
SENATE BILL 5973

State of Washington

59th Legislature

2005 Regular Session

By Senator Franklin

Read first time 02/17/2005. Referred to Committee on Ways & Means.

1 AN ACT Relating to the sales and use taxation of candy; amending
2 RCW 82.08.0293 and 82.12.0293; adding a new section to chapter 82.32
3 RCW; creating a new section; and providing an effective date.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The legislature recognizes that public
6 health programs are the first line of defense against threats of
7 bioterrorism and epidemics. The legislature also recognizes that
8 federal funding for protection against bioterrorism and other safety
9 measures is primarily for planning, not for implementation.

10 Furthermore, the legislature finds that poor nutrition contributes
11 to significant and expensive health problems in our society, including
12 obesity, tooth decay, cardiovascular disease, diabetes, and cancer.
13 The legislature recognizes the value of creating disincentives for
14 unhealthy behavior, including poor eating habits.

15 The state's public health system is an important resource for
16 protecting the population as well as promoting good nutrition and
17 helping to reduce the incidence of disease in the population. The
18 legislature recognizes that public health programs are not adequately
19 funded to carry out their job of protecting the public's health.

1 The legislature declares that paying for programs that will help
2 protect the public against disease and bioterrorism is a necessary and
3 worthy cause.

4 **Sec. 2.** RCW 82.08.0293 and 2004 c 153 s 201 are each amended to
5 read as follows:

6 (1) The tax levied by RCW 82.08.020 shall not apply to sales of
7 food and food ingredients. "Food and food ingredients" means
8 substances, whether in liquid, concentrated, solid, frozen, dried, or
9 dehydrated form, that are sold for ingestion or chewing by humans and
10 are consumed for their taste or nutritional value. "Food and food
11 ingredients" does not include:

12 (a) "Alcoholic beverages," which means beverages that are suitable
13 for human consumption and contain one-half of one percent or more of
14 alcohol by volume; and

15 (b) "Tobacco," which means cigarettes, cigars, chewing or pipe
16 tobacco, or any other item that contains tobacco.

17 (2) The exemption of "food and food ingredients" provided for in
18 subsection (1) of this section shall not apply to prepared food, soft
19 drinks, candy, or dietary supplements.

20 (a) "Prepared food" means:

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

22 (ii) Food sold with eating utensils provided by the seller,
23 including plates, knives, forks, spoons, glasses, cups, napkins, or
24 straws. A plate does not include a container or packaging used to
25 transport the food; or

26 (iii) Two or more food ingredients mixed or combined by the seller
27 for sale as a single item, except:

28 (A) Food that is only cut, repackaged, or pasteurized by the
29 seller; or

30 (B) Raw eggs, fish, meat, poultry, and foods containing these raw
31 animal foods requiring cooking by the consumer as recommended by the
32 federal food and drug administration in chapter 3, part 401.11 of The
33 Food Code, published by the food and drug administration, as amended or
34 renumbered as of January 1, 2003, so as to prevent foodborne illness.

35 (b) "Prepared food" does not include the following food or food
36 ingredients, if the food or food ingredients are sold without eating
37 utensils provided by the seller:

1 (i) Food sold by a seller whose proper primary North American
2 industry classification system (NAICS) classification is manufacturing
3 in sector 311, except subsector 3118 (bakeries), as provided in the
4 "North American industry classification system--United States, 2002";

5 (ii) Food sold in an unheated state by weight or volume as a single
6 item; or

7 (iii) Bakery items. The term "bakery items" includes bread, rolls,
8 buns, biscuits, bagels, croissants, pastries, donuts, Danish, cakes,
9 tortes, pies, tarts, muffins, bars, cookies, or tortillas.

10 (c) "Soft drinks" means nonalcoholic beverages that contain natural
11 or artificial sweeteners. Soft drinks do not include beverages that
12 contain: Milk or milk products; soy, rice, or similar milk
13 substitutes; or greater than fifty percent of vegetable or fruit juice
14 by volume.

15 (d) "Candy" means a preparation of sugar, honey, or other natural
16 or artificial sweeteners in combination with chocolate, fruits, nuts,
17 or other ingredients or flavorings in the form of bars, drops, or
18 pieces. Candy does not include any preparation containing flour nor
19 does it include any products that require refrigeration.

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

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

23 (A) A vitamin;

24 (B) A mineral;

25 (C) An herb or other botanical;

26 (D) An amino acid;

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

29 (F) A concentrate, metabolite, constituent, extract, or combination
30 of any ingredient described in this subsection;

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

35 (iii) Is required to be labeled as a dietary supplement,
36 identifiable by the "supplement facts" box found on the label as
37 required pursuant to 21 C.F.R. Sec. 101.36, as amended or renumbered as
38 of January 1, 2003.

1 (3) Notwithstanding anything in this section to the contrary, the
2 exemption of "food and food ingredients" provided in this section shall
3 apply to food and food ingredients that are furnished, prepared, or
4 served as meals:

5 (a) Under a state administered nutrition program for the aged as
6 provided for in the Older Americans Act (P.L. 95-478 Title III) and RCW
7 74.38.040(6); or

8 (b) That are provided to senior citizens, disabled persons, or low-
9 income persons by a not-for-profit organization organized under chapter
10 24.03 or 24.12 RCW.

11 (4)(a) Subsection (1) of this section notwithstanding, the retail
12 sale of food and food ingredients is subject to sales tax under RCW
13 82.08.020 if the food and food ingredients are sold through a vending
14 machine, and in this case the selling price for purposes of RCW
15 82.08.020 is fifty-seven percent of the gross receipts.

16 (b) This subsection (4) does not apply to hot prepared food and
17 food ingredients, other than food and food ingredients which are heated
18 after they have been dispensed from the vending machine.

19 (c) For tax collected under this subsection (4), the requirements
20 that the tax be collected from the buyer and that the amount of tax be
21 stated as a separate item are waived.

22 **Sec. 3.** RCW 82.12.0293 and 2003 c 168 s 303 are each amended to
23 read as follows:

24 (1) The provisions of this chapter shall not apply in respect to
25 the use of food and food ingredients for human consumption. "Food and
26 food ingredients" has the same meaning as in RCW 82.08.0293.

27 (2) The exemption of "food and food ingredients" provided for in
28 subsection (1) of this section shall not apply to prepared food, soft
29 drinks, candy, or dietary supplements. "Prepared food," "soft drinks,"
30 "candy," and "dietary supplements" have the same meanings as in RCW
31 82.08.0293.

32 (3) Notwithstanding anything in this section to the contrary, the
33 exemption of "food and food ingredients" provided in this section shall
34 apply to food and food ingredients which are furnished, prepared, or
35 served as meals:

36 (a) Under a state administered nutrition program for the aged as

1 provided for in the Older Americans Act (P.L. 95-478 Title III) and RCW
2 74.38.040(6); or

3 (b) Which are provided to senior citizens, disabled persons, or
4 low-income persons by a not-for-profit organization organized under
5 chapter 24.03 or 24.12 RCW.

6 NEW SECTION. **Sec. 4.** A new section is added to chapter 82.32 RCW
7 to read as follows:

8 The department of revenue shall deposit twenty-five one-hundredths
9 of one percent of the revenues collected under chapters 82.08 and 82.12
10 RCW into the county public health account in RCW 70.05.125.

11 NEW SECTION. **Sec. 5.** This act takes effect August 1, 2005.

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