

1 28-9, all to read as follows:

2 **ARTICLE 28. LOCAL OPTION FOOD AND BEVERAGE TAX.**

3 **§11-28-1. Food and beverage tax.**

4 A county or municipality is hereby authorized to levy a tax on
5 food and beverages sold for human consumption by a restaurant as
6 defined in this article. Any tax levied under this article may not
7 exceed three percent of the gross amount charged for such food and
8 beverages.

9 **§11-28-2. Definitions.**

10 As used in this article.

11 (a) "Alcoholic beverage" means any alcohol, beer, wine and
12 spirits and any liquid or solid capable of being used as a
13 beverage, including any beverage that consists of a mixture of
14 alcoholic and nonalcoholic liquids or solids.

15 (b) "Beverage" means any alcoholic or nonalcoholic liquid
16 intended for human consumption.

17 (c) "Fund-raising organization" means any church, school,
18 fraternal or social organization, volunteer fire department or
19 rescue squad which periodically sells food and beverages for public
20 consumption to raise funds to benefit the organization.

21 (d) "Municipal" or "municipality" means any city or town.

22 (e) "Not-for-profit capacity" means the sale of food for the
23 intentional purpose of equaling the operating costs of the
24 restaurant.

1 (f) "Restaurant" means any place where food is prepared for
2 service to the public on or off the premises, or any place where
3 food is served including, but not limited to, lunchrooms, food
4 counters, food trucks or carts, short order or fast food eateries,
5 cafeterias, coffee shops, cafes, taverns, delicatessens, dining
6 accommodations of public or private clubs, kitchen facilities of
7 hospitals and nursing homes and dining accommodations of public and
8 private schools and colleges.

9 **§11-28-3. County option.**

10 (a) Any tax levied under this article shall be approved by
11 referendum within the county in which the tax is to be levied.

12 (b) A referendum for imposition of a county food and beverage
13 tax shall be initiated by:

14 (1) A resolution of the county commission; or

15 (2) A petition filed with the county commission signed by a
16 minimum of ten percent of the county's registered voters as of
17 January 1 in the year in which the petition is filed.

18 (c) A petition or resolution may designate the length of time
19 of the tax's imposition or projects or purposes for which the tax
20 will be levied: *Provided*, That this information shall be included
21 on the referendum's ballot.

22 (d) The county commission shall publish a Class III legal
23 advertisement in compliance with the provisions of article three,
24 chapter fifty-nine of this code in a newspaper of general

1 circulation in the county.

2 **§11-28-4. Collection of tax, use.**

3 (a) Any tax levied under section three of this article shall
4 be collected in a manner prescribed by the county commission.

5 (b) Any tax levied under section three of this article shall
6 be placed in the county's General Revenue Fund and expended as the
7 county commission determines appropriate: *Provided, That*

8 (1) Any projects or purposes designated for the imposition of
9 the tax and included on the referendum ballot shall be paid
10 accordingly;

11 (2) A minimum of forty percent of the collected tax shall be
12 remitted by the county to the Economic Development Authority of the
13 county to be expended for economic development purposes.

14 (3) Forty percent of any tax collected under this article from
15 a restaurant located in a municipality shall be remitted by the
16 county to the municipality in which the restaurant is located, to
17 be expended in a manner which the governing body of the
18 municipality considers appropriate.

19 **§11-28-5. Municipal option.**

20 Any municipality, located in a county that has not levied or
21 sought to levy a food and beverage tax within one year following
22 the effective date of this article, may levy a tax on food and
23 beverages sold for human consumption by a restaurant as defined in
24 this article. Any tax levied under this article may not exceed two

1 percent of the gross amount charged for the food and beverages.

2 (a) Any tax levied under this article shall be approved by
3 referendum within the municipality in which the tax is to be
4 levied.

5 (b) A referendum for imposition of municipal food and beverage
6 tax may be initiated by:

7 (1) A resolution of the governing body of the municipality; or

8 (2) A petition filed with the governing body of the
9 municipality signed by a minimum of ten percent of the registered
10 voters of the municipality as of the January 1 in the year in which
11 the petition is filed.

12 (c) A petition or resolution may designate the length of time
13 of the imposition of the tax or projects or purposes for which the
14 tax will be levied: *Provided*, That this information shall be
15 included on the referendum ballot.

16 (d) The governing body of the municipality shall publish a
17 Class III legal advertisement in compliance with the provisions of
18 article three, chapter fifty-nine of this code in a newspaper of
19 general circulation in the municipality.

20 **§11-28-6. Exemptions.**

21 (a) This tax is applicable to any restaurant whose food and
22 beverage preparation and service is regulated by county boards of
23 health. Any tax levied under this article may not be levied upon
24 food and beverages sold from:

1 (1) Places manufacturing packaged or canned foods which are
2 distributed to grocery stores or other similar food retailers for
3 sale to the public;

4 (2) Vending machines;

5 (3) Restaurants operating in a not-for-profit capacity;

6 (4) Churches which serve meals as a regular part of regular
7 religious observances;

8 (5) Fund-raising organizations;

9 (6) Food counters or delicatessens which operate as part of a
10 larger retail business which:

11 (i) Food and beverage sales do not exceed thirty percent of
12 the larger retail business's total gross sales; and

13 (ii) Have ten or fewer seats on the premises at which food is
14 consumed.

15 (b) Any tax levied under this article may not be applied to
16 any discretionary gratuity paid by the purchaser in addition to the
17 sales price, nor to any mandatory gratuity or service charge added
18 by the restaurant to the sales price that does not exceed twenty
19 percent of the sales price.

20 **§11-28-7. Wrongful and fraudulent use of funds.**

21 All food and beverage tax collections shall be considered to
22 be in trust for the county or municipality imposing the applicable
23 tax. The wrongful and fraudulent use of these proceeds other than
24 remittance to the county or municipality as provided by this

1 article constitutes embezzlement pursuant to the provisions of
2 section twenty, article three, chapter sixty-one of this code.

3 **§11-28-8. Apportionment.**

4 When a business is located partially within two or more local
5 jurisdictions by reason of the boundary line between the local
6 jurisdictions passing through such place of business, and one or
7 more of the local jurisdictions imposes the food and beverage tax,
8 the tax rate of each applicable local jurisdiction constitutes such
9 proportion of the entire tax as the area within that political
10 subdivision, which the place of business actually occupies and
11 actively uses in connection with the business, bears to the total
12 area which the place of business actually occupies and actively
13 uses in connection with the business.

14 **§11-28-9. Severability.**

15 If any provision of this article or the application thereof to
16 any person or circumstance is held invalid, the invalidity may not
17 affect other provisions or applications of this article which can
18 be given effect without the invalid provision or application and to
19 that end the provisions of this article are severable.

NOTE: The purpose of this bill is to authorize county and municipal government to levy a tax on food and beverages. It provides for county and municipal option elections relating to the tax. It also designates the usage of some funds collected by the tax.

This article is new; therefore, strike-throughs and underscoring have been omitted.