

SENATE BILL 1235

By Bunch

AN ACT to amend Tennessee Code Annotated, Title 67, Chapter 6; Section 67-6-102 and Section 67-6-228(a), relative to reducing the rate of sales tax levied on food and food ingredients for human consumption and increasing the rate of tax levied on certain adult-oriented products and amusements.

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

SECTION 1. This act shall be known and may be cited as the "Food Tax – Adult Materials Tax Swap Act of 2007".

SECTION 2. Tennessee Code Annotated, 67-6-228(a), is amended by deleting the language "five and one half percent (5.5%)" and by substituting instead the language "three percent (3%)".

SECTION 3. Tennessee Code Annotated, Section 67-6-228(a), is further amended by adding the following language thereto:

The commissioner of revenue shall develop and implement a formula to hold counties and municipalities harmless from actual or potential net loss of revenue resulting from the reduction of sales tax imposed on food and food ingredients. No county or municipality shall receive from state sales tax revenues in fiscal year 2009-2010 and in subsequent fiscal years a lesser amount of state sales tax revenues than it would have received prior to the reduction of sales tax imposed on food and food ingredients, adjusted for any changes in state sales tax revenues from the current fiscal year.

SECTION 4. Tennessee Code Annotated, Section 67-6-102, is amended by adding the following as new subdivisions to be appropriately numbered:

() "Adult bookstore" means a business that offers, as its principal or predominate stock or trade, sexually oriented material, devices, or paraphernalia, whether determined by the total number of sexually oriented materials, devices or paraphernalia offered for sale, by the percent of its total sales or its profits, by the retail value of such materials, devices or paraphernalia, specified sexual activities, or any combination or form thereof, whether printed, filmed, recorded or live, or that in part or in whole restricts or purports to restrict admission to adults or to any class of adults. The definition specifically includes items sexually oriented in nature, regardless of how labeled or sold, such as adult novelties, risqué gifts or marital aids;

() "Adult materials" means those materials whose display to minors is limited by § 39-17-914;

() "Escort" means a person who, for monetary consideration in the form of a fee, commission, salary or tip, dates, socializes, visits, consorts with, accompanies, or offers to date, socialize, visit, consort or accompany to social affairs, entertainment or places of amusement or within any place of public resort or within any private quarters of a place of public resort;

() "Service-oriented escort" is an escort that:

(A) Operates from an open office;

(B) Does not employ or use an escort runner;

(C) Does not advertise that sexual conduct will be provided to the patron or work for an escort bureau that so advertises; and

(D) Does not offer or provide sexual conduct;

() "Sexually-oriented escort" is an escort that:

(A) Employs as an employee, agent, or independent contractor an escort bureau runner;

(B) Works for, as an agent, employee, contractor, or is referred to a patron by a sexually-oriented escort bureau;

(C) Advertises that sexual conduct will be provided, or works for, as an employee, agent or independent contractor or is referred to a patron by an escort bureau that so advertises;

(D) Solicits, offers to provide or does provide acts of sexual conduct to an escort patron, or accepts an offer or solicitation to provide acts of sexual conduct for a fee in addition to the fee charged by the escort bureau;

(E) Works as an escort without having a current valid permit issued under this part in such person's possession at all times while working as an escort; or

(F) Accepts a fee from a patron who has not first been delivered a contract;

() "Escort service" means a "person" as defined in this section, who, for a fee, commission, profit, payment or other monetary consideration, furnishes or offers to furnish escorts or provides or offers to introduce patrons to escorts;

() "Service-oriented escort bureau" is an escort bureau that:

(A) Maintains an open office at an established place of business;

(B) Does not use an escort bureau runner; and

(C) Does not advertise that sexual conduct will be provided to a patron;

() "Sexually-oriented escort bureau" is an escort bureau that:

(i) Does not maintain an open office;

(ii) Employs as an employee, agent, or independent contractor, uses an escort bureau runner;

(iii) Advertises that sexual conduct will be provided, or that escorts that provide such sexual conduct will be provided, referred, or introduced to a patron;

(iv) Solicits, offers to provide or does provide acts of sexual conduct to an escort patron;

(v) Employs, contracts with or provides or refers escorts who do not possess valid permits issued under this part;

