

1 **State of Arkansas**

2 **78th General Assembly**

3 **Regular Session, 1991**

# A Bill

**HOUSE BILL 1748**

4 **By: Representative Bryan, *Representatives Dietz, Hutchinson and Hawkins***

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

8 "AN ACT TO PROVIDE FOR THE ASSESSMENT OF AN ANNUAL DECAL  
9 FEE ON CERTAIN VENDING DEVICES OPERATED IN THE STATE OF  
10 ARKANSAS; TO FURTHER PROVIDE THAT PAYMENT OF ANNUAL DECAL  
11 FEES SHALL BE IN LIEU OF THE GROSS RECEIPTS TAX PRESENTLY  
12 IMPOSED ON GOODS AND SERVICES DISPENSED THROUGH VENDING  
13 DEVICES; PROVIDING PENALTIES FOR FAILURE TO PAY ANNUAL  
14 DECAL FEES; REQUIRING PERMITS TO SELL AND DISTRIBUTE  
15 VENDING DEVICES; AUTHORIZING MUNICIPAL TAXATION OF VENDING  
16 DEVICES; AND FOR OTHER PURPOSES."

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

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20 SECTION 1. SHORT TITLE. This act may be known and cited as the  
21 "Vending Devices Decal Act of 1991".

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23 SECTION 2. FINDINGS AND PURPOSE. It is the finding of the General  
24 Assembly that it is impractical for the owners and operators of vending  
25 devices, as defined herein, to collect the Gross Receipts Tax on sales of  
26 goods and services made through vending devices inasmuch as the owners thereof  
27 do not deal with customers at the point of sale and, mechanical limitations on  
28 such devices dictate that prices for goods and services dispensed thereby be  
29 adjusted in increments of five cents (\$.05); it is further found that it is  
30 difficult for the Department of Finance and Administration to apply its audit  
31 procedures in the determination and collection of the proper taxes due to the  
32 state from sales made through vending devices. It is, therefore, the purpose  
33 of this act to provide an orderly system of collecting an annual decal fee for  
34 the operation of each vending device dispensing goods and services in this  
35 state.

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2 SECTION 3. DEFINITIONS. As used in this act, unless the context  
3 otherwise requires:

4 (a) "Person" means any individual, partnership, association or  
5 corporation;

6 (b) "Coin-operated vending device" means any and all machines or  
7 devices which, upon the payment or insertion of a coin, token or similar  
8 object, dispenses tangible personal property, including, but not limited to,  
9 candies, gum, cold drinks, hot drinks, sandwiches, and chips. It shall not  
10 mean amusement and game machines or devices used exclusively for the purpose  
11 of selling cigarettes, *newspapers* or such services as pay telephone booths,  
12 parking meters, gas and electric meters or other distribution of needful  
13 service;

14 (c) "Coin-operated bulk vending device" means a machine or device  
15 which, upon the payment or insertion of a coin, token or similar object,  
16 dispenses to the purchaser ballpoint pens, combs, cigarette lighters,  
17 prophylactics, filled capsules, peanuts, gum balls, mints, perfume or  
18 novelties; and

19 (d) "Vending devices" means coin-operated vending devices and coin-  
20 operated bulk vending devices.

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22 SECTION 4. AMOUNT OF FEE - IN LIEU OF SALES TAX - SPECIAL DECAL.

23 (a) Every person who owns and has available to any of the public for  
24 operation, or who permits to be operated in or on his place of business,  
25 vending devices, shall pay for such privilege an annual fee as follows:

26 (1) For each coin-operated vending device requiring a coin or  
27 thing of value of twenty-five cents (\$0.25) or more, *sixty dollars (\$60.00)*;

28 (2) For each coin-operated vending device requiring a coin or  
29 thing of value of less than twenty-five cents (\$0.25), ten dollars (\$10.00);  
30 and

31 (3) For each coin-operated bulk vending device, ten dollars  
32 (\$10.00).

33 (b) The annual fee required by this section shall be in lieu of the  
34 sales tax levied pursuant to the Arkansas Gross Receipts Act of 1941, as  
35 amended, A.C.A. §26-52-101, et seq. and in addition to the fee prescribed by  
36 A.C.A. §26-57-307. The exemption from payment of individual machine license

1 fees prescribed by A.C.A. §26-57-309, shall not apply to this act.

