

STATE OF OKLAHOMA

2nd Session of the 58th Legislature (2022)

HOUSE BILL 3685

By: McDugle

AS INTRODUCED

An Act relating to sales tax; defining terms; exempting the sale of food and food ingredients; authorizing the Oklahoma Tax Commission to promulgate rules; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1357.11 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. As used in this section:

1. "Food and food ingredients" shall mean 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. Food and food ingredients shall not include:

- a. alcoholic beverages,
- b. bottled water,
- c. candy,
- d. dietary supplements,

- e. marijuana, useable marijuana or marijuana-infused products,
- f. prepared food,
- g. soft drinks, or
- h. tobacco;

2. "Alcoholic beverages" shall mean beverages that are suitable for human consumption and contain one-half (1/2) of one percent (1%) or more of alcohol by volume;

3. "Candy" shall mean 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 or requiring refrigeration;

4. "Dietary supplements" shall mean any product, other than tobacco, intended to supplement the diet that:

- a. contains one or more of the following dietary ingredients:

- (1) a vitamin,
- (2) a mineral,
- (3) an herb or other botanical,
- (4) an amino acid,
- (5) a dietary substance for use by humans to supplement the diet by increasing the total dietary intake, and

- (6) a concentrate, metabolite, constituent, extract,
or combination of any ingredient described in
divisions (1) through (5) of this subparagraph,
b. is intended for ingestion in tablet, capsule, powder,
softgel, gelcap or liquid form, or, if not intended for
ingestion in such 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
c. is required to be labeled as a dietary supplement,
identifiable by the supplement facts box found on the
label and as required pursuant Section 101.36 of Title
21 of the Code of Federal Regulations;

5. "Prepared food" shall mean:

- a. food sold in a heated state or heated by the seller,
b. two or more food ingredients mixed or combined by the
seller for sale as a single item, or
c. food sold with eating utensils provided by the seller,
including plates, knives, forks, spoons, glasses, cups,
napkins or straws;

6. "Soft drinks" shall mean any nonalcoholic beverages that
contain natural or artificial sweeteners. Soft drinks shall not
include beverages that contain:

- a. milk or milk products,
b. soy, rice, oat or similar milk substitutes, or

1 c. greater than fifty percent (50%) of vegetable or fruit
2 juice by volume; and

3 7. "Tobacco" shall mean cigarettes, cigars, chewing or pipe
4 tobacco, or any other item that contains tobacco.

5 B. The retail sale of food and food ingredients, sold for human
6 consumption off the premises where sold, shall be exempt from the
7 tax imposed by Section 1354 of Title 68 of the Oklahoma Statutes.

8 C. The Oklahoma Tax Commission shall promulgate any necessary
9 rules to implement the provisions of this section in accordance with
10 the Streamlined Sales and Use Tax Agreement.

11 SECTION 2. This act shall become effective November 1, 2022.

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