

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

A Bill

SENATE BILL 528

4 By: Senators Todd, Hardin, Canada, Boozman, Bradford, Gordon, Edwards and
5 Brown

For An Act To Be Entitled

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

Subtitle

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

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

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

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

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

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

4 (2)(A) Coin-operated vending devices means any and all machines or
5 devices which, upon the payment or insertion of a coin, token, or similar
6 object, dispense tangible personal property, including, but not limited to,
7 candies, gum, cold drinks, hot drinks, sandwiches, chips, or other edible
8 items; or cigarette lighters, combs, soaps or detergents, ballpoint pens, or
9 other nonedible items.

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

11 (i) Amusement and game machines;

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

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

18 (3) Coin-operated bulk vending device means a machine or device
19 containing unsorted merchandise which, upon insertion of a single coin or
20 coins, dispenses the merchandise in appropriately equal portions, at random
21 and without selection by the customer. Such vending machine is a simple
22 mechanical device capable of accepting a coin of only one (1) denomination
23 with one (1) coin slot. Sorted or unsorted merchandise dispensed by such
24 vending machine includes gum, candy, toys, novelties, sanitary napkins or
25 similar merchandise;

26 (4) Coin-operated manually-powered vending devices mean any and all
27 machines or devices which use manual power, rather than electromotive power,
28 for dispensing products; and which, upon payment or insertion of coins,
29 tokens, or similar objects, dispense the type of tangible personal property
30 described in Ark. Code Ann. §26-57-1003(A). The term coin-operated
31 manually-powered vending device is not intended to refer to a coin-operated
32 bulk vending device, which term itself is otherwise defined by this section,
33 but this term is intended to include coin-operated manually-powered vending
34 devices that have one or more coin slots (as long as such dispensing devices
35 are housed in one cabinet) and manually-powered devices that dispense

1 prophylactics;

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

9 (6) Vending devices means coin-operated vending devices, coin-
10 operated manually-powered vending devices, coin-operated table top snack
11 vending devices and coin-operated bulk vending devices;

12 (7) Decal registration year or decal fee year means the period
13 that begins on July 1, of a given year, and expires on June 30, of the
14 following year, during which a vending device decal, as required by this
15 subchapter, must be purchased and affixed to all vending devices operating
16 within the state;

17 (8) Owner means the person who is the owner of any vending device;
18 and

19 (9) Operator means the person who (as owner, lessee, bailee or
20 otherwise) is responsible for removing money from the vending device and who
21 is the person who would otherwise be responsible for reporting and paying the
22 applicable Gross Receipts (Sales) Taxes on sales made through the vending
23 device."

24

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

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

27 (a) Any person operating a vending device in this state that is to be
28 made available for use and operation by the general public (whether the
29 operator is the owner of such vending device, or a lessee, renter, bailee,
30 etc. of the owner of such vending device) shall apply to the Director of the
31 Department of Finance and Administration for the issuance of an annual or
32 special vending device decal for such vending device and shall, at the same
33 time, pay to the Director of the Department of Finance and Administration the
34 annual or special vending device decal fee provided for by this subchapter,
35 before such vending device is made available for use and operation by the

1 general public.

2 (b) The Director of the Department of Finance and Administration, upon
3 receipt of full payment of the applicable decal fee, and upon approval of
4 such application, shall issue to the person making such application an annual
5 or special vending device decal for the type of vending device or devices
6 covered by such application and payment.

7 (c)(1) The annual or special vending device decals, and the
8 application provided for herein, shall be in such form as prescribed by the
9 Director of the Department of Finance and Administration, and these decals
10 and applications shall contain on their face such information and
11 descriptions as shall be required by regulations adopted by the Director of
12 the Department of Finance and Administration to properly and reasonably
13 implement the provisions of this subchapter.

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

16 (d) Before any vending device is put into operation or placed where
17 the same may be used or operated by any member of the general public, and at
18 all times when the vending device is being used or operated or made available
19 to 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 4. Arkansas Code § 26-57-1006(a)(3) is amended to read as
25 follows:

26 "(3) Such annual vending device decal shall not be transferred from
27 one (1) vending device to another, unless the person who is the operator of
28 such vending device shall establish to the satisfaction of the Director of
29 the Department of Finance and Administration that the vending device to which
30 the annual vending device decal is to be transferred is a vending device that
31 is replacing the vending device to which such annual decal was originally
32 affixed."

