

**First Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 13-0541.01 Jason Gelender x4330

SENATE BILL 13-045

SENATE SPONSORSHIP

Hill,

HOUSE SPONSORSHIP

(None),

Senate Committees
State, Veterans, & Military Affairs

House Committees

A BILL FOR AN ACT

101 **CONCERNING THE EXPANSION OF THE SALES TAX EXEMPTION FOR**
102 **FOOD TO INCLUDE FOOD THAT IS NOT PREPARED FOR DOMESTIC**
103 **HOME CONSUMPTION.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

The bill expands the state sales tax exemption for food, which currently exempts from state sales tax most food for domestic home consumption, by also exempting from state sales tax most food that is not for domestic home consumption and is instead prepared for on-site

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

consumption at a restaurant, grocery store, or other establishment or to be carried out and consumed without additional cooking or other preparation.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 hereby finds and declares that:

4 (a) Following the principle that basic necessities should not be
5 subject to state sales tax, the general assembly has for many years
6 exempted from state sales tax food for domestic home consumption;

7 (b) The general assembly has not exempted from state sales tax
8 food that is not for domestic home consumption because in the past
9 people prepared most of their meals at home and food prepared for on-site
10 consumption away from the home at a restaurant or other business
11 establishment or prepared to be carried out and consumed at home
12 without additional cooking or preparation was considered to be more of
13 a luxury than a basic necessity;

14 (c) As the demands of the modern economy have reduced the
15 amount of time available for regular preparation of meals at home, many
16 people have found it necessary or convenient to regularly consume
17 restaurant, carry out, and other food fully prepared outside the home.

18 (2) The general assembly further finds and declares that it is now
19 necessary, appropriate, and in the best interest of all Coloradans to view
20 food prepared for on-site consumption away from the home at a restaurant
21 or other business establishment or prepared to be carried out and
22 consumed at home without additional cooking or preparation as a basic
23 necessity rather than a luxury and to exempt such food from state sales
24 tax.

1 **SECTION 2.** In Colorado Revised Statutes, 39-26-102, **amend**
2 (4.5) as follows:

3 **39-26-102. Definitions.** As used in this article, unless the context
4 otherwise requires:

5 (4.5) ~~(a) "Food" means ALL food INTENDED SOLELY OR PRIMARILY~~
6 ~~for domestic home consumption as defined in 7 U.S.C. sec. 2012 (k), as~~
7 ~~amended, for purposes of the federal food stamp program, or any~~
8 ~~successor program, as defined in 7 U.S.C. sec. 2012 (l), as amended~~
9 HUMAN CONSUMPTION; except that "food" does not include carbonated
10 water marketed in containers; ALCOHOLIC BEVERAGES; chewing gum; OR
11 seeds and plants to grow foods. ~~prepared salads and salad bars; packaged~~
12 ~~and unpackaged cold sandwiches; deli trays; and hot or cold beverages~~
13 ~~served in unsealed containers or cups that are vended by or through~~
14 ~~machines or non-coin-operated coin-collecting food and snack devices on~~
15 ~~behalf of a vendor.~~

16 ~~(b) In determining whether a food product is for domestic home~~
17 ~~consumption, unless the vendor is described in section 39-26-104 (1) (e),~~
18 ~~no inference shall be drawn from the type of vendor selling the product,~~
19 ~~the location of the product within a store, or the manner in which the~~
20 ~~product is marketed.~~

21 **SECTION 3.** In Colorado Revised Statutes, 39-26-104, **amend**
22 (1) (e) as follows:

23 **39-26-104. Property and services taxed.** (1) There is levied and
24 there shall be collected and paid a tax in the amount stated in section
25 39-26-106 as follows:

26 (e) Upon the amount paid for ~~food or drink~~ OR OTHER FARE THAT
27 IS NOT FOOD AND THAT IS served or furnished in or by restaurants, cafes,

1 lunch counters, cafeterias, hotels, social clubs, nightclubs, cabarets,
2 resorts, snack bars, caterers, carryout shops, and other like places of
3 business at which prepared food or drink is regularly sold, including sales
4 from pushcarts, motor vehicles, and other mobile facilities. Cover charges
5 ~~shall be~~ ARE included as part of the amount paid for such ~~food or~~ drink.
6 However, ~~meals~~ DRINK OR OTHER FARE THAT IS NOT FOOD provided to
7 employees of the places mentioned in this paragraph (e) at no charge or
8 at a reduced charge ~~shall be~~ IS exempt from taxation under the provisions
9 of this part 1.

