

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas  
2 84th General Assembly  
3 Regular Session, 2003

# A Bill

HOUSE BILL 2282

4  
5 By: Representative Nichols  
6  
7

## For An Act To Be Entitled

8  
9 AN ACT TO PROMOTE HEALTHY ARKANSANS BY ADDING A  
10 ONE PERCENT (1%) TAX ON JUNK FOOD; AND FOR OTHER  
11 PURPOSES.  
12

## Subtitle

13  
14 TO PROMOTE HEALTHY ARKANSANS BY ADDING A  
15 ONE PERCENT (1%) TAX ON JUNK FOOD.  
16  
17

18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
19

20 SECTION 1. Arkansas Code Title 26, Chapter 57, is amended to add an  
21 additional subchapter to read as follows:

22 26-57-1301. Title.

23 This subchapter shall be known and may be cited as the "Arkansas Junk  
24 Food Tax Act" and is declared to levy a state tax as defined in the Arkansas  
25 Tax Procedure Act, § 26-18-101 et seq.  
26

27 26-57-1302. Definitions.

28 As used in this subchapter:

29 (1) "Director" means the Director of the Department of Finance  
30 and Administration or his authorized agent;

31 (2) "Distributor, manufacturer, or wholesaler" means any person  
32 who receives, stores, manufactures, or sells junk food to retailers, other  
33 distributors, manufacturers, or wholesalers for resale purposes;

34 (3) "Food of minimal nutritional value" means:

35 (A) Artificially sweetened food that provides a total of  
36 less than twenty percent (20%) per serving of the Reference Daily Intakes as



1 established by the United States Food and Drug Administration regulations in  
2 effect on January 1, 2003, of:

- 3 (i) Biotin;
- 4 (ii) Calcium;
- 5 (iii) Copper;
- 6 (iv) Folic Acid or Folate;
- 7 (v) Iron;
- 8 (vi) Magnesium;
- 9 (vii) Niacin;
- 10 (viii) Pantothenic acid;
- 11 (ix) Phosphorus;
- 12 (x) Potassium;
- 13 (xi) Riboflavin or Vitamin B2;
- 14 (xii) Thiamine or Vitamin B1;
- 15 (xiii) Vitamin A;
- 16 (xiv) Vitamin B6;
- 17 (xv) Vitamin B12;
- 18 (xvi) Vitamin C;
- 19 (xvii) Vitamin D;
- 20 (xviii) Vitamin E;
- 21 (ixx) Vitamin K; or
- 22 (xx) Zinc.

23 (B) All other food that provides a total of less than  
24 twenty percent (20%) per one hundred (100) calories of the Reference Daily  
25 Intakes as established by the United States Food and Drug Administration  
26 regulations in effect on January 1, 2003, of:

- 27 (i) Biotin;
- 28 (ii) Calcium;
- 29 (iii) Copper;
- 30 (iv) Folic Acid or Folate;
- 31 (v) Iron;
- 32 (vi) Magnesium;
- 33 (vii) Niacin;
- 34 (viii) Pantothenic acid;
- 35 (ix) Phosphorus;
- 36 (x) Potassium;

(xi) Riboflavin or Vitamin B2;

(xii) Thiamine or Vitamin B1;

(xiii) Vitamin A;

(xiv) Vitamin B6;

(xv) Vitamin B12;

(xvi) Vitamin C;

(xvii) Vitamin D;

(xviii) Vitamin E;

(ixx) Vitamin K; or

(xx) Zinc;

(4)(A) "Junk Food" means food of minimal nutritional value.

(B) "Junk Food" does not include:

(i) Beverages of any type;

(ii) Fresh, frozen, or dried fruits;

(iii) Fresh, frozen, dried, or canned vegetables;

(iv) Foods that contain at least four (4) grams of protein per serving; or

(v) Foods that contain live and active yogurt cultures, including acidophilus and bifidus;

(5)(A) "Person" means an individual, trust, estate, fiduciary, firm, partnership, limited liability company, or corporation.

