

1 State of Arkansas
2 80th General Assembly
3 Regular Session, 1995

A Bill

HOUSE BILL 1717

4 By: Representatives Allen, McKissack, Bisbee, Bryant, Curran, George, Hall,
5 von Grep, Willems, Simmons, Wooldridge, Simon, Hinshaw, Bryan, Dietz,
6 Pappas, Booker, Young, T. Smith, McGee, Flanagan, *Northcutt and Thomas*

For An Act To Be Entitled

9 "AN ACT TO AMEND THE VENDING DEVICES DECAL ACT OF 1993 TO
10 CREATE AN ADDITIONAL CLASSIFICATION FOR MANUALLY-POWERED
11 VENDING DEVICES; TO EXTEND THE EXISTENCE OF THE LAW; TO
12 SIMPLIFY AND CLARIFY THE ADMINISTRATION OF THE LAW BY THE
13 DEPARTMENT OF FINANCE AND ADMINISTRATION; TO CREATE A MORE
14 EFFECTIVE PENALTY PROVISION FOR VENDING DEVICES THAT WILL
15 BE MORE EQUITABLE; AND FOR OTHER PURPOSES."

Subtitle

17
18 "AN ACT TO AMEND THE VENDING DEVICES
19 DECAL ACT OF 1993."

20
21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

22
23 SECTION 1. The purpose of these amendments to the Vending Devices
24 Decal Act of 1993 is to eliminate unforeseen and unintended burdens that have
25 been inequitably imposed upon the owners and operators of manually-powered
26 vending devices; to extend the period of time this law will be in effect; to
27 clarify the ultimate responsibility of the party who must register the
28 vending devices and pay the vending decal fee, so as to simplify the
29 administrative burden that has been placed upon the Arkansas Department of
30 Finance and Administration to enforce the provisions of this law; and to
31 create a more stringent, but more effective and equitable penalty applicable
32 to the failure to timely register vending devices and purchase the required
33 decal fee.

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35 SECTION 2. Arkansas Code § 26-57-1003 is amended to read as follows:

1 "26-57-1003. Definitions.

2 As used in this subchapter, unless the context otherwise requires:

3 (1) Person means any individual, partnership, association, or
4 corporation;

5 (2) *'Coin-operated snack food vending devices'* means any and all
6 machines or devices which, upon payment or insertion of a coin, token or
7 similar object, dispense snack food (including, but not limited to, chips,
8 candy, pasteries, cookies, crackers, gum, mints, etc.), perishable foods,
9 canned soups, canned entrees, cup drinks (hot or cold) or dairy products;

10 (3) *'Coin-operated canned or bottled drink vending devices'* means any
11 and all machines or devices which, upon payment or insertion of a coin,
12 token, or similar object, dispense canned or bottled soft drinks, fruit
13 juices or other liquid refreshments;

14 (4)(A) Coin-operated vending devices means any and all machines or
15 devices which, upon the payment or insertion of a coin, token, or similar
16 object, dispense tangible personal property, including, but not limited to,
17 cigarette lighters, combs, soaps or detergents, ballpoint pens, or other
18 nonedible items.

19 (B) Coin-operated vending device shall not mean:

20 (i) Amusement and game machines;

21 (ii) Devices used exclusively for the purpose of selling
22 cigarettes, newspapers, magazines, or postage stamps; or

23 (iii) Devices used for the purpose of selling services
24 such as pay telephone booths, parking meters, gas and electric meters,
25 automatic teller machines or other devices used in the distribution of such
26 needful services;

27 (5) Coin-operated bulk vending device means a machine or device
28 containing unsorted merchandise which, upon insertion of a single coin or
29 coins, dispenses the merchandise in appropriately equal portions, at random
30 and without selection by the customer. Such vending machine is a simple
31 mechanical device capable of accepting a coin of only one (1) denomination
32 with one (1) coin slot. Sorted or unsorted merchandise dispensed by such
33 vending machine includes gum, candy, toys, novelties, sanitary napkins or
34 similar merchandise;

