

HOUSE BILL 1260

By Odom

AN ACT to amend Tennessee Code Annotated, Title 67, Chapter 6, Part 3; Title 67, Chapter 6, Part 2 and Title 67, Chapter 6, Part 7, relative to food and food ingredients for human consumption.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 67-6-228, is amended by deleting the section in its entirety and by substituting instead the following:

Section 67-6-228.

(a)

(1) Notwithstanding any provision of this part to the contrary, except as otherwise provided in subdivision (a)(2) and subsection (d), the retail sale of food and food ingredients for human consumption shall be taxed at the rate of six percent (6%) of the sales price of each single article of food or food ingredient.

(2) The retail sale of the following food and food ingredients shall be taxed at the rate of tax levied on the sale of tangible personal property at retail by the provisions of § 67-6-202:

(A) Candy;

(B) Dietary supplements; and

(C) Prepared food.

(3) For purposes of this section:

(A) "Candy" means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavorings in the form of bars,

drops, or pieces. Candy shall not include any preparation containing flour and shall require no refrigeration;

(B) "Dietary supplement" means any product, other than tobacco, intended to supplement the diet that:

(i) Contains one or more of the following dietary ingredients:

(a) A vitamin;

(b) A mineral;

(c) An herb or other botanical;

(d) An amino acid;

(e) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or

(f) A concentrate, metabolite, constituent, extract, or combination of any ingredient described in subdivisions (a)(3)(B)(i)(a)-(e); and

(ii) Is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in such a form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and

(iii) Is required to be labeled as a dietary supplement, identifiable by the "Supplement Facts" box found on the label and as required pursuant to 21 C.F.R. § 101.36; and

(C) "Prepared food" means:

(i) Food sold in a heated state or heated by the seller;

(ii) Two (2) or more food ingredients mixed or combined by the seller for sale as a single item; or

(iii) Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. "Prepared food" does not include food that is only sliced, repackaged, or pasteurized.

(b) Except as otherwise provided in this section, "food and food ingredients" means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value.

(c) As used in this section, "food and food ingredients" does not include the following items, which shall be taxed at the rate of the tax levied on the sale of tangible personal property at retail by the provisions of § 67-6-202:

(1) Beer, wine or any other beverage, however designated, that contains alcohol and is regulated pursuant to title 57; or

(2) Cigarettes, cigars or any other product, however designated, that contains tobacco.

(d)

(1) The retail sale of bread and essential food items shall be taxed at the rate of zero percent (0%) of the sales price of each single article of food or food ingredient.

(2) For the purposes of this chapter, "essential food items" includes only the following items commonly associated with the special supplemental nutrition program for women, infants, and children (WIC):

(A) Infant formula, infant juice and infant cereal maintained on an approved list by the department of revenue;

(B) Orange juice, grapefruit juice, apple juice, pineapple juice, grape juice, tomato juice and certain other juices maintained on an approved list by the department of revenue;

(C) Breakfast cereals high in folic acid maintained on an approved list by the department of revenue;

(D) Smooth or crunchy peanut butter but not reduced fat peanut butter, peanut butter spreads, store ground peanut butter or peanut butter with added jelly or honey;

(E) Reduced fat, low fat, fat free, sweet acidophilus, whole milk, lactose reduced or lactose free, Ultra High Temperature (UHT) milk, non fat dry powdered milk and evaporated milk but not buttermilk, chocolate milk or non-dairy beverages;

(F) Dried beans and peas without added seasoning;

(G) Carrots but not fresh shredded carrots or fresh cut up carrots;

(H) Canned tuna packed in oil or water but not smoked tuna;

(I) Mozzarella, cheddar, colby, monterey jack and processed American cheeses; provided that such cheeses are not shredded, cubed, imported, flavored or smoked, combined with added ingredients or seasonings, imitation cheese, cheese products, cheese foods or cheese spreads; and

(J) White or brown eggs but not specialty eggs.

SECTION 2. Tennessee Code Annotated, Section 67-6-709, is amended by deleting the section in its entirety and by substituting instead the following language:

Section 67-6-709.

(a) Except as provided in subsection (b), any ordinance or resolution of a county, city or town adopted in accordance with this part may be repealed in the same manner as provided by this part for its adoption; provided, that any election for the repeal of a county tax shall be open to the voters of the entire county.

(b) A county, city or town may amend or repeal its ordinance or resolution adopting a tax under this part in order to reduce or eliminate the local tax rate on the retail sale of bread and essential food items, as defined in §67-6-228(d)(2), for human consumption by passage of a resolution or ordinance reflecting such reduction or elimination by a majority vote of its legislative body. No city or town may raise their rate

of taxation to the maximum allowable rate on any items reduced or eliminated by passage of a county resolution pursuant to this subsection (b).

SECTION 3. This act shall take effect at 12:02 a.m. on July 1, 2007, the public welfare requiring it.