10 **SECTION 4.** In Colorado Revised Statutes, 39-26-707, **amend**
11 (1), (2) introductory portion, (2) (a), (2) (b), and (2) (c) as follows:

12 **39-26-707. Food, meals, and beverages - definitions.** (1) The
13 following ~~shall be~~ ARE exempt from taxation under the provisions of part
14 1 of this article:

15 (a) All sales of food; ~~purchased with food stamps. For the~~
16 ~~purposes of this paragraph (a), "food" shall have the same meaning as~~
17 ~~provided in 7 U.S.C. sec. 2012 (g), as such section exists on October 1,~~
18 ~~1987, or is thereafter amended.~~

19 (b) ~~All sales of food purchased with funds provided by the special~~
20 ~~supplemental food program for women, infants, and children, as provided~~
21 ~~for in 42 U.S.C. sec. 1786. For the purposes of this paragraph (b), "food"~~
22 ~~shall have the same meaning as provided in 42 U.S.C. sec. 1786, as such~~
23 ~~section exists on October 1, 1987, or is thereafter amended.~~

24 (c) Any sale of any article to a retailer or vendor of food, ~~meals,~~
25 ~~or beverages~~ DRINK OR OTHER FARE THAT IS NOT FOOD, which article is to
26 be furnished to a consumer or user for use with articles of tangible
27 personal property purchased at retail, if a separate charge is not made for

1 the article to the consumer or user, if such article becomes the property
2 of the consumer or user, together with ~~the food, meals, or beverages~~
3 DRINK OR OTHER FARE THAT IS NOT FOOD purchased, and if a tax is paid
4 on the retail sale as required by section 39-26-104 (1) (a) or (1) (e);
5 except that, on or after March 1, 2010, any such article that is
6 nonessential to the consumer or user, as determined by rules of the
7 department of revenue promulgated in accordance with article 4 of title
8 24, C.R.S., ~~shall be~~ IS subject to state sales taxation;

9 (d) Any sale of any container or bag to a retailer or vendor of
10 ~~food, meals, or beverages~~ DRINK OR OTHER FARE THAT IS NOT FOOD,
11 which container or bag is to be furnished to a consumer or user for the
12 purpose of packaging or bagging articles of tangible personal property
13 purchased at retail, if a separate charge is not made for the container or
14 bag to the consumer or user, if such container or bag becomes the
15 property of the consumer or user, together with ~~the food, meals, or~~
16 ~~beverages~~ DRINK OR OTHER FARE THAT IS NOT FOOD purchased, and if a
17 tax is paid on the retail sale as required by section 39-26-104 (1) (a) or (1)
18 (e); except that, on and after March 1, 2010, any such container or bag
19 that is nonessential to the consumer or user, as determined by rules of the
20 department of revenue promulgated in accordance with article 4 of title
21 24, C.R.S., ~~shall be~~ IS subject to state sales taxation; and

22 (e) Commencing January 1, 1980, all sales of food.

23 (2) The following ~~shall be~~ ARE exempt from taxation under the
24 provisions of part 2 of this article:

25 (a) ~~Effective January 1, 1980,~~ The storage, use, or consumption
26 of ~~food or meals that are~~ DRINK OR OTHER FARE THAT IS NOT FOOD THAT
27 IS provided to employees of the places described in section 39-26-104 (1)

1 (e), if such ~~are~~ IS provided to such employees at no charge or at a reduced
2 charge;

3 (b) The storage, use, or consumption of any article by a retailer or
4 vendor of ~~food, meals, or beverages~~ DRINKS OR OTHER FARE THAT IS NOT
5 FOOD, which article is to be furnished to a consumer or user for use with
6 articles of tangible personal property purchased at retail, if a separate
7 charge is not made for the article to the consumer or user, if the article
8 becomes the property of the consumer or user, together with the ~~food,~~
9 ~~meals, or beverages~~ DRINK OR OTHER FARE THAT IS NOT FOOD purchased,
10 and if a tax is paid on the retail sale as required by section 39-26-104 (1)
11 (a) or (1) (e); except that, on and after March 1, 2010, any such article
12 stored, used, or consumed that is nonessential to the end consumer or
13 user, as determined by rules of the department of revenue promulgated in
14 accordance with article 4 of title 24, C.R.S., ~~shall be~~ IS subject to state use
15 taxation;

16 (c) The storage, use, or consumption of any container or bag by
17 a retailer or vendor of ~~food, meals, or beverages~~ DRINKS OR OTHER FARE
18 THAT IS NOT FOOD, which container or bag is to be furnished to a
19 consumer or user for the purpose of packaging or bagging articles of
20 tangible personal property purchased at retail, if a separate charge is not
21 made for the container or bag to the consumer or user, if the container or
22 bag becomes the property of the consumer or user, together with the ~~food,~~
23 ~~meals, or beverages~~ DRINKS OR OTHER FARE THAT IS NOT FOOD purchased,
24 and if a tax is paid on the retail sale as required by section 39-26-104 (1)
25 (a) or (1) (e); except that, on and after March 1, 2010, any such container
26 or bag stored, used, or consumed that is nonessential to the end consumer
27 or user, as determined by rules of the department of revenue promulgated

1 in accordance with article 4 of title 24, C.R.S., ~~shall be~~ IS subject to state
2 use taxation; and

3 **SECTION 5. Effective date - applicability.** This act takes effect
4 July 1, 2013, and applies to sales made on or after said date.

5 **SECTION 6. Safety clause.** The general assembly hereby finds,
6 determines, and declares that this act is necessary for the immediate
7 preservation of the public peace, health, and safety.