35 (6) Coin-operated manually-powered vending devices mean any and all

1 machines or devices which use manual power, rather than electromotive power,
2 for dispensing products; and which, upon payment or insertion of coins,
3 tokens, or similar objects, dispense the type of tangible personal property
4 described in Ark. Code Ann. §26-57-1003(A). The term coin-operated
5 manually-powered vending device is not intended to refer to a coin-operated
6 bulk vending device, which term itself is otherwise defined by this section,
7 but this term is intended to include coin-operated manually-powered vending
8 devices that have one or more coin slots (as long as such dispensing devices
9 are housed in one cabinet) and manually-powered devices that dispense
10 prophylactics;

11 (7) Coin-operated tabletop snack vending devices mean any and all
12 machines or devices without refrigeration capabilities that sit upon a
13 counter, tabletop, or stand and provide for eighteen (18) selections, or
14 less, and which, upon the payment or insertion of a coin, token or similar
15 object, dispenses tangible personal property, including candies, gum, chips,
16 cookies, crackers or other edible snacks, but not cold drinks, hot drinks, or
17 sandwiches.

18 (8) Vending devices means coin-operated vending devices, *coin-*
19 *operated snack food vending devices, coin-operated canned or bottled drink*
20 *vending devices*, coin-operated manually-powered vending devices, coin-
21 operated table top snack vending devices and coin-operated bulk vending
22 devices;

23 (9) Decal registration year or decal fee year means the period
24 that begins on July 1, of a given year, and expires on June 30, of the
25 following year, during which a vending device decal, as required by this
26 subchapter, must be purchased and affixed to all vending devices operating
27 within the state;

28 (10) Owner means the person who is the owner of any vending device;
29 and

30 (11) Operator means the person who (as owner, lessee, bailee or
31 otherwise) is responsible for removing money from the vending device and who
32 is the person who would otherwise be responsible for reporting and paying the
33 applicable Gross Receipts (Sales) Taxes on sales made through the vending
34 device."

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1 SECTION 3. Arkansas Code § 26-57-1004 is amended to read as follows:

2 "§ 26-57-1004. Application and issuance of decal - Display.

3 (a) Any person operating a vending device in this state that is to be
4 made available for use and operation by the general public (whether the
5 operator is the owner of such vending device, or a lessee, renter, bailee,
6 etc. of the owner of such vending device) *may elect yearly to purchase a*
7 *decal or decals, as provided by this subchapter, in lieu of collecting and*
8 *remitting state and local gross receipts (sales) taxes levied pursuant to the*
9 *provisions of the Arkansas Gross Receipts Act of 1941, as amended, § 26-52-*
10 *101 et seq., or any provisions of Chapters 74 and 75 of Title 26; or any*
11 *other provisions of this Code which provides for the levy of a local gross*
12 *receipts (sales) tax, for the sale of merchandise through vending devices as*
13 *described in this subchapter. If such election is made by the operator of*
14 *such vending devices, the election must cover all vending devices operated by*
15 *such person, and the election shall be made in a manner as shall be*
16 *reasonably proscribed by regulations adopted by the Director. If such*
17 *election has been made by the operator, then such operator shall apply to the*
18 Director of the Department of Finance and Administration for the issuance of
19 an annual or special vending device decal for such vending device and shall,
20 at the same time, pay to the Director of the Department of Finance and
21 Administration the annual or special vending device decal fee provided for by
22 this subchapter, before such vending device is made available for use and
23 operation by the general public. *If no such election has been made by the*
24 *operator of such vending device or devices, then all sales of merchandise*
25 *made through such vending device or devices shall be subject to the otherwise*
26 *applicable state and local gross receipts (sales) taxes.*

27 (b) The Director of the Department of Finance and Administration, upon
28 receipt of full payment of the applicable decal fee, and upon approval of
29 such application, shall issue to the person making such application an annual
30 or special vending device decal for the type of vending device or devices
31 covered by such application and payment.

