

ASSEMBLY BILL NO. 399—ASSEMBLYMAN MUNFORD

MARCH 21, 2011

Referred to Committee on Taxation

SUMMARY—Imposes a fee on sales by fast-food businesses of certain items of prepared food. (BDR 32-54)

FISCAL NOTE: Effect on Local Government: Increases or Newly Provides for Term of Imprisonment in County or City Jail or Detention Facility.
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets [omitted material] is material to be omitted.

AN ACT relating to state revenue; providing for the imposition, administration, collection and enforcement of a fee on the sale in this State by fast-food businesses of certain items of prepared food; providing penalties; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 **Section 10** of this bill imposes a fee on the sale in this State by a fast-food
2 business of items of prepared food that have a caloric content of 500 calories or
3 more, in the amount of 5 cents for each such item. The fee must be collected by the
4 fast-food provider from the purchaser. **Sections 1-29** of this bill provide for the
5 administration, collection and enforcement of the fee by the Department of
6 Taxation in a manner similar to other state taxes.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** Title 32 of NRS is hereby amended by adding
2 thereto a new chapter to consist of the provisions set forth as
3 sections 2 to 23, inclusive, of this act.

4 **Sec. 2.** *As used in this chapter, unless the context otherwise*
5 *requires, the words and terms defined in sections 3 and 4 of this*
6 *act have the meanings ascribed to them in those sections.*

7 **Sec. 3.** *“Commission” means the Nevada Tax Commission.*



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1 **Sec. 4.** *“Fast-food provider” means a person engaged in the*
2 *business of selling at retail prepared food intended for immediate*
3 *consumption which is served primarily in or on disposable*
4 *wrappers, containers or plates.*

5 **Sec. 5.** *The Department shall:*

6 1. *Administer and enforce the provisions of this chapter, and*
7 *may adopt such regulations as it deems appropriate for those*
8 *purposes.*

9 2. *Deposit all fees, interest and penalties it receives pursuant*
10 *to this chapter in the State Treasury for credit to the State General*
11 *Fund.*

12 **Sec. 6.** 1. *Each person responsible for maintaining the*
13 *records of a fast-food provider shall:*

14 (a) *Keep such records as may be necessary to determine the*
15 *amount of the liability of the fast-food provider pursuant to the*
16 *provisions of this chapter;*

17 (b) *Preserve those records for 4 years or until any litigation or*
18 *prosecution pursuant to this chapter is finally determined,*
19 *whichever is longer; and*

20 (c) *Make the records available for inspection by the*
21 *Department upon demand at reasonable times during regular*
22 *business hours.*

23 2. *The Department may by regulation specify the types of*
24 *records which must be kept to determine the amount of the*
25 *liability of a fast-food provider pursuant to the provisions of this*
26 *chapter.*

27 3. *Any person who violates the provisions of subsection 1 is*
28 *guilty of a misdemeanor.*

29 **Sec. 7.** 1. *To verify the accuracy of any return filed or, if*
30 *no return is filed by a fast-food provider, to determine the amount*
31 *required to be paid, the Department, or any person authorized in*
32 *writing by the Department, may examine the books, papers and*
33 *records of any person who may be liable for the fee imposed by*
34 *this chapter.*

35 2. *Any person who may be liable for the fee imposed by this*
36 *chapter and who keeps outside of this State any books, papers and*
37 *records relating thereto shall pay to the Department an amount*
38 *equal to the allowance provided for state officers and employees*
39 *generally while traveling outside of the State for each day or*
40 *fraction thereof during which an employee of the Department is*
41 *engaged in examining those documents, plus any other actual*
42 *expenses incurred by the employee while he or she is absent from*
43 *his or her regular place of employment to examine those*
44 *documents.*



