
SENATE BILL 6189

State of Washington

61st Legislature

2009 Regular Session

By Senators Kohl-Welles, Franklin, Keiser, Murray, McDermott, Kline, Ranker, Regala, Prentice, Rockefeller, Fairley, Tom, Hargrove, and Fraser

1 AN ACT Relating to providing grants to increase dental and medical
2 services by a voter-approved sales and use tax on candy; amending RCW
3 82.08.0293 and 82.12.0293; creating a new section; making an
4 appropriation; providing a contingent effective date; and providing for
5 submission of certain sections of this act to a vote of the people.

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

7 **Sec. 1.** RCW 82.08.0293 and 2004 c 153 s 201 are each amended to
8 read as follows:

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

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

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

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

4 (a) "Prepared food" means:

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

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

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

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

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

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

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

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

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

31 (c) "Soft drinks" means nonalcoholic beverages that contain natural
32 or artificial sweeteners. Soft drinks do not include beverages that
33 contain: Milk or milk products; soy, rice, or similar milk
34 substitutes; or greater than fifty percent of vegetable or fruit juice
35 by volume.

36 (d) "Candy" means a preparation of sugar, honey, or other natural
37 or artificial sweeteners in combination with chocolate, fruits, nuts,

1 or other ingredients or flavorings in the form of bars, drops, or
2 pieces. Candy does not include any preparation containing flour nor
3 does it include any products that require refrigeration.

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

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

7 (A) A vitamin;

8 (B) A mineral;

9 (C) An herb or other botanical;

10 (D) An amino acid;

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

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

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

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

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

27 (a) Under a state administered nutrition program for the aged as
28 provided for in the Older Americans Act (P.L. 95-478 Title III) and RCW
29 74.38.040(6); or

30 (b) That are provided to senior citizens, (~~disabled persons~~)
31 individuals with disabilities, or low-income persons by a not-for-
32 profit organization organized under chapter 24.03 or 24.12 RCW.

33 (4)(a) Subsection (1) of this section notwithstanding, the retail
34 sale of food and food ingredients is subject to sales tax under RCW
35 82.08.020 if the food and food ingredients are sold through a vending
36 machine, and in this case the selling price for purposes of RCW
37 82.08.020 is fifty-seven percent of the gross receipts.

1 (b) This subsection (4) does not apply to: (i) Candy; and (ii) hot
2 prepared food and food ingredients, other than food and food
3 ingredients which are heated after they have been dispensed from the
4 vending machine.

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

8 **Sec. 2.** RCW 82.12.0293 and 2003 c 168 s 303 are each amended to
9 read as follows:

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

13 (2) The exemption of "food and food ingredients" provided for in
14 subsection (1) of this section shall not apply to prepared food, soft
15 drinks, candy, or dietary supplements. "Prepared food," "soft drinks,"
16 "candy," and "dietary supplements" have the same meanings as in RCW
17 82.08.0293.

18 (3) Notwithstanding anything in this section to the contrary, the
19 exemption of "food and food ingredients" provided in this section shall
20 apply to food and food ingredients which are furnished, prepared, or
21 served as meals:

22 (a) Under a state administered nutrition program for the aged as
23 provided for in the Older Americans Act (P.L. 95-478 Title III) and RCW
24 74.38.040(6); or

25 (b) Which are provided to senior citizens, (~~disabled persons~~)
26 individuals with disabilities, or low-income persons by a not-for-
27 profit organization organized under chapter 24.03 or 24.12 RCW.

28 NEW SECTION. **Sec. 3.** The sum of forty million dollars, which
29 reflects the increased revenue receipts from sales tax on candy, is
30 appropriated to the state health care authority for the biennium ending
31 June 30, 2011, from the general fund solely for the authority to
32 provide one-time competitive grants to community health centers to
33 increase dental and medical services.

34 NEW SECTION. **Sec. 4.** REFERRAL TO VOTERS FOR APPROVAL--BALLOT
35 TITLE. (1) The secretary of state shall submit sections 1 through 3 of

1 this act to the people for their adoption and ratification, or
2 rejection, at the next general election to be held in this state, in
3 accordance with Article II, section 1 of the state Constitution and the
4 laws adopted to facilitate its operation.

5 (2) Pursuant to RCW 29A.72.050, the statement of subject and
6 concise description for the ballot title shall be as follows:

7 "The legislature has passed Senate Bill No. . . . (this act). This
8 bill would fund competitive grants to community health centers to
9 increase dental and medical services during the 2009-2011 biennium
10 through a sales tax on candy and gum."

11 NEW SECTION. **Sec. 5.** This act takes effect upon approval of
12 sections 1 through 3 of this act by the voters by December 15, 2009, as
13 provided in section 4 of this act. If sections 1 through 3 of this act
14 are not approved by the voters by December 15, 2009, as provided in
15 section 4 of this act, this act is null and void in its entirety.

16 NEW SECTION. **Sec. 6.** Captions used in this act are not any part
17 of the law.

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