2 (c) In those instances where it is shown to the satisfaction of the  
3 Department of Finance and Administration that a vending device, upon which an  
4 annual fee is imposed, will be placed available for use by the public for a  
5 definite but limited period of time less than one (1) year, such as where  
6 displayed in connection with fairs, carnivals, and places of amusement that  
7 operate only during certain seasons of the year, the Department of Finance and  
8 Administration may issue a special decal therefor. Such special decal may be  
9 issued for any number of thirty-day periods less than a full year, and shall  
10 indicate that it is a special decal; and shall be for one or more thirty-day  
11 periods and shall state the precise dates for which issued and shall not be  
12 transferred from one machine to another. The fee shall be computed and paid  
13 on the basis of one-tenth (1/10) of the annual rate for the type of device  
14 operated, for each thirty-day period for which such special decal is issued.  
15 In the event the mechanical device is made available to the public for a  
16 period beyond that for which the special decal is issued, then a full year's  
17 fee and penalty, as set out in Section 7 of this title, shall be due.

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19 SECTION 5. APPLICATION AND ISSUANCE OF DECAL - DISPLAY. Any person  
20 owning a vending device or operating the premises where the same is to be  
21 operated or exposed to the public shall apply to the Department of Finance and  
22 Administration for a decal for such device and shall, at the same time, pay to  
23 the Department of Finance and Administration the annual fee herein levied.  
24 The Department of Finance and Administration shall, upon receipt of such  
25 payment and approval of such application, issue a decal for the type of  
26 vending device covered by such application and payment. The decal and  
27 application provided for herein shall be prescribed by the Department of  
28 Finance and Administration and shall contain such information and description  
29 as shall be required by rule of said Department of Finance and Administration.  
30 Any number of vending devices may be included in one application. Before any  
31 vending device is put in operation or placed where the same may be operated by  
32 any of the public, and at all times when the same is being operated or  
33 available to any of the public for operation, a decal shall be firmly affixed  
34 to the vending device covered thereby, and plainly visible to and readable by  
35 the public.

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2       SECTION 6. TAXABLE YEAR - DECAL FOR REMAINDER OF YEAR. For the purpose  
3 of the decal issued under Section 5 of this title, the fee year shall begin on  
4 the first day of July and end on the last day of the following June; and shall  
5 be divided into two (2) halves. The Department of Finance and Administration  
6 shall in each instance issue decals for the remainder of the fee year upon  
7 payment of the fee on the basis of the current and remaining half of such fee  
8 year. Any product purchased for resale, through a vending device where fees  
9 have been paid and decals affixed, shall not be subject to sales tax.

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11       SECTION 7. OPERATION WITHOUT DECAL - FEE AND PENALTY. Any owner of a  
12 vending device who places such device in operation or in a place available to  
13 the public for operation, and any person who permits a vending device to be in  
14 operation or accessible to the public for operation in his place of business,  
15 without a decal affixed as required by Section 5 of this title, shall be  
16 liable for the fee on such device at the full annual rate as herein levied and  
17 shall be liable to a penalty in addition to the amount of the fee, in the  
18 amount of one hundred dollars (\$100).

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20       SECTION 8. SEIZURE AND FORFEITURE OF DEVICES WITHOUT DECAL AFFIXED.  
21 Where any vending device as hereinbefore defined is placed on location, or,  
22 after having been placed on location is there left without the decal affixed  
23 thereon as herein provided, the device, including all cash in the receptacle  
24 thereof, shall be considered forfeited to the State of Arkansas and may be  
25 sealed until released by the Department of Finance and Administration or  
26 seized by any authorized agent of the Arkansas Department of Finance and  
27 Administration, or any sheriff, constable, or other peace officer of this  
28 state, and upon so being seized shall, together with the cash, if any,  
29 contained in the receptacle of such device, forthwith, be delivered to the  
30 Department of Finance and Administration. The Department of Finance and  
31 Administration shall then proceed to hear and determine the matter of whether  
32 or not the device and cash, if any, should, in fact, be forfeited to the State  
33 of Arkansas. The owner of the device shall be given at least ten (10) days  
34 notice of the date of the hearing. In the event the Department of Finance and  
35 Administration finds that the device, including the cash contents, if any,

1 should be forfeited to the State of Arkansas, it shall make an order  
2 forfeiting the same to the State of Arkansas, and directing the sale of such  
3 device. The device shall be sold in the county where seized after ten (10)  
4 days notice, which notice shall be by posting five (5) notices in conspicuous  
5 places in the county where the sale is to be made, one of which notices shall  
6 be posted on the bulletin board at the county courthouse of said county. The  
7 sale shall be for cash, and the proceeds thereof shall be applied as follows:

- 8 (1) To the payment of the costs incident to the seizure and sale;
- 9 (2) To the payment of any taxes, including penalties, that may have  
10 accrued against the device; and
- 11 (3) The balance, if any, shall be remitted to the owner.