(B) "Person" shall include:

(i) The directors, officers, agents, and employees of any person; and

(ii) The beneficiaries, members, managers, and partners of any person;

(6) "Place of business" means any place where junk food is manufactured or received;

(7) "Retailer" means any person, other than a manufacturer, distributor, or wholesaler, who receives, stores, or otherwise dispenses junk food to the ultimate consumer; and

(8) "Sale" means the transfer of title or possession for a valuable consideration of tangible personal property regardless of the manner by which the transfer is accomplished.

26-57-1303. Administration.

1       This subchapter shall be administered in all respects in accordance  
 2 with the Arkansas Tax Procedure Act, § 26-18-101 et seq., unless otherwise  
 3 provided.

4  
 5       26-57-1304. Tax rate.

6       (a) There is levied and there shall be collected a tax upon every  
 7 distributor, manufacturer, or wholesaler, a one percent (1%) wholesale tax on  
 8 all junk food sold in the state.

9       (b) The duty to report and pay the tax imposed by this subchapter  
 10 arises when the property is transferred to a retailer for sale to the  
 11 ultimate consumer, as reflected by the records of the taxpayer.

12       (c) The Department of Health may establish a list of all junk food  
 13 that is subject to the tax levied under this subchapter.

14       (d) The Department of Finance and Administration shall work with the  
 15 Department of Health to promulgate rules and regulations under this  
 16 subchapter.

17  
 18       26-57-1305. Licenses.

19       (a) All distributors, manufacturers, or wholesalers of junk food,  
 20 whether located within or outside of the State of Arkansas, who sell or offer  
 21 junk food for sale to retailers within the State of Arkansas shall obtain a  
 22 license for the privilege of conducting the business within Arkansas from the  
 23 director.

24       (b) Any retailer who purchases junk food from an unlicensed  
 25 distributor, manufacturer, or wholesaler shall obtain a license for the  
 26 privilege of conducting the business from the director.

27       (c) Any retailer acting as a distributor, manufacturer, or wholesaler  
 28 shall obtain a license for the privilege of conducting the business from the  
 29 director.

30       (d) Any person required to obtain a license under this subchapter  
 31 shall obtain a license for each place of business owned or operated by him or  
 32 her.

33       (e) The license shall be conspicuously displayed at the place of  
 34 business for which it was issued.

35  
 36       26-57-1306. Tax reporting duty of a distributor, manufacturer, or

1 wholesaler.

2 (a) The tax levied under this subchapter shall be paid by the  
 3 distributor, manufacturer, or wholesaler when the junk food is sold.

4 (b) The distributor, manufacturer, or wholesaler subject to this tax  
 5 shall file a monthly return and remit the tax for the month to the Director  
 6 of the Department of Finance and Administration on or before the fifteenth  
 7 day of the month following the month in which the sale or purchase was made.

8 (c)(1) The returns shall be made upon forms prescribed and furnished  
 9 by the director and signed by the person required to collect and remit the  
 10 tax or his agent.

11 (2) The return shall contain such information as the director  
 12 shall require for the proper administration of this subchapter.

13  
 14 26-57-1307. Tax reporting duty of retailers.

15 (a) If a retailer purchases junk food from an unlicensed distributor,  
 16 wholesaler, or manufacturer, then the tax levied under this subchapter shall  
 17 be paid by the retailer.

18 (b) If a retailer is acting as a distributor, manufacturer, or  
 19 wholesaler, then the tax levied under this subchapter shall be paid by the  
 20 retailer.

21 (c) The retailer subject to this tax shall file a monthly return and  
 22 remit the tax for the month to the Director of the Department of Finance and  
 23 Administration on or before the fifteenth day of the month following the  
 24 month in which the sale or purchase was made.

25 (d)(1) The returns shall be made upon forms prescribed and furnished  
 26 by the director and signed by the person required to collect and remit the  
 27 tax or his agent.

28 (2) The return shall contain such information as the director  
 29 shall require for the proper administration of this subchapter.

30  
 31 SECTION 2. This act shall become effective on the first day of the  
 32 second calendar month following the ninetieth day after the sine die  
 33 adjournment of this session or the first day of the second calendar month  
 34 following the ninetieth day after a recess or adjournment for a period longer  
 35 than ninety (90) days.