1 **Sec. 8.** *The Executive Director may request from any other*
2 *governmental agency or officer such information as the Executive*
3 *Director deems necessary to carry out the provisions of this*
4 *chapter. If the Executive Director obtains any confidential*
5 *information pursuant to such a request, he or she shall maintain*
6 *the confidentiality of that information in the same manner and to*
7 *the same extent as provided by law for the agency or officer from*
8 *whom the information was obtained.*

9 **Sec. 9.** 1. *Except as otherwise provided in this section and*
10 *NRS 239.0115 and 360.250, the records and files of the*
11 *Department concerning the administration of this chapter are*
12 *confidential and privileged. The Department, and any employee*
13 *engaged in the administration of this chapter or charged with the*
14 *custody of any such records or files, shall not disclose any*
15 *information obtained from the Department's records or files or*
16 *from any examination, investigation or hearing authorized by the*
17 *provisions of this chapter. Neither the Department nor any*
18 *employee of the Department may be required to produce any of the*
19 *records, files and information for the inspection of any person or*
20 *for use in any action or proceeding.*

21 2. *The records and files of the Department concerning the*
22 *administration of this chapter are not confidential and privileged*
23 *in the following cases:*

24 (a) *Testimony by a member or employee of the Department*
25 *and production of records, files and information on behalf of the*
26 *Department or a fast-food provider in any action or proceeding*
27 *pursuant to the provisions of this chapter if that testimony or the*
28 *records, files or information, or the facts shown thereby, are*
29 *directly involved in the action or proceeding.*

30 (b) *Delivery to a fast-food provider or his or her authorized*
31 *representative of a copy of any return or other document filed by*
32 *the fast-food provider pursuant to this chapter.*

33 (c) *Publication of statistics so classified as to prevent the*
34 *identification of a particular person or document.*

35 (d) *Exchanges of information with the Internal Revenue*
36 *Service in accordance with compacts made and provided for in*
37 *such cases.*

38 (e) *Disclosure in confidence to the Governor or his or her*
39 *agent in the exercise of the Governor's general supervisory*
40 *powers, or to any person authorized to audit the accounts of the*
41 *Department in pursuance of an audit, or to the Attorney General*
42 *or other legal representative of the State in connection with an*
43 *action or proceeding pursuant to this chapter, or to any agency of*
44 *this or any other state charged with the administration or*
45 *enforcement of laws relating to taxation.*



(f) *Exchanges of information pursuant to subsection 3.*

3. *The Commission may agree with any county fair and recreation board or the governing body of any county, city or town for the continuing exchange of information concerning fast-food providers.*

Sec. 10. 1. *A fee is hereby imposed on each retail sale in this State by a fast-food provider of any item of prepared food intended for immediate consumption which has a caloric content of 500 calories or more, in the amount of 5 cents for each such item.*

2. *Each fast-food provider shall:*

(a) *Collect the fee from the purchaser of the item; and*

(b) *On or before the last day of the month immediately following each calendar quarter:*

(1) *File with the Department, on a form prescribed by the Department, a return indicating the total amount of the fees collected by the fast-food provider pursuant to this section during the immediately preceding calendar quarter; and*

(2) *Remit to the Department the fees collected by the fast-food provider pursuant to this section during the immediately preceding calendar quarter.*

3. *The fee imposed by this section does not apply to any sale:*

(a) *By or to a governmental entity; or*

(b) *Which is exempt from taxation by this State under the Constitution, laws or treaties of the United States or the Nevada Constitution.*

Sec. 11. *Upon written application made before the date on which payment must be made, the Department may for good cause extend by 30 days the time within which a fast-food provider is required to pay the fee imposed by this chapter. If the fee is paid during the period of extension, no penalty or late charge may be imposed for failure to pay at the time required, but the fast-food provider shall pay interest at the rate of 1 percent per month from the date on which the amount would have been due without the extension until the date of payment, unless otherwise provided in NRS 360.232 or 360.320.*

