable taxable year.

8

9           SECTION 12. PERMANENT NATURE OF ACT CONDITIONED UPON MINIMUM  
10 COLLECTIONS. All provisions of this Act shall be of a general and permanent  
11 nature. However, and only if the Director of the Department of Finance and  
12 Administration shall certify to the Governor of the State of Arkansas, on a  
13 date between May 1, 1995, and June 30, 1995, that the total amount of moneys  
14 collected by the State of Arkansas from the Annual and Special Vending Device  
15 Decal Fees provided for in Section 3 of this Act were less than an average of  
16 three million two hundred thousand dollars (\$3,200,000) per taxable year, for  
17 the first two taxable years, the Decal Fee is in effect, then such fact shall  
18 be, in turn, certified by the Governor to the Secretary of State, to the  
19 Speaker of the House of Representatives, and to the President Pro Tempore of  
20 the Senate, and this Act shall be deemed to have expired, as of June 30, 1995.  
21 If this Act expires as of June 30, 1995, then sales made by way of vending  
22 devices shall thereafter be subject to the state and local gross receipts  
23 sales taxes provided by the provisions of A.C.A. §26-52-101, et seq., or any  
24 provisions of Chapters 74 and 75 of the Arkansas Code Annotated of 1987, or  
25 any other provisions of the Arkansas Code Annotated of 1987 which provides for  
26 the levy of a local sales tax.

27

28           SECTION 13. All provisions of this Act of a general and permanent  
29 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas  
30 Code Revision Commission shall incorporate the same in the Code.

31

32           SECTION 14. If any provision of this Act or the application thereof to  
33 any person or circumstance is held invalid, such invalidity shall not affect  
34 other provisions or applications of the Act which can be given effect without  
35 the invalid provision or application, and to this end the provisions of this

1 Act are declared to be severable.

2

3 SECTION 15. The provisions of this Act will be subject to the  
4 provisions of the Arkansas Tax Procedure Act, A.C.A. § § 26-18-101, et. seq.,  
5 as those provisions shall apply to the administration of this Act by the  
6 Director of the Department of Finance and Administration.

7

8 SECTION 16. All laws and parts of law in conflict with this Act are  
9 hereby repealed.

10

11

12 SECTION 17. EMERGENCY. It is hereby found by the General Assembly:  
13 (1) that it is impractical for the persons who are owners, lessors, renters or  
14 operators of vending devices, as defined by this Act, to collect the state and  
15 local Gross Receipts (Sales) Taxes on the gross proceeds or gross receipts  
16 they realize from the sale of goods and services made through vending devices,  
17 inasmuch as such vendors do not deal in person with their customers at the  
18 point of sale; (2) that mechanical limitations on such vending devices dictate  
19 that prices for goods and services dispensed by these vending devices be  
20 adjusted in increments of five cents (\$.05); (3) that the state and local  
21 Gross Receipts (Sales) Taxes imposed upon the sales made by vending devices  
22 must be borne by the persons who are the owners, lessors, renters or operators  
23 of such vending devices from the gross proceeds or gross receipts received for  
24 such sales (where other vendors are able to collect such state and local Gross  
25 Receipts (Sales) Taxes from their customers in addition to the gross receipts  
26 or gross proceeds they receive from their customer for the sale of similar  
27 goods and services as those sold by vending devices); (4) that the General  
28 Assembly finds this situation is unfair and discriminatory to the persons who  
29 are the owners, lessors, renters or operators of such vending devices; (5)  
30 that the states surrounding Arkansas have all recognized this specific problem  
31 imposed upon sales made by vending devices and have each provided some form of  
32 legislative relief for the persons who are owners, lessors, renters and  
33 operators of vending devices from their states' respective sales tax laws; (6)  
34 that there appears to be a problem of compliance and accountability in this  
35 state on sales made by vending devices, due to the cash nature of such sales

1 without receipts being prepared; and (7) it being the intent of the General  
2 Assembly to place all persons who are owners, lessors, renters and operators  
3 of vending devices on an even competitive plane by the establishment of the  
4 simplified Vending Device Decal Fee system contained in this Act, in lieu of  
5 the state and local Gross Receipts (Sales) Tax being applicable to sales made  
6 in this state by vending devices; an emergency is therefore declared to exist,  
7 and this Act being necessary for the preservation of the public peace, health  
8 and safety; it is declared that this Act shall be in full force and effect as  
9 of July 1, 1993.

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*/s/Tom Collier, et al*