

1 H.392
2 Introduced by Representatives Till of Jericho, Evans of Essex, Greshin of
3 Warren, Jerman of Essex, Milkey of Brattleboro, O'Brien of
4 Richmond, Pellett of Chester, Ram of Burlington, Webb of
5 Shelburne, Wizowaty of Burlington and Zuckerman of
6 Burlington

7 Referred to Committee on

8 Date:

9 Subject: Taxation; snack food

10 Statement of purpose: This bill proposes to impose a surcharge on the
11 distribution of high caloric foods with low nutritional value.

12 An act relating to a surcharge on snack food

13 It is hereby enacted by the General Assembly of the State of Vermont:

14 Sec. 1. 32 V.S.A. chapter 227 is amended to read:

15 CHAPTER 227. SURCHARGE ON SNACK FOOD

16 § 9401. ADMINISTRATION OF CHAPTER

17 The administration of this chapter is vested in the commissioner. All forms
18 necessary and proper for the enforcement of this chapter shall be prescribed
19 and furnished by the commissioner. The commissioner shall appoint such

1 agents, clerks, stenographers, and other assistants as he or she may deem
2 necessary for effecting the purposes of this chapter, but their salaries shall be
3 fixed by the commissioner with the approval of the governor. The
4 commissioner may require any such agent, clerk, stenographer, or other
5 assistant to execute a bond in such sum as such commissioner shall determine
6 for the faithful discharge of his or her duties. Any such agent, clerk,
7 stenographer, or other assistant may be removed by the commissioner. The
8 commissioner may prescribe regulations and rulings not inconsistent with law
9 to carry into effect the provisions of this chapter, which regulations and rulings,
10 when reasonably designed to carry out the intent and purpose of this chapter,
11 shall be prima facie evidence of its proper interpretation. The commissioner,
12 from time to time, may publish for distribution such regulations prescribed by
13 him or her and such rulings as he or she shall deem to be of general interest.

14 § 9402. DEFINITIONS

15 The following words, terms, and phrases when used in this chapter shall have
16 the meanings ascribed to them in this section unless the context clearly indicates a
17 different meaning:

18 (1) "Distributor" means any person who imports, or causes to be
19 imported, into this state any snack food for sale or who manufactures any snack
20 food in this state and any person within or without the state who is authorized

1 by the commissioner to make returns and pay the surcharge on snack food sold,
2 shipped, or delivered by him or her to any person in the state.

3 (2) "Manufacturer" means a person who manufactures and sells snack
4 food.

5 (3) "Person" shall mean any individual, firm, fiduciary, partnership,
6 corporation, trust, or association, however formed.

7 (4) "Sale" or "sell" means any transfer, exchange, or barter in any
8 manner or by any means whatever of any snack food.

9 (5) "Snack food" shall mean candy; soft drinks, artificially flavored
10 powdered or liquid drink mixes or drinks, fruit or vegetable drinks which
11 contain less than 15 percent natural fruit or vegetable juice by volume; corn
12 chips, potato chips and sticks, cheese puffs, pork rinds, popped corn, pretzels;
13 dips, salsa; beef jerky; roasted nuts; granola bars, breakfast bars; pastries,
14 doughnuts, cakes, pies, cookies, toaster pastries; ice cream, frozen yogurt,
15 sherbet or other frozen confection; ice cream sauces or syrups; ready-to-eat
16 puddings; processed fruit snacks, fruit rolls, fruit bars, but not jams, jellies,
17 preserves, dried fruit, or fruit prepared in a sweetened syrup.

18 (6) "Wholesale dealer" shall mean a person who sells or furnishes snack
19 food or both to wholesale or retail dealers for the purpose of resale, but not by
20 the small quantity or parcel to consumers thereof.

1 (7) “Wholesale price” means the price at which a distributor or
2 wholesale dealer sells or furnishes snack food.

3 § 9403. LICENSE REQUIRED

4 Each wholesale dealer and distributor shall secure a license from the
5 commissioner of taxes before engaging in the business of selling snack food in
6 this state.

7 § 9404. APPLICATION FOR AND ISSUANCE OF LICENSE

8 A license shall be issued by the commissioner on application without
9 charge, on forms prescribed by him or her, stating the name and address of the
10 applicant, the address of the place of business at which it is proposed to engage
11 in the business, the type of business, and such other information as the
12 commissioner may require for the proper administration of this chapter.

13 § 9405. PENALTIES FOR SALES WITHOUT LICENSE

14 Any wholesale dealer or distributor who shall sell, offer for sale, or possess
15 with intent to sell any snack food without having first obtained a license as
16 provided in this chapter shall be fined not more than \$25.00 for the first
17 offense and not more than \$200.00 nor less than \$25.00 for each subsequent
18 offense.