Sec. 12. *If the Department determines that any fee, penalty or interest has been paid more than once or has been erroneously or illegally collected or computed, the Department shall set forth that fact in the records of the Department and certify to the State Board of Examiners the amount collected in excess of the amount legally due and the person from whom it was collected or by whom it was paid. If approved by the State Board of Examiners, the excess amount collected or paid must, after being credited against any amount then due from the person in accordance with*



1 *NRS 360.236, be refunded to the person or his or her successors in*
2 *interest.*

3 **Sec. 13.** 1. *Except as otherwise provided in NRS 360.235*
4 *and 360.395:*

5 (a) *No refund may be allowed unless a claim for it is filed with*
6 *the Department within 3 years after the last day of the month*
7 *following the calendar quarter for which the overpayment was*
8 *made.*

9 (b) *No credit may be allowed after the expiration of the period*
10 *specified for filing claims for refund unless a claim for credit is*
11 *filed with the Department within that period.*

12 2. *Each claim must be in writing and must state the specific*
13 *grounds upon which the claim is founded.*

14 3. *Failure to file a claim within the time prescribed in this*
15 *chapter constitutes a waiver of any demand against the State on*
16 *account of overpayment.*

17 4. *Within 30 days after rejecting any claim in whole or in*
18 *part, the Department shall serve notice of its action on the*
19 *claimant in the manner prescribed for service of notice of a*
20 *deficiency determination.*

21 **Sec. 14.** 1. *Except as otherwise provided in this section,*
22 *NRS 360.320 or any other specific statute, interest must be paid*
23 *upon any overpayment of any amount of the fee imposed by this*
24 *chapter at the rate set forth in, and in accordance with the*
25 *provisions of, NRS 360.2937.*

26 2. *If the Department determines that any overpayment has*
27 *been made intentionally or by reason of carelessness, the*
28 *Department shall not allow any interest on the overpayment.*

29 **Sec. 15.** 1. *No injunction, writ of mandate or other legal or*
30 *equitable process may issue in any suit, action or proceeding in*
31 *any court against this State or against any officer of this State to*
32 *prevent or enjoin the collection under this chapter of the fee*
33 *imposed by this chapter or any amount of the fee, penalty or*
34 *interest required to be collected.*

35 2. *No suit or proceeding may be maintained in any court for*
36 *the recovery of any amount alleged to have been erroneously or*
37 *illegally determined or collected unless a claim for refund or credit*
38 *has been filed.*

39 **Sec. 16.** 1. *Within 90 days after a final decision upon a*
40 *claim filed pursuant to this chapter is rendered by the*
41 *Commission, the claimant may bring an action against the*
42 *Department on the grounds set forth in the claim in a court of*
43 *competent jurisdiction in Carson City, the county of this State*
44 *where the claimant resides or maintains his or her principal place*
45 *of business or a county in which any relevant proceedings were*



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1 *conducted by the Department, for the recovery of the whole or any*
2 *part of the amount with respect to which the claim has been*
3 *disallowed.*

4 *2. Failure to bring an action within the time specified*
5 *constitutes a waiver of any demand against the State on account of*
6 *alleged overpayments.*

7 **Sec. 17.** *1. If the Department fails to mail notice of action*
8 *on a claim within 6 months after the claim is filed, the claimant*
9 *may consider the claim disallowed and file an appeal with the*
10 *Commission within 30 days after the last day of the 6-month*
11 *period. If the claimant is aggrieved by the decision of the*
12 *Commission rendered on appeal, the claimant may, within 90 days*
13 *after the decision is rendered, bring an action against the*
14 *Department on the grounds set forth in the claim for the recovery*
15 *of the whole or any part of the amount claimed as an*
16 *overpayment.*

17 *2. If judgment is rendered for the plaintiff, the amount of the*
18 *judgment must first be credited towards any fees due from the*
19 *plaintiff pursuant to this chapter.*