32 (c)(1) The annual or special vending device decals, and the
33 application provided for herein, shall be in such form as prescribed by the
34 Director of the Department of Finance and Administration, and these decals
35 and applications shall contain on their face such information and

1 descriptions as shall be required by regulations adopted by the Director of
2 the Department of Finance and Administration to properly and reasonably
3 implement the provisions of this subchapter.

4 (2) Any number of vending devices may be included in one (1)
5 application.

6 (d) Before any vending device is put into operation or placed where
7 the same may be used or operated by any member of the general public, and at
8 all times when the vending device is being used or operated or made available
9 to members of the general public for use or operation, an annual or special
10 vending device decal shall be firmly affixed to the vending device covered
11 thereby, so that such decal shall be plainly visible to, and readable by, the
12 members of the general public."

13

14 SECTION 4. Arkansas Code § 26-57-1006(a)(3) is amended to read as
15 follows:

16 "(3) Such annual vending device decal shall not be transferred from
17 one (1) vending device to another, unless the person who is the operator of
18 such vending device shall establish to the satisfaction of the Director of
19 the Department of Finance and Administration that the vending device to which
20 the annual vending device decal is to be transferred is a vending device that
21 is replacing the vending device to which such annual decal was originally
22 affixed."

23

24 SECTION 5. Arkansas Code § 26-57-1006(b)(2) is amended to read as
25 follows:

26 "(2) The special vending device decal fee shall be computed and paid
27 by the person who is the operator of such vending device on the basis of
28 one-tenth (1/10) of the annual vending device decal fee charged by this
29 subchapter for the type of vending device operated, for each thirty-day
30 period for which such special decal is issued."

31

32 SECTION 6. Arkansas Code § 26-57-1006(b)(3) is amended to read as
33 follows:

34 "(3) In the event the vending device is made available to the public
35 for a period beyond that for which the special decal is issued, then a full

1 year's fee and penalty, as set out in § 26-57-1006, shall be due on such
2 vending device from the person who is the operator of such vending device."

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4 SECTION 7. Arkansas Code § 26-57-1006(c) is amended to read as
5 follows:

6 "(c) The annual or special vending device decal fees required to be
7 paid by subsections (a) and (b) of this section shall be paid by the person
8 who is the operator of such vending device in lieu of the requirement that
9 such person collect and remit the state and local gross receipts (sales)
10 taxes levied pursuant to the provisions of the Arkansas Gross Receipts Act of
11 1941, as amended, § 26-52-101 et seq., or any provision of chapters 74 and 75
12 of title 26, or any other provision of this Code which provides for the levy
13 of a local sales tax. Where gross receipts or gross proceeds are received by
14 a person who is the operator of a vending device from the sale of any item of
15 tangible personal property, through the vending device, where the annual or
16 special vending device decal fee has been paid and such decal is affixed to
17 the vending device, then it is the intent of the General Assembly that such
18 gross proceeds or gross receipts shall not be subject to any state or local
19 gross receipts (sales) taxes imposed in this state."

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21 SECTION 8. Arkansas Code § 26-57-1009 is amended to read as follows:

22 "§ 26-57-1009. Operation without decal - Fee and civil penalty -
23 Criminal penalty.

24 (a)(1) Any person who is the operator of a vending device who places a
25 vending device in use or operation, or in a place available to the members of
26 the general public for use and operation, *after electing to be taxed under*
27 *the provisions of this subchapter*, without a valid and current annual or
28 special vending device decal's being affixed, as required by §§ 26-57-1004
29 and 26-57-1006, shall be liable for the decal fee on such vending device in
30 the full amount of an annual vending device decal fee, as levied by this
31 subchapter, and such annual vending device decal fee shall be collected by
32 the Director of the Department of Finance and Administration in accordance
33 with the provisions of § 26-57-1004.

