

1 STATE OF OKLAHOMA

2 1st Session of the 59th Legislature (2023)

3 HOUSE BILL 2312

By: Hilbert

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5
6 AS INTRODUCED

7 An Act relating to revenue and taxation; amending 68
8 O.S. 2021, Section 1357, as amended by Section 1,
9 Chapter 206, O.S.L. 2022 (68 O.S. Supp. 2022, Section
10 1357), which relates to sales tax exemptions;
11 modifying provisions related to surviving spouses of
12 certain disabled veterans; providing for use of
13 exemption based on certain disability determination
14 date; providing an effective date; and declaring an
15 emergency.

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

17 SECTION 1. AMENDATORY 68 O.S. 2021, Section 1357, as
18 amended by Section 1, Chapter 206, O.S.L. 2022 (68 O.S. Supp. 2022,
19 Section 1357), is amended to read as follows:

20 Section 1357. Exemptions - General.

21 There are hereby specifically exempted from the tax levied by
22 the Oklahoma Sales Tax Code:

23 1. Transportation of school pupils to and from elementary
24 schools or high schools in motor or other vehicles;

1 2. Transportation of persons where the fare of each person does
2 not exceed One Dollar (\$1.00), or local transportation of persons
3 within the corporate limits of a municipality except by taxicabs;

4 3. Sales for resale to persons engaged in the business of
5 reselling the articles purchased, whether within or without the
6 state, provided that such sales to residents of this state are made
7 to persons to whom sales tax permits have been issued as provided in
8 the Oklahoma Sales Tax Code. This exemption shall not apply to the
9 sales of articles made to persons holding permits when such persons
10 purchase items for their use and which they are not regularly
11 engaged in the business of reselling; neither shall this exemption
12 apply to sales of tangible personal property to peddlers, solicitors
13 and other salespersons who do not have an established place of
14 business and a sales tax permit. The exemption provided by this
15 paragraph shall apply to sales of motor fuel or diesel fuel to a
16 Group Five vendor, but the use of such motor fuel or diesel fuel by
17 the Group Five vendor shall not be exempt from the tax levied by the
18 Oklahoma Sales Tax Code. The purchase of motor fuel or diesel fuel
19 is exempt from sales tax when the motor fuel is for shipment outside
20 this state and consumed by a common carrier by rail in the conduct
21 of its business. The sales tax shall apply to the purchase of motor
22 fuel or diesel fuel in Oklahoma by a common carrier by rail when
23 such motor fuel is purchased for fueling, within this state, of any
24 locomotive or other motorized flanged wheel equipment;

1 4. Sales of advertising space in newspapers and periodicals;

2 5. Sales of programs relating to sporting and entertainment
3 events, and sales of advertising on billboards (including signage,
4 posters, panels, marquees or on other similar surfaces, whether
5 indoors or outdoors) or in programs relating to sporting and
6 entertainment events, and sales of any advertising, to be displayed
7 at or in connection with a sporting event, via the Internet,
8 electronic display devices or through public address or broadcast
9 systems. The exemption authorized by this paragraph shall be
10 effective for all sales made on or after January 1, 2001;

11 6. Sales of any advertising, other than the advertising
12 described by paragraph 5 of this section, via the Internet,
13 electronic display devices or through the electronic media including
14 radio, public address or broadcast systems, television (whether
15 through closed circuit broadcasting systems or otherwise), and cable
16 and satellite television, and the servicing of any advertising
17 devices;

18 7. Eggs, feed, supplies, machinery, and equipment purchased by
19 persons regularly engaged in the business of raising worms, fish,
20 any insect, or any other form of terrestrial or aquatic animal life
21 and used for the purpose of raising same for marketing. This
22 exemption shall only be granted and extended to the purchaser when
23 the items are to be used and in fact are used in the raising of
24 animal life as set out above. Each purchaser shall certify, in