20 *3. The balance of the judgment must be refunded to the*
21 *plaintiff.*

22 **Sec. 18.** *In any judgment, interest must be allowed at the rate*
23 *of 6 percent per annum upon the amount found to have been*
24 *illegally collected from the date of payment of the amount to the*
25 *date of allowance of credit on account of the judgment, or to a*
26 *date preceding the date of the refund warrant by not more than 30*
27 *days. The date must be determined by the Department.*

28 **Sec. 19.** *A judgment may not be rendered in favor of the*
29 *plaintiff in any action brought against the Department to recover*
30 *any amount paid when the action is brought by or in the name of*
31 *an assignee of the person paying the amount or by any person*
32 *other than the person who paid the amount.*

33 **Sec. 20.** *1. The Department may recover a refund or any*
34 *part thereof which is erroneously made and any credit or part*
35 *thereof which is erroneously allowed in an action brought in a*
36 *court of competent jurisdiction in Carson City or Clark County in*
37 *the name of the State of Nevada.*

38 *2. The action must be tried in Carson City or Clark County*
39 *unless the court, with the consent of the Attorney General, orders*
40 *a change of place of trial.*

41 *3. The Attorney General shall prosecute the action, and the*
42 *provisions of NRS, the Nevada Rules of Civil Procedure and the*
43 *Nevada Rules of Appellate Procedure relating to service of*
44 *summons, pleadings, proofs, trials and appeals are applicable to*
45 *the proceedings.*



1 **Sec. 21. 1. If any amount in excess of \$25 has been**
2 *illegally determined, either by the Department or by the person*
3 *filing the return, the Department shall certify this fact to the State*
4 *Board of Examiners, and the latter shall authorize the*
5 *cancellation of the amount upon the records of the Department.*

6 **2. If an amount not exceeding \$25 has been illegally**
7 *determined, either by the Department or by the person filing the*
8 *return, the Department, without certifying this fact to the State*
9 *Board of Examiners, shall authorize the cancellation of the*
10 *amount upon the records of the Department.*

11 **Sec. 22. 1. A person shall not:**

12 **(a) Make, cause to be made or permit to be made any false or**
13 *fraudulent return or declaration or false statement in any return*
14 *or declaration with intent to defraud the State or to evade payment*
15 *of the fee or any part of the fee imposed by this chapter.*

16 **(b) Make, cause to be made or permit to be made any false**
17 *entry in books, records or accounts with intent to defraud the State*
18 *or to evade the payment of the fee or any part of the fee imposed*
19 *by this chapter.*

20 **(c) Keep, cause to be kept or permit to be kept more than one**
21 *set of books, records or accounts with intent to defraud the State*
22 *or to evade the payment of the fee or any part of the fee imposed*
23 *by this chapter.*

24 **2. Any person who violates the provisions of subsection 1 is**
25 *guilty of a gross misdemeanor.*

26 **Sec. 23. The remedies of the State provided for in this**
27 *chapter are cumulative, and no action taken by the Department or*
28 *the Attorney General constitutes an election by the State to pursue*
29 *any remedy to the exclusion of any other remedy for which*
30 *provision is made in this chapter.*

31 **Sec. 24. NRS 360.2937 is hereby amended to read as follows:**

32 **360.2937 1. Except as otherwise provided in this section,**
33 *NRS 360.320 or any other specific statute, and notwithstanding the*
34 *provisions of NRS 360.2935, interest must be paid upon an*
35 *overpayment of any tax provided for in chapter 362, 363A, 363B,*
36 *369, 370, 372, 374, 377 or 377A of NRS, any fee provided for in*
37 *NRS 444A.090 or 482.313, or sections 2 to 23, inclusive, of this*
38 *act, or any assessment provided for in NRS 585.497, at the rate of*
39 *0.5 percent per month from the last day of the calendar month*
40 *following the period for which the overpayment was made.*

41 **2. No refund or credit may be made of any interest imposed on**
42 *the person making the overpayment with respect to the amount*
43 *being refunded or credited.*

44 **3. The interest must be paid:**



(a) In the case of a refund, to the last day of the calendar month following the date upon which the person making the overpayment, if the person has not already filed a claim, is notified by the Department that a claim may be filed or the date upon which the claim is certified to the State Board of Examiners, whichever is earlier.

