

SENATE BILL 40

Q4

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HB 39/1SS07 – W&M

(PRE-FILED)

By: **Senator Harrington**

Requested: November 7, 2008

Introduced and read first time: January 14, 2009

Assigned to: Budget and Taxation

A BILL ENTITLED

1 AN ACT concerning

2 **Sales and Use Tax – Snack Tax**

3 FOR the purpose of providing that a certain exemption under the sales and use tax for
4 certain sales of food does not apply to certain snack food; repealing an
5 exemption under the sales and use tax for certain snack food sold through
6 vending machines; defining a certain term; and generally relating to the sales
7 and use taxation of certain snack food.

8 BY repealing and reenacting, with amendments,
9 Article – Tax – General
10 Section 11–206
11 Annotated Code of Maryland
12 (2004 Replacement Volume and 2008 Supplement)

13 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
14 MARYLAND, That the Laws of Maryland read as follows:

15 **Article – Tax – General**

16 11–206.

17 (a) (1) In this section the following words have the meanings indicated.

18 (2) “Food for immediate consumption” means:

19 (i) food obtained from a salad, soup, or dessert bar;

20 (ii) party platters;

21 (iii) heated food;

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



- 1 (iv) sandwiches suitable for immediate consumption; or
2 (v) ice cream, frozen yogurt, and other frozen desserts, sold in
3 containers of less than 1 pint.

4 (3) "Facility for food consumption" does not include parking spaces for
5 vehicles as the sole accommodation.

6 (4) (i) "Food" means food for human consumption.

7 (ii) "Food" includes the following foods and their products:

- 8 1. beverages, including coffee, coffee substitutes, cocoa,
9 fruit juices, and tea;
10 2. condiments;
11 3. eggs;
12 4. fish, meat, and poultry;
13 5. fruit, grain, and vegetables;
14 6. milk, including ice cream; and
15 7. sugar.

16 (iii) "Food" does not include:

- 17 1. an alcoholic beverage as defined in § 5-101 of this
18 article;
19 2. a soft drink or carbonated beverage; or
20 3. candy or confectionery.

21 (5) "Premises" includes any building, grounds, parking lot, or other
22 area that:

23 (i) a food vendor owns or controls; or

24 (ii) another person makes available primarily for the use of the
25 patrons of 1 or more food vendors.

26 (6) "SNACK FOOD" MEANS:

- 1 (I) POTATO CHIPS AND STICKS;
- 2 (II) CORN CHIPS, INCLUDING TORTILLA CHIPS;
- 3 (III) PRETZELS;
- 4 (IV) CHEESE PUFFS AND CURLS;
- 5 (V) PORK RINDS;
- 6 (VI) EXTRUDED PRETZELS AND CHIPS;
- 7 (VII) POPPED POPCORN;
- 8 (VIII) NUTS AND EDIBLE SEEDS; OR
- 9 (IX) SNACK MIXTURES THAT CONTAIN ANY ONE OR MORE OF
- 10 THE FOODS LISTED IN ITEMS (I) THROUGH (VIII) OF THIS PARAGRAPH.

11 [(6)] (7) “Substantial grocery or market business” means a business
12 at which at least 10% of all sales of food are sales of grocery or market food items, not
13 including food normally consumed on the premises even though it is packaged to carry
14 out.

15 (b) The sales and use tax does not apply to a sale of food stamp eligible food,
16 as defined in 7 U.S.C. § 2012, bought with a food coupon issued in accordance with 7
17 U.S.C. § 2016.

18 (c) (1) Except as provided in paragraph (2) of this subsection, the sales
19 and use tax does not apply to a sale of food for consumption off the premises by a food
20 vendor who operates a substantial grocery or market business at the same location
21 where the food is sold.

22 (2) The exemption under paragraph (1) of this subsection does not
23 apply to:

24 (i) food that the vendor serves for consumption on the premises
25 of the buyer or of a third party; [or]

26 (ii) food for immediate consumption; OR

27 (III) SNACK FOOD.

28 (d) The sales and use tax does not apply to:

29 (1) a sale of food:

1 (i) to patients in a hospital when the food charge is included in
2 the regular room rate;

3 (ii) by a church or religious organization;

4 (iii) by a school other than an institution of postsecondary
5 education, including sales at a school by a food concessionaire that is under contract
6 with the school or with its designated contract agent, but not including sales at events
7 that are not sponsored by the school or are not educationally related;

8 (iv) to students at an institution of postsecondary education if
9 the food charge is for a meal plan or is included in the regular charge for room and
10 board; or

11 (v) by a nonprofit food vendor if there are no facilities for food
12 consumption on the premises, unless the food is sold within an enclosure for which a
13 charge is made for admission;

14 (2) if the proceeds of the sale are used to support a bona fide
15 nationally organized and recognized organization of veterans of the armed forces of the
16 United States or auxiliary of the organization or 1 of its units, a sale of food or meals
17 for consumption only on the premises, served by the organization or auxiliary; or

18 (3) if the proceeds of the sale are used to support a volunteer fire
19 company or department or its auxiliary or a volunteer ambulance company or rescue
20 squad or its auxiliary, a sale of food served by the company, department, squad, or
21 auxiliary.

22 (e) The sales and use tax does not apply to a sale of food or any beverage in a
23 vehicle that is being operated in the State while in the course of interstate commerce.

24 (f) The sales and use tax does not apply to a sale for consumption off the
25 premises of:

26 (1) crabs; or

27 (2) seafood that is not prepared for immediate consumption.

28 [(g) (1) In this subsection, "snack food" means:

29 (i) potato chips and sticks;

30 (ii) corn chips;

31 (iii) pretzels;

32 (iv) cheese puffs and curls;

- 1 (v) pork rinds;
- 2 (vi) extruded pretzels and chips;
- 3 (vii) popped popcorn;
- 4 (viii) nuts and edible seeds; or
- 5 (ix) snack mixtures that contain any one or more of the foods
- 6 listed in items (i) through (viii) of this paragraph.

7 (2) The sales and use tax does not apply to the sale of snack food
8 through a vending machine.]

9 [(h)] (G) The sales and use tax does not apply to the sale through a vending
10 machine of milk, fresh fruit, fresh vegetables, or yogurt.

11 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
12 July 1, 2009.