12 The cash contained in any device and forfeited under the provisions of this  
13 section shall be forfeited as an additional tax penalty and shall be in  
14 addition to all other penalties provided for in this act. The order of the  
15 Department of Finance and Administration, declaring a forfeiture of the  
16 device, including the cash contents thereof, if any, and directing the sale of  
17 such device shall be a final order and may be appealed from as provided for in  
18 the Arkansas Tax Procedure Act, A.C.A. §§26-18-101, et seq. It shall be the  
19 duty of all sheriffs, constables and other peace officers to cooperate with  
20 the Department of Finance and Administration in the enforcement of the seizure  
21 and forfeiture provisions of this section.

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23 SECTION 9. OPERATING DEVICE WITHOUT DECAL AFFIXED - PUNISHMENT.

24 Any owner of a vending device who places such device in operation or in  
25 a place available to the public for operation, and any person who permits a  
26 vending device to be in operation or accessible to the public for operation in  
27 his place of business, without attaching the decal herein provided for, shall  
28 be guilty of a misdemeanor and, upon conviction, shall be punished by a fine  
29 not exceeding two hundred dollars (\$200) or by imprisonment in the county jail  
30 for a period not exceeding thirty (30) days or by both such fine and  
31 imprisonment.

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33 SECTION 10. PROHIBITED DEVICES NOT LEGALIZED - FEES NOT REFUNDED.

34 Nothing in this act shall be construed to legalize any device that may be  
35 prohibited by any of the statutes of this state. The Department of Finance

1 and Administration may assume that any device described in any application,  
2 and for which a fee is paid, is lawful and no claim for refund of any such fee  
3 will be entertained based on an owner's inability to operate such device  
4 because of any law of this state or for any other reason.

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6 SECTION 11. SALE OR DISTRIBUTION OF VENDING DEVICES - PERMIT REQUIRED -  
7 RULES AND REGULATIONS. The Department of Finance and Administration shall  
8 issue permits for the sale or distribution of one or more vending devices  
9 pursuant to the provisions of Section 12 herein and shall adopt such rules and  
10 regulations as are necessary to implement such provisions.

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12 SECTION 12. REQUIREMENTS TO OBTAIN PERMIT. To obtain a permit to sell  
13 or distribute vending devices, an applicant shall comply with the following  
14 requirements:

15 (1) Not be a convicted felon;

16 (2) Have obtained an Arkansas Sales Tax Permit to be used exclusively  
17 to report the sale of vending devices;

18 (3) Be either an owner or partner of a business selling or distributing  
19 vending devices; and

20 (4) Have obtained a surety bond to ensure the faithful and prompt  
21 payment of all taxes which may become due in connection with the operation of  
22 the business in the amount of five thousand dollars (\$5,000).

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24 SECTION 13. DISTRIBUTOR'S PERMIT - FEES.

25 (a) The seller or distributor of vending devices shall be required to  
26 purchase a distributor's permit at an annual fee of two hundred dollars  
27 (\$200).

28 (b) The permit and fees required by this section shall be in lieu of  
29 any similar permit or fee requirements of any county or municipality.

30 (c) All permit fees collected hereunder shall be distributed in  
31 accordance with Section 14 of this act.

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33 SECTION 14. DISTRIBUTION OF REVENUES. It is hereby declared to be the  
34 purpose of this act to provide revenues for general government functions of  
35 the state government, and for that purpose and to that end, it is expressly

1 provided that the revenue derived herefrom, including penalties, shall be  
2 deposited monthly to the credit of the General Revenue Fund of the state for  
3 the support of the state government, to be paid out only pursuant to  
4 appropriation by the General Assembly.

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6       SECTION 15. MUNICIPAL TAXATION AUTHORIZED.   *Cities and counties*  
7 *presently levying a local sales tax are authorized to levy a decal fee in lieu*  
8 *of the tax upon vending machines, or persons operating the same, or the*  
9 *premises where same are located, in an amount not in excess of twenty-five*  
10 *percent (25%) of the fee hereinabove imposed.*

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12       SECTION 16. FEE IN LIEU OF TAXES. The fee herein levied is the  
13 exclusive fee to be imposed by the state, and is in lieu of all taxes upon  
14 vending devices, except the permit fee prescribed by Arkansas Code 26-57-307,  
15 ad valorem taxes, municipal fees provided by Section 15 herein, and those fees  
16 provided by Sections 11 through 13 of this act.

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18       SECTION 18. All provisions of this act of a general and permanent  
19 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas  
20 Code Revision Commission shall incorporate the same in the Code.

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22       SECTION 19. If any provision of this act or the application thereof to  
23 any person or circumstance is held invalid, such invalidity shall not affect  
24 other provisions or applications of the act which can be given effect without  
25 the invalid provision or application, and to this end the provisions of this  
26 act are declared to be severable.

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28       SECTION 20. All laws and parts of laws in conflict with this act are  
29 hereby repealed.

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31                                   /s/ L. Bryan et al

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