(b) In the case of a credit, to the same date as that to which interest is computed on the tax or the amount against which the credit is applied.

Sec. 25. NRS 360.297 is hereby amended to read as follows:

360.297 1. A responsible person who fails to collect or pay to the Department any tax or fee imposed by this chapter, chapter 363A, 363B, 368A, 369, 370, 372 or 374 of NRS, NRS 444A.090 or 482.313, or chapter 680B of NRS, *or sections 2 to 23, inclusive, of this act*, or who attempts to evade the payment of any such tax or fee, is jointly and severally liable with any other person who is required to pay such a tax or fee for the tax or fee owed plus interest and all applicable penalties. The responsible person shall pay the tax or fee upon notice from the Department that it is due.

2. As used in this section, "responsible person" includes:

(a) An officer or employee of a corporation; and

(b) A member or employee of a partnership or limited-liability company,

↳ whose job or duty it is to collect, account for or pay to the Department any tax or fee imposed by this chapter, chapter 363A, 363B, 368A, 369, 370, 372 or 374 of NRS, NRS 444A.090 or 482.313, or chapter 680B of NRS ~~§~~ *or sections 2 to 23, inclusive, of this act*.

Sec. 26. NRS 360.300 is hereby amended to read as follows:

360.300 1. If a person fails to file a return or the Department is not satisfied with the return or returns of any tax, contribution or premium or amount of tax, contribution or premium required to be paid to the State by any person, in accordance with the applicable provisions of this chapter, chapter 360B, 362, 363A, 363B, 369, 370, 372, 372A, 374, 377, 377A or 444A of NRS, NRS 482.313, or chapter 585 or 680B of NRS *or sections 2 to 23, inclusive, of this act* as administered or audited by the Department, it may compute and determine the amount required to be paid upon the basis of:

(a) The facts contained in the return;

(b) Any information within its possession or that may come into its possession; or

(c) Reasonable estimates of the amount.

2. One or more deficiency determinations may be made with respect to the amount due for one or for more than one period.



3. In making its determination of the amount required to be paid, the Department shall impose interest on the amount of tax determined to be due, calculated at the rate and in the manner set forth in NRS 360.417, unless a different rate of interest is specifically provided by statute.

4. The Department shall impose a penalty of 10 percent in addition to the amount of a determination that is made in the case of the failure of a person to file a return with the Department.

5. When a business is discontinued, a determination may be made at any time thereafter within the time prescribed in NRS 360.355 as to liability arising out of that business, irrespective of whether the determination is issued before the due date of the liability.

Sec. 27. NRS 360.417 is hereby amended to read as follows:

360.417 Except as otherwise provided in NRS 360.232 and 360.320, and unless a different penalty or rate of interest is specifically provided by statute, any person who fails to pay any tax provided for in chapter 362, 363A, 363B, 369, 370, 372, 374, 377, 377A, 444A or 585 of NRS, or any fee provided for in NRS 482.313, *or sections 2 to 23, inclusive, of this act*, and any person or governmental entity that fails to pay any fee provided for in NRS 360.787, to the State or a county within the time required, shall pay a penalty of not more than 10 percent of the amount of the tax or fee which is owed, as determined by the Department, in addition to the tax or fee, plus interest at the rate of 1 percent per month, or fraction of a month, from the last day of the month following the period for which the amount or any portion of the amount should have been reported until the date of payment. The amount of any penalty imposed must be based on a graduated schedule adopted by the Nevada Tax Commission which takes into consideration the length of time the tax or fee remained unpaid.