34 (2) In addition to the annual vending device decal fee that is
35 due on such vending device, the operator of the vending device, who was

1 responsible for failing to apply for and pay for the applicable annual
2 vending device decal fee, shall also be liable to pay the Director of the
3 Department of Finance and Administration a penalty which such person shall
4 pay to the Director and which the Director shall assess against such person.
5 The amounts of these penalties for failure to purchase and display the
6 annual decal fee are to be paid by such person, in addition to the applicable
7 annual vending device decal fee, and such penalty shall be the larger of
8 either \$25.00 per vending device, or an amount equal to eight (8) times the
9 annual vending decal fee applicable to each such vending device.

10 (b) Any person who is the operator of a vending device who places such
11 vending device in operation in this state for the use or operation by members
12 of the public without first attaching either the annual or special vending
13 device decal provided for herein shall be guilty of a Class C misdemeanor
14 and, upon conviction, shall be punished by a fine not exceeding one hundred
15 dollars (\$100) or by imprisonment in the county jail for a period not
16 exceeding thirty (30) days, or by both such fine and imprisonment, as
17 provided by §§ 5-4-201 and 5-4-401, for each such vending device found not to
18 be in compliance with the requirements of this subchapter."

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20 SECTION 9. It is the intention of the General Assembly that the
21 provisions of Arkansas Code of 1987 Annotated §§ 26-57-1001 through 26-57-
22 1017 be considered together as one subchapter of Chapter 57 of Title 26 and
23 that no distinction be made in interpreting these provisions simply because
24 they were enacted in two separate Acts during the Regular Session of the 79th
25 General Assembly. The provisions of these two Acts should be read and
26 interpreted in pari materia.

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28 SECTION 10. 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.

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32 SECTION 11. 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.

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3 SECTION 12. All laws and parts of laws in conflict with this act are
4 hereby repealed.

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6 SECTION 13. EMERGENCY. It is hereby found and determined by the
7 General Assembly: (1) that it is impractical for the persons who are
8 operators of vending devices, as defined by the Vending Devices Decal Act, to
9 collect the state and local Gross Receipts (Sales) Taxes on the gross
10 proceeds or gross receipts they realize from the sale of goods and services
11 made through vending devices, inasmuch as such vendors do not deal in person
12 with their customers at the point of sale; (2) that mechanical limitations on
13 such vending devices dictate that prices for goods or services dispensed by
14 these devices be adjusted in increments of five cents (\$.05); (3) that the
15 state and local Gross Receipts (Sales) Taxes imposed upon the sales made by
16 vending devices must be borne by the persons who are the operators of such
17 vending devices from the gross proceeds or gross receipts received for such
18 sales (where other vendors are able to collect such state and local Gross
19 Receipts (Sales) Taxes from their customers in addition to the gross receipts
20 or gross proceeds they receive from their customer for the sale of similar
21 goods and services as those sold by vending devices); (4) that the General
22 Assembly finds this situation is unfair and discriminatory to the persons who
23 are the operators of such vending devices; (5) that the states surrounding
24 Arkansas have all recognized this specific problem imposed upon sales made by
25 vending devices and have each provided some form of legislative relief for
26 the persons who are operators of vending devices from their states'
27 respective Sales Tax laws; and (6) that it being the intent of the General
28 Assembly to place all persons who are operators of vending devices on an even
29 competitive plane by the establishment of the simplified Vending Device Decal
30 Fee system, as amended by this Act, in lieu of the state and local Gross
31 Receipts (Sales) Tax being applicable to sales made in this state by vending
32 devices; an emergency is therefore declared to exist, and this Act being
33 necessary for the preservation of the public peace, health and safety; it is
34 declared that this Act shall be in full force and effect as of July 1, 1995.

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/s/Rep. Allen, et al

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