(vi) Does not deliver contracts to every patron or customer; or

(vii) Employs or contracts with a sexually-oriented escort, or refers or provides to a patron, a sexually-oriented escort;

() "Nude or partially denuded individual" means an individual with any of the following less than completely and opaquely covered:

(A) Genitals;

(B) The pubic region; or

(C) A female breast below a point immediately above the top of the areola; and

() "Sexually explicit business" means a business at which any nude or partially denuded individual, regardless of whether the nude or partially denuded individual is an employee of the sexually explicit business or an independent contractor, performs any service:

(A) Personally on the premises of the sexually explicit business; and

(B) During at least thirty (30) consecutive or nonconsecutive days within a calendar year for:

(i) A salary;

(ii) A fee;

(iii) A commission;

(iv) Hire;

(v) Profit; or

(vi) Any compensation similar to an amount listed in this subdivision.

SECTION 5. Tennessee Code Annotated, Section 67-6-212, is amended by adding the following new subsections thereto:

(e) In addition to any other applicable tax, there is levied a tax of twenty-five percent (25%) on the sale or rental of personal property, membership dues and fees, sales of tickets or other charges for admission, entering into or engaging in any kind of recreational activity or viewing any motion picture for which a fee is charged, in any adult bookstore or any sexually explicit business. The sale or rental of personal property subject to this tax shall include but not be limited to, sexually oriented material, devices, or paraphernalia, including adult novelties, risqué gifts or marital aids.

(f) In addition to any other applicable tax, there is levied a tax of twenty-five percent (25%) on an escort service or an sexually oriented escort service on amounts paid or charged by such escort services for any transaction that involves providing an escort to another individual.

(g) In addition to any other applicable tax, there is levied a tax of twenty-five percent (25%) on individual charges for viewing sexually explicit movies received from cable televisions channels or in hotels or motels.

(h) In addition to any other applicable tax, there is levied a tax of twenty-five percent (25%) on magazines, books and other adult materials that are restricted to viewing by minors pursuant to § 39-17-914.

(i) Nothing in this subsections (e) - (h) act shall apply to motion pictures designated by the rating board of the Motion Picture Association of America by the letter

“R” for restricted audiences, persons under seventeen (17) years of age not admitted unless accompanied by parent or adult guardian, or the designation “NC-17”, persons under seventeen (17) years of age not admitted.

SECTION 6. On July 1 of each fiscal year, beginning with fiscal year 2009-2010 and continuing until fiscal year 2018-2019, the tax rate on the sale or rental of sexually oriented material, devices, or paraphernalia shall be increased by three percent (3%); provided, that if sales or rentals of sexually oriented material, devices, or paraphernalia decline more than ten percent (10%) from the prior year of collections, the tax increase imposed by this section shall not apply until sales or rentals of sexually oriented material, devices, or paraphernalia increase to a level before such ten percent (10%) decline. Any increase of the tax rate on the sale or rental of sexually oriented material, devices, or paraphernalia shall be implemented to ensure that this act is, to the greatest extent practicable, revenue neutral considering declining sales or rentals of sexually oriented material, devices, or paraphernalia, fees and charges for escort services and sexually oriented businesses, and other such factors.

SECTION 7. Nothing in this act shall apply to any contraceptive device or to any medication that is prescribed by a physician and that is intended to enhance sexual performance or sexual enjoyment.

SECTION 8. It is the legislative intent of this act that the fiscal impact of this act be as revenue-neutral as practicable in the immediate and long-term. Beginning July 1, 2009, the commissioner of revenue shall review the fiscal impact of this act to ensure that it continues to be revenue neutral, taking into consideration changing purchases of sexually oriented material, devices, or paraphernalia in this state and growth of the state population. The commissioner of revenue shall report to the general assembly by January 1 of each year, beginning in 2010 and continuing through 2018, regarding any recommended adjustment to the annual increase of three percent (3%), as specified in Section 6 that should be implemented in order to maintain an

equivalent amount of revenues if the sales tax on food and food ingredients had not been reduced pursuant to this act.

SECTION 9. The commissioner of revenue is authorized to promulgate rules and regulations pursuant to title 4, chapter 5, to implement the provisions of this act.

SECTION 10. For the purpose of promulgating rules and regulations, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect at 12:05 a.m. on July 1, 2009, the public welfare requiring it.