Sec. 28. NRS 360.419 is hereby amended to read as follows:

360.419 1. If the Executive Director or a designated hearing officer finds that the failure of a person to make a timely return or payment of a tax *or fee* imposed pursuant to NRS 361.320 or chapter 361A, 362, 363A, 363B, 369, 370, 372, 372A, 374, 375A, 375B, 376A, 377 or 377A of NRS, *or sections 2 to 23, inclusive, of this act*, is the result of circumstances beyond his or her control and occurred despite the exercise of ordinary care and without intent, the Department may relieve the person of all or part of any interest or penalty, or both.

2. A person seeking relief must file with the Department a statement under oath setting forth the facts upon which the person bases his or her claim.



3. The Department shall disclose, upon the request of any person:

- (a) The name of the person to whom relief was granted; and
- (b) The amount of the relief.

4. The Executive Director or a designated hearing officer shall act upon the request of a taxpayer seeking relief pursuant to NRS 361.4835 which is deferred by a county treasurer or county assessor.

Sec. 29. NRS 360.510 is hereby amended to read as follows:

360.510 1. If any person is delinquent in the payment of any tax or fee administered by the Department or if a determination has been made against the person which remains unpaid, the Department may:

(a) Not later than 3 years after the payment became delinquent or the determination became final; or

(b) Not later than 6 years after the last recording of an abstract of judgment or of a certificate constituting a lien for tax owed,

↳ give a notice of the delinquency and a demand to transmit personally or by registered or certified mail to any person, including, without limitation, any officer or department of this State or any political subdivision or agency of this State, who has in his or her possession or under his or her control any credits or other personal property belonging to the delinquent, or owing any debts to the delinquent or person against whom a determination has been made which remains unpaid, or owing any debts to the delinquent or that person. In the case of any state officer, department or agency, the notice must be given to the officer, department or agency before the Department presents the claim of the delinquent taxpayer to the State Controller.

2. A state officer, department or agency which receives such a notice may satisfy any debt owed to it by that person before it honors the notice of the Department.

3. After receiving the demand to transmit, the person notified by the demand may not transfer or otherwise dispose of the credits, other personal property, or debts in his or her possession or under his or her control at the time the person received the notice until the Department consents to a transfer or other disposition.

4. Every person notified by a demand to transmit shall, within 10 days after receipt of the demand to transmit, inform the Department of and transmit to the Department all such credits, other personal property or debts in his or her possession, under his or her control or owing by that person within the time and in the manner requested by the Department. Except as otherwise provided in subsection 5, no further notice is required to be served to that person.



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5. If the property of the delinquent taxpayer consists of a series of payments owed to him or her, the person who owes or controls the payments shall transmit the payments to the Department until otherwise notified by the Department. If the debt of the delinquent taxpayer is not paid within 1 year after the Department issued the original demand to transmit, the Department shall issue another demand to transmit to the person responsible for making the payments informing him or her to continue to transmit payments to the Department or that his or her duty to transmit the payments to the Department has ceased.

6. If the notice of the delinquency seeks to prevent the transfer or other disposition of a deposit in a bank or credit union or other credits or personal property in the possession or under the control of a bank, credit union or other depository institution, the notice must be delivered or mailed to any branch or office of the bank, credit union or other depository institution at which the deposit is carried or at which the credits or personal property is held.

7. If any person notified by the notice of the delinquency makes any transfer or other disposition of the property or debts required to be withheld or transmitted, to the extent of the value of the property or the amount of the debts thus transferred or paid, that person is liable to the State for any indebtedness due pursuant to this chapter, or chapter 360B, 362, 363A, 363B, 369, 370, 372, 372A, 374, 377, 377A or 444A of NRS, NRS 482.313, or chapter 585 or 680B of NRS *or sections 2 to 23, inclusive, of this act* from the person with respect to whose obligation the notice was given if solely by reason of the transfer or other disposition the State is unable to recover the indebtedness of the person with respect to whose obligation the notice was given.

Sec. 30. This act becomes effective:

1. Upon passage and approval for the purpose of adopting regulations and performing any other preparatory administrative tasks that are necessary to carry out the provisions of this act; and

2. On January 1, 2012, for all other purposes.