1 writing, on the invoice or sales ticket retained by the vendor that
2 the purchaser is regularly engaged in the business of raising such
3 animal life and that the items purchased will be used only in such
4 business. The vendor shall certify to the Oklahoma Tax Commission
5 that the price of the items has been reduced to grant the full
6 benefit of the exemption. Violation hereof by the purchaser or
7 vendor shall be a misdemeanor;

8 8. Sale of natural or artificial gas and electricity, and
9 associated delivery or transmission services, when sold exclusively
10 for residential use. Provided, this exemption shall not apply to
11 any sales tax levied by a city or town, or a county or any other
12 jurisdiction in this state;

13 9. In addition to the exemptions authorized by Section 1357.6
14 of this title, sales of drugs sold pursuant to a prescription
15 written for the treatment of human beings by a person licensed to
16 prescribe the drugs, and sales of insulin and medical oxygen.
17 Provided, this exemption shall not apply to over-the-counter drugs;

18 10. Transfers of title or possession of empty, partially
19 filled, or filled returnable oil and chemical drums to any person
20 who is not regularly engaged in the business of selling, reselling
21 or otherwise transferring empty, partially filled or filled
22 returnable oil drums;

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1 11. Sales of one-way utensils, paper napkins, paper cups,
2 disposable hot containers, and other one-way carry out materials to
3 a vendor of meals or beverages;

4 12. Sales of food or food products for home consumption which
5 are purchased in whole or in part with coupons issued pursuant to
6 the federal food stamp program as authorized by Sections 2011
7 through 2029 of Title 7 of the United States Code, as to that
8 portion purchased with such coupons. The exemption provided for
9 such sales shall be inapplicable to such sales upon the effective
10 date of any federal law that removes the requirement of the
11 exemption as a condition for participation by the state in the
12 federal food stamp program;

13 13. Sales of food or food products, or any equipment or
14 supplies used in the preparation of the food or food products to or
15 by an organization which:

- 16 a. is exempt from taxation pursuant to the provisions of
17 Section 501(c)(3) of the Internal Revenue Code, 26
18 U.S.C., Section 501(c)(3), and which provides and
19 delivers prepared meals for home consumption to
20 elderly or homebound persons as part of a program
21 commonly known as "Meals on Wheels" or "Mobile Meals",
22 or
23 b. is exempt from taxation pursuant to the provisions of
24 Section 501(c)(3) of the Internal Revenue Code, 26

1 U.S.C., Section 501(c)(3), and which receives federal
2 funding pursuant to the Older Americans Act of 1965,
3 as amended, for the purpose of providing nutrition
4 programs for the care and benefit of elderly persons;

5 14. a. Sales of tangible personal property or services to or
6 by organizations which are exempt from taxation
7 pursuant to the provisions of Section 501(c)(3) of the
8 Internal Revenue Code, 26 U.S.C., Section 501(c)(3),
9 and:

10 (1) are primarily involved in the collection and
11 distribution of food and other household products
12 to other organizations that facilitate the
13 distribution of such products to the needy and
14 such distributee organizations are exempt from
15 taxation pursuant to the provisions of Section
16 501(c)(3) of the Internal Revenue Code, 26
17 U.S.C., Section 501(c)(3), or

18 (2) facilitate the distribution of such products to
19 the needy.

20 b. Sales made in the course of business for profit or
21 savings, competing with other persons engaged in the
22 same or similar business shall not be exempt under
23 this paragraph;
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1 15. Sales of tangible personal property or services to
2 children's homes which are located on church-owned property and are
3 operated by organizations exempt from taxation pursuant to the
4 provisions of the Internal Revenue Code, 26 U.S.C., Section
5 501(c) (3);