33

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

1 "(2) The special vending device decal fee shall be computed and paid
2 by the person who is the operator of such vending device on the basis of
3 one-tenth (1/10) of the annual vending device decal fee charged by this
4 subchapter for the type of vending device operated, for each thirty-day
5 period for which such special decal is issued."
6

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

9 "(3) In the event the mechanical vending device is made available to
10 the public for a period beyond that for which the special decal is issued,
11 then a full year's fee and penalty, as set out in § 26-57-1006, shall be due
12 on such vending device from the person who is the operator of such vending
13 device."
14

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

17 "(c) The annual or special vending device decal fees required to be
18 paid by subsections (a) and (b) of this section shall be paid by the person
19 who is the operator of such vending device in lieu of the requirement that
20 such person collect and remit the state and local gross receipts (sales)
21 taxes levied pursuant to the provisions of the Arkansas Gross Receipts Act of
22 1941, as amended, § 26-52-101 et seq., or any provision of chapters 74 and 75
23 of title 26, or any other provision of this Code which provides for the levy
24 of a local sales tax. Where gross receipts or gross proceeds are received by
25 a person who is the operator of a vending device from the sale of any item of
26 tangible personal property, through the vending device, where the annual or
27 special vending device decal fee has been paid and such decal is affixed to
28 the vending device, then it is the intent of the General Assembly that such
29 gross proceeds or gross receipts shall not be subject to any state or local
30 gross receipts (sales) taxes imposed in this state."
31

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

33 "§ 26-57-1009. Operation without decal - Fee and civil penalty -
34 Criminal penalty.

35 (a)(1) Any person who is the operator of a vending device who places a

1 vending device in use or operation, or in a place available to the members of
2 the general public for use and operation, without a valid and current annual
3 or special vending device decal's being affixed, as required by §§ 26-57-1004
4 and 26-57-1006, shall be liable for the decal fee on such vending device in
5 the full amount of an annual vending device decal fee, as levied by this
6 subchapter, and such annual vending device decal fee shall be collected by
7 the Director of the Department of Finance and Administration in accordance
8 with the provisions of § 26-57-1004.

9 (2) In addition to the annual vending device decal fee that is
10 due on such vending device, the operator of the vending device, who was
11 responsible for failing to apply for and pay for the applicable annual
12 vending device decal fee, shall also be liable to pay the Director of the
13 Department of Finance and Administration a penalty which such person shall
14 pay to the Director and which the Director shall assess against such person.
15 The amounts of these penalties for failure to purchase and display the
16 annual decal fee are to be paid by such person, in addition to the applicable
17 annual vending device decal fee, and such penalty shall be the larger of
18 either \$25.00 per vending device, or an amount equal to eight (8) times the
19 annual vending decal fee applicable to each such vending device.

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

29

30 SECTION 9. It is the intention of the General Assembly that the
31 provisions of Arkansas Code of 1987 Annotated §§ 26-57-1001 through 26-57-
32 1017 be considered together as one subchapter of Chapter 57 of Title 26 and
33 that no distinction be made in interpreting these provisions simply because
34 they were enacted in two separate Acts during the Regular Session of the 79th
35 General Assembly. The provisions of these two Acts should be read and

1 interpreted in pari materia.

2

3 SECTION 10. The provisions of SECTION 12 of Act 1037 of 1993 were not
4 incorporated into the permanent provisions of the Arkansas Code of 1987
5 Annotated by the members of the Arkansas Code Revision Commission, but are
6 compiled as notes that appear prior to the codified provisions of this Act.
7 Therefore, in lieu of the provisions of SECTION 12 of Act 1037 of 1993, and
8 in their place, the General Assembly hereby states:

9 "PERMANENT NATURE OF VENDING DEVICES DECAL ACT OF 1993 ARE CONDITIONED UPON
10 MINIMUM COLLECTIONS. All provisions of the Vending Devices Decal Act, as
11 amended, shall be of a general and permanent nature. However, and only if
12 the Director of the Department of Finance and Administration shall certify to
13 the Governor of the State of Arkansas, on a date between May 1, 1998, and
14 June 30, 1998, that the total amount of moneys collected by the State of
15 Arkansas from the Annual and Special Vending Device Decal Fees provided for
16 in § 26-57-1006, as amended, total less than \$13.0 million (an average of two
17 million six hundred thousand dollars (\$2,600,000) per taxable year for the
18 period the Vending Devices Decal Act shall then have been in effect), then
19 such fact shall be, in turn, certified by the Governor to the Secretary of
20 State, to the Speaker of the House of Representatives, and to the President
21 Pro Tempore of the Senate, and the Vending Devices Decal Act of 1993 shall be
22 deemed to have expired, as of June 30, 1998, and its provisions will no
23 longer be the law of this state. If the Vending Devices Decal Act expires as
24 of June 30, 1998, then sales made by way of vending devices shall thereafter
25 be subject to the state and local Gross Receipts (Sales) Taxes provided by
26 the provisions of Arkansas Code of 1987 Annotated, § 26-52-101, et. seq., or
27 any provisions of Chapters 74 and 75 of the Arkansas Code of 1987 Annotated,
28 or any other provisions of the Arkansas Code of 1987 Annotated which provides
29 for the levy of a local Sales Tax."

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31 SECTION 11. All provisions of this act of a general and permanent
32 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
33 Code Revision Commission shall incorporate the same in the Code.

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35 SECTION 12. If any provision of this act or the application thereof to

1 any person or circumstance is held invalid, such invalidity shall not affect
2 other provisions or applications of the act which can be given effect without
3 the invalid provision or application, and to this end the provisions of this
4 act are declared to be severable.

5

6 SECTION 13. All laws and parts of laws in conflict with this act are
7 hereby repealed.

8

9 SECTION 14. EMERGENCY. It is hereby found and determined by the
10 General Assembly: (1) that it is impractical for the persons who are
11 operators of vending devices, as defined by the Vending Devices Decal Act, to
12 collect the state and local Gross Receipts (Sales) Taxes on the gross
13 proceeds or gross receipts they realize from the sale of goods and services
14 made through vending devices, inasmuch as such vendors do not deal in person
15 with their customers at the point of sale; (2) that mechanical limitations on
16 such vending devices dictate that prices for goods or services dispensed by
17 these devices be adjusted in increments of five cents (\$.05); (3) that the
18 state and local Gross Receipts (Sales) Taxes imposed upon the sales made by
19 vending devices must be borne by the persons who are the operators of such
20 vending devices from the gross proceeds or gross receipts received for such
21 sales (where other vendors are able to collect such state and local Gross
22 Receipts (Sales) Taxes from their customers in addition to the gross receipts
23 or gross proceeds they receive from their customer for the sale of similar
24 goods and services as those sold by vending devices); (4) that the General
25 Assembly finds this situation is unfair and discriminatory to the persons who
26 are the operators of such vending devices; (5) that the states surrounding
27 Arkansas have all recognized this specific problem imposed upon sales made by
28 vending devices and have each provided some form of legislative relief for
29 the persons who are operators of vending devices from their states'
30 respective Sales Tax laws; (6) that a record has been established by the
31 first two years' imposition of the vending devices decal fees that proves
32 that there was a serious problem of compliance and accountability in this
33 state with the payment of taxes on sales made by vending devices, due to the
34 cash nature of such sales without receipts being prepared; (7) that the
35 dispute over which person has ultimate responsibility for the payment of the

1 vending decal fee has resulted in the Director of the DF&A not being able to
2 collect an average of \$2.6 million per year directly from the sales of
3 vending device decals during the first two years that the Vending Devices
4 Decal Act has been in effect, but which deficiency in collections should be
5 eliminated if the Vending Devices Decal Act is extended for an additional
6 three (3) year period based upon the same "sunsetting provisions" if a total
7 of \$13.0 million is not collected from the sale of vending device decals
8 within the first five (5) years the law is in effect; and (8) that it being
9 the intent of the General Assembly to place all persons who are operators of
10 vending devices on an even competitive plane by the establishment of the
11 simplified Vending Device Decal Fee system, as amended by this Act, in lieu
12 of the state and local Gross Receipts (Sales) Tax being applicable to sales
13 made in this state by vending devices; an emergency is therefore declared to
14 exist, and this Act being necessary for the preservation of the public peace,
15 health and safety; it is declared that this Act shall be in full force and
16 effect as of July 1, 1995.

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