19 § 9406. TERM OF LICENSES

20 Each license issued under the provisions of this chapter shall be valid as
21 long as the licensee continues to do business at the place named unless revoked

1 or suspended by the commissioner as provided in section 9407 of this title. If
2 the business with respect to which such license was issued shall be sold or
3 transferred or if the licensee ceases to do business at the place named, the
4 license shall immediately be returned to the commissioner for cancellation.

5 § 9407. REVOCATION AND SUSPENSION OF LICENSES

6 The commissioner may revoke or suspend the license of any wholesale
7 dealer or distributor for failure to comply with any provision of this chapter or
8 for failure to comply with the provisions of chapter 15 of Title 11. Any person
9 aggrieved by such revocation or suspension may apply to the commissioner for
10 a hearing in the same manner as provided in chapter 205 of this title and may
11 further appeal to the courts in the same manner as provided in chapter 205.

12 § 9408. BONDING

13 When the commissioner, in his or her discretion, deems it necessary to
14 protect the revenues to be obtained under this chapter, he or she may require
15 any wholesale dealer or distributor to file with him or her a bond, issued by a
16 surety company authorized to transact business in this state and approved by
17 the commissioner of banking, insurance, securities, and health care
18 administration of this state as to its solvency and responsibility, in an amount
19 fixed by the commissioner to secure the payment of any surcharges or penalties
20 or interest due or which may become due from that wholesale dealer or
21 distributor under this chapter. In the event that the commissioner determines

1 that a wholesale dealer or distributor is to file a bond, he or she shall give
2 notice to him or her to that effect, specifying the amount of the bond required.
3 The wholesale dealer or distributor shall file the bond within 15 days after the
4 giving of the notice unless, within those 15 days, he or she shall request in
5 writing a hearing before the commissioner at which the necessity, propriety,
6 and amount of the bond shall be determined by the commissioner. The
7 determination shall be final and shall be complied with within 15 days after the
8 giving of notice thereof. In lieu of a bond, securities approved by the
9 commissioner or cash in such amount as he or she may prescribe may be
10 deposited, which shall be kept in the custody of the state treasurer, who may, at
11 any time, upon instruction from the commissioner without notice to the
12 depositor, apply them to any surcharges or interest or penalties due, and for that
13 purpose the securities may be sold by him or her at public or private sale
14 without notice to the depositor thereof. In determining whether a person
15 should be required to obtain a bond, the commissioner is specifically
16 authorized to consider the filing and payment history, with respect to any tax
17 administered by the commissioner, of the person or any individual,
18 corporation, partnership, or other legal entity with which the person is or was
19 associated as principal, partner, officer, director, employee, agent, or
20 incorporator.

1 § 9409. IMPOSITION OF SNACK FOOD SURCHARGE

2 There is hereby imposed and shall be paid a surcharge on all snack foods
3 possessed in the state of Vermont by any distributor or wholesale dealer for
4 sale on and after January 1, 2010 which were imported into the state or
5 manufactured in the state after that date, except that no surcharge shall be
6 imposed on snack food sold under such circumstances that this state is without
7 power to impose such surcharge, or sold to the United States, or sold to or by a
8 voluntary unincorporated organization of the armed forces of the United States
9 operating a place for the sale of goods pursuant to regulations promulgated by
10 the appropriate executive agency of the United States. The surcharge on snack
11 food shall be at the rate of ten percent of the wholesale price. It shall be
12 presumed that all snack foods within the state are subject to the surcharge until
13 the contrary is established, and the burden of proof that any snack food is not
14 so subject shall be upon the person in possession thereof. Distributors and
15 wholesale dealers of snack foods shall state on the invoice whether the price
16 includes the Vermont snack food surcharge.

17 § 9410. LIABILITY FOR AND COLLECTION OF SURCHARGE

18 The distributor or wholesale dealer shall be liable for the payment of the
19 surcharge on snack food which he or she imports or causes to be imported into
20 the state, or which he or she manufactures in this state, and every distributor
21 and wholesale dealer authorized by the commissioner to make returns and pay

1 the surcharge on snack food sold, shipped, or delivered by him or her to any
2 person in the state shall be liable for the collection and payment of the
3 surcharge on all snack foods sold, shipped, or delivered.

4 § 9411. RETURNS AND PAYMENT OF SURCHARGE BY

5 DISTRIBUTOR OR WHOLESALE DEALER

6 Every distributor and wholesale dealer shall, on or before the 15th day of
7 each month, file with the commissioner a return on forms to be prescribed and
8 furnished by the commissioner, showing the quantity and wholesale price of all
9 snack foods sold, shipped, or delivered by him or her to any person in the state
10 during the preceding calendar month. The returns shall contain such further
11 information as the commissioner may require. Every distributor and wholesale
12 dealer shall pay to the commissioner with the filing of such return the
13 surcharge on snack foods for such month imposed under this chapter.