6 16. Sales of computers, data processing equipment, related
7 peripherals, and telephone, telegraph or telecommunications service
8 and equipment for use in a qualified aircraft maintenance or
9 manufacturing facility. For purposes of this paragraph, "qualified
10 aircraft maintenance or manufacturing facility" means a new or
11 expanding facility primarily engaged in aircraft repair, building or
12 rebuilding whether or not on a factory basis, whose total cost of
13 construction exceeds the sum of Five Million Dollars (\$5,000,000.00)
14 and which employs at least two hundred fifty (250) new full-time-
15 equivalent employees, as certified by the Oklahoma Employment
16 Security Commission, upon completion of the facility. In order to
17 qualify for the exemption provided for by this paragraph, the cost
18 of the items purchased by the qualified aircraft maintenance or
19 manufacturing facility shall equal or exceed the sum of Two Million
20 Dollars (\$2,000,000.00);

21 17. Sales of tangible personal property consumed or
22 incorporated in the construction or expansion of a qualified
23 aircraft maintenance or manufacturing facility as defined in
24 paragraph 16 of this section. For purposes of this paragraph, sales

1 made to a contractor or subcontractor that has previously entered
2 into a contractual relationship with a qualified aircraft
3 maintenance or manufacturing facility for construction or expansion
4 of such a facility shall be considered sales made to a qualified
5 aircraft maintenance or manufacturing facility;

6 18. Sales of the following telecommunications services:

7 a. Interstate and International "800 service". "800
8 service" means a "telecommunications service" that
9 allows a caller to dial a toll-free number without
10 incurring a charge for the call. The service is
11 typically marketed under the name "800", "855", "866",
12 "877" and "888" toll-free calling, and any subsequent
13 numbers designated by the Federal Communications
14 Commission,

15 b. Interstate and International "900 service". "900
16 service" means an inbound toll "telecommunications
17 service" purchased by a subscriber that allows the
18 subscriber's customers to call in to the subscriber's
19 prerecorded announcement or live service. "900
20 service" does not include the charge for: collection
21 services provided by the seller of the
22 "telecommunications services" to the subscriber, or
23 service or product sold by the subscriber to the
24 subscriber's customer. The service is typically

1 marketed under the name "900" service, and any
2 subsequent numbers designated by the Federal
3 Communications Commission,

4 c. Interstate and International "private communications
5 service". "Private communications service" means a
6 "telecommunications service" that entitles the
7 customer to exclusive or priority use of a
8 communications channel or group of channels between or
9 among termination points, regardless of the manner in
10 which such channel or channels are connected, and
11 includes switching capacity, extension lines, stations
12 and any other associated services that are provided in
13 connection with the use of such channel or channels,

14 d. "Value-added nonvoice data service". "Value-added
15 nonvoice data service" means a service that otherwise
16 meets the definition of "telecommunications services"
17 in which computer processing applications are used to
18 act on the form, content, code or protocol of the
19 information or data primarily for a purpose other than
20 transmission, conveyance, or routing,

21 e. Interstate and International telecommunications
22 service which is:

23 (1) rendered by a company for private use within its
24 organization, or

1 (2) used, allocated or distributed by a company to
2 its affiliated group,

3 f. Regulatory assessments and charges including charges
4 to fund the Oklahoma Universal Service Fund, the
5 Oklahoma Lifeline Fund and the Oklahoma High Cost
6 Fund, and

7 g. Telecommunications nonrecurring charges including but
8 not limited to the installation, connection, change,
9 or initiation of telecommunications services which are
10 not associated with a retail consumer sale;

11 19. Sales of railroad track spikes manufactured and sold for
12 use in this state in the construction or repair of railroad tracks,
13 switches, sidings, and turnouts;

14 20. Sales of aircraft and aircraft parts provided such sales
15 occur at a qualified aircraft maintenance facility. As used in this
16 paragraph, "qualified aircraft maintenance facility" means a
17 facility operated by an air common carrier including one or more
18 component overhaul support buildings or structures in an area owned,
19 leased, or controlled by the air common carrier, at which there were
20 employed at least two thousand (2,000) full-time-equivalent
21 employees in the preceding year as certified by the Oklahoma
22 Employment Security Commission and which is primarily related to the
23 fabrication, repair, alteration, modification, refurbishing,
24 maintenance, building, or rebuilding of commercial aircraft or

1 aircraft parts used in air common carriage. For purposes of this
2 paragraph, "air common carrier" shall also include members of an
3 affiliated group as defined by Section 1504 of the Internal Revenue
4 Code, 26 U.S.C., Section 1504. Beginning July 1, 2012, sales of
5 machinery, tools, supplies, equipment, and related tangible personal
6 property and services used or consumed in the repair, remodeling, or
7 maintenance of aircraft, aircraft engines or aircraft component
8 parts which occur at a qualified aircraft maintenance facility;

9 21. Sales of machinery and equipment purchased and used by
10 persons and establishments primarily engaged in computer services
11 and data processing:

12 a. as defined under Industrial Group Numbers 7372 and
13 7373 of the Standard Industrial Classification (SIC)
14 Manual, latest version, which derive at least fifty
15 percent (50%) of their annual gross revenues from the
16 sale of a product or service to an out-of-state buyer
17 or consumer, and

18 b. as defined under Industrial Group Number 7374 of the
19 SIC Manual, latest version, which derive at least
20 eighty percent (80%) of their annual gross revenues
21 from the sale of a product or service to an out-of-
22 state buyer or consumer.

23 Eligibility for the exemption set out in this paragraph shall be
24 established, subject to review by the Tax Commission, by annually

1 filing an affidavit with the Tax Commission stating that the
2 facility so qualifies and such information as required by the Tax
3 Commission. For purposes of determining whether annual gross
4 revenues are derived from sales to out-of-state buyers or consumers,
5 all sales to the federal government shall be considered to be to an
6 out-of-state buyer or consumer;

7 22. Sales of prosthetic devices to an individual for use by
8 such individual. For purposes of this paragraph, "prosthetic
9 device" shall have the same meaning as provided in Section 1357.6 of
10 this title, but shall not include corrective eye glasses, contact
11 lenses, or hearing aids;

12 23. Sales of tangible personal property or services to a motion
13 picture or television production company to be used or consumed in
14 connection with an eligible production. For purposes of this
15 paragraph, "eligible production" means a documentary, special, music
16 video or a television commercial or television program that will
17 serve as a pilot for or be a segment of an ongoing dramatic or
18 situation comedy series filmed or taped for network or national or
19 regional syndication or a feature-length motion picture intended for
20 theatrical release or for network or national or regional
21 syndication or broadcast. The provisions of this paragraph shall
22 apply to sales occurring on or after July 1, 1996. In order to
23 qualify for the exemption, the motion picture or television
24 production company shall file any documentation and information

1 required to be submitted pursuant to rules promulgated by the Tax
2 Commission;

3 24. Sales of diesel fuel sold for consumption by commercial
4 vessels, barges and other commercial watercraft;

5 25. Sales of tangible personal property or services to tax-
6 exempt independent nonprofit biomedical research foundations that
7 provide educational programs for Oklahoma science students and
8 teachers and to tax-exempt independent nonprofit community blood
9 banks headquartered in this state;

10 26. Effective May 6, 1992, sales of wireless telecommunications
11 equipment to a vendor who subsequently transfers the equipment at no
12 charge or for a discounted charge to a consumer as part of a
13 promotional package or as an inducement to commence or continue a
14 contract for wireless telecommunications services;

15 27. Effective January 1, 1991, leases of rail transportation
16 cars to haul coal to coal-fired plants located in this state which
17 generate electric power;

18 28. Beginning July 1, 2005, sales of aircraft engine repairs,
19 modification, and replacement parts, sales of aircraft frame repairs
20 and modification, aircraft interior modification, and paint, and
21 sales of services employed in the repair, modification, and
22 replacement of parts of aircraft engines, aircraft frame and
23 interior repair and modification, and paint;

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1 29. Sales of materials and supplies to the owner or operator of
2 a ship, motor vessel, or barge that is used in interstate or
3 international commerce if the materials and supplies:

4 a. are loaded on the ship, motor vessel, or barge and
5 used in the maintenance and operation of the ship,
6 motor vessel, or barge, or

7 b. enter into and become component parts of the ship,
8 motor vessel, or barge;

9 30. Sales of tangible personal property made at estate sales at
10 which such property is offered for sale on the premises of the
11 former residence of the decedent by a person who is not required to
12 be licensed pursuant to the Transient Merchant Licensing Act, or who
13 is not otherwise required to obtain a sales tax permit for the sale
14 of such property pursuant to the provisions of Section 1364 of this
15 title; provided:

16 a. such sale or event may not be held for a period
17 exceeding three (3) consecutive days,

18 b. the sale must be conducted within six (6) months of
19 the date of death of the decedent, and

20 c. the exemption allowed by this paragraph shall not be
21 allowed for property that was not part of the
22 decedent's estate;

23 31. Beginning January 1, 2004, sales of electricity and
24 associated delivery and transmission services, when sold exclusively

1 for use by an oil and gas operator for reservoir dewatering projects
2 and associated operations commencing on or after July 1, 2003, in
3 which the initial water-to-oil ratio is greater than or equal to
4 five-to-one water-to-oil, and such oil and gas development projects
5 have been classified by the Corporation Commission as a reservoir
6 dewatering unit;

7 32. Sales of prewritten computer software that is delivered
8 electronically. For purposes of this paragraph, "delivered
9 electronically" means delivered to the purchaser by means other than
10 tangible storage media;

11 33. Sales of modular dwelling units when built at a production
12 facility and moved in whole or in parts, to be assembled on-site,
13 and permanently affixed to the real property and used for
14 residential or commercial purposes. The exemption provided by this
15 paragraph shall equal forty-five percent (45%) of the total sales
16 price of the modular dwelling unit. For purposes of this paragraph,
17 "modular dwelling unit" means a structure that is not subject to the
18 motor vehicle excise tax imposed pursuant to Section 2103 of this
19 title;

20 34. Sales of tangible personal property or services to:
21 a. persons who are residents of Oklahoma and have been
22 honorably discharged from active service in any branch
23 of the Armed Forces of the United States or Oklahoma
24 National Guard and who have been certified by the

1 United States Department of Veterans Affairs or its
2 successor to be in receipt of disability compensation
3 at the one-hundred-percent rate and the disability
4 shall be permanent and have been sustained through
5 military action or accident or resulting from disease
6 contracted while in such active service and registered
7 with the veterans registry created by the Oklahoma
8 Department of Veterans Affairs; provided, that if the
9 veteran received the sales tax exemption prior to
10 November 1, 2020, he or she shall be required to
11 register with the veterans registry prior to July 1,
12 2023, in order to remain qualified, or

13 b. the surviving spouse of the person in subparagraph a
14 of this paragraph if the person is deceased and the
15 spouse has not remarried and the surviving spouse of a
16 person who is determined by the United States
17 Department of Defense or any branch of the United
18 States military to have died while in the line of duty
19 if the spouse has not remarried. Sales for the
20 benefit of an eligible person to a spouse of the
21 eligible person or to a member of the household in
22 which the eligible person resides and who is
23 authorized to make purchases on the person's behalf,
24 when such eligible person is not present at the sale,

1 shall also be exempt for purposes of this paragraph.
2 The Oklahoma Tax Commission shall issue a separate
3 exemption card to a spouse of an eligible person or to
4 a member of the household in which the eligible person
5 resides who is authorized to make purchases on the
6 person's behalf, if requested by the eligible person.
7 Sales qualifying for the exemption authorized by this
8 