14 § 9412. RECORDS REQUIRED; INSPECTION AND EXAMINATION;

15 ASSESSMENT OF DEFICIENCY

16 (a) Each distributor and wholesale dealer shall keep complete and accurate
17 records of all snack foods manufactured, produced, purchased, transferred, and
18 sold by him or her. The records shall be of a kind and in a form as the
19 commissioner may prescribe and shall be safely preserved for six years in a
20 manner as to ensure permanency and accessibility for inspection by the
21 commissioner and authorized agents. The commissioner or authorized agents

1 may enter in or upon any premises where the commissioner or they have reason
2 to believe that snack foods are possessed, stored, or sold, for the purpose of
3 determining whether the provisions of this chapter are being obeyed and may
4 examine and copy the books, papers, records, and snack food stock of any
5 wholesale dealer or retail dealer, for the purpose of determining whether the
6 surcharge imposed by this chapter has been fully paid.

7 (b) Any distributor or wholesale dealer who fails to pay the required
8 surcharge to the commissioner as required under this chapter shall be
9 personally and individually liable for the amount of the surcharge, together
10 with interest and penalties under the provisions of section 3202 of this title;
11 and if the distributor or wholesale dealer is a corporation or other entity, the
12 personal liability shall extend and be applicable to any officer or agent of the
13 corporation or entity who as an officer or agent is under a duty to pay or
14 transmit the surcharge to the commissioner.

15 (c) If any distributor or wholesale dealer required to pay and transmit a
16 surcharge under this chapter neglects or refuses to pay the same after demand,
17 the amount, together with all penalties and interest provided for in this chapter
18 and together with any costs that may accrue in addition thereto, shall be a lien
19 in favor of the state of Vermont upon all property and rights to property,
20 whether real or personal, belonging to such dealer. Such lien shall arise at the
21 time demand is made by the commissioner and shall continue until the liability

1 for such sum with interest, penalties, and costs is satisfied or becomes
2 unenforceable. Such lien shall have the same force and effect as the lien for
3 taxes withheld under the withholding provisions of the Vermont income tax
4 law as provided under section 5895 of this title, and notice of such lien shall be
5 recorded as is provided in that section. Certificates of release of such lien shall
6 also be given by the commissioner as in the case of the aforesaid liens.

7 § 9413. ENFORCEMENT OF THIS CHAPTER

8 The commissioner may enforce the provisions of this chapter in the same
9 manner as provided for in chapter 205 of this title, including the provisions for
10 review and appeal of license suspensions or revocation, but excluding the
11 provisions for criminal penalties.

12 § 9414. MONTHLY REPORT

13 Each distributor and wholesale dealer shall file with the commissioner, on
14 or before the 15th day of each month, a report for the calendar month
15 immediately preceding, in a form prescribed by the commissioner, showing the
16 amount and source of snack food acquired, the amount paid, and such other
17 information as the commissioner may require.

18 § 9415. DETERMINATION OF SURCHARGE ON FAILURE TO FILE

19 RETURN

20 (a) When the commissioner discovers, by examination of the records of the
21 taxpayer as provided in section 9412 of this title or otherwise, that a person

1 required to file a return under this subchapter has filed an incorrect or
2 insufficient return, the commissioner may, at any time within three years after
3 the date the return was due, determine the correct amount of surcharge and
4 shall give notice to the taxpayer of the amount of any deficiency in the
5 surcharge, together with penalty and interest as hereinafter provided. If no
6 return has been filed as provided by law, the surcharge may be assessed at any
7 time.

8 (b) A determination by the commissioner in accordance with subsection (a)
9 of this section shall fix the surcharge, unless the person against whom it is
10 assessed shall, within 60 days after receiving the notice of such determination,
11 apply to the commissioner for a hearing as provided in chapter 205. The
12 decision of the commissioner after the hearing may be reviewed as provided in
13 that chapter.

14 § 9416. SURCHARGE AS DEBT TO THE STATE

15 The surcharge on snack food imposed by this chapter and all increases,
16 interest, and penalties thereon shall become, from the date due and payable, a
17 personal debt from the person liable to pay the same to the state of Vermont to
18 be recovered in a civil action under this section.

19 § 9417. REFUNDS

20 Whenever any snack food upon which the surcharge has been paid has been
21 sold and shipped into another state for sale or use there, or has become unfit for

1 use and consumption or unsalable or has been destroyed, the dealer shall be
2 entitled to a refund of the actual amount of surcharge paid with respect thereto.
3 If the commissioner is satisfied that any dealer is entitled to a refund, he or she
4 shall so certify to the commissioner of finance and management who shall
5 issue his or her warrant in favor of the dealer entitled to receive such refund.

6 § 9418. DEPOSIT OF REVENUE

7 The revenue generated by the surcharge imposed under this chapter shall be
8 credited to the state health care resources fund established in section 1901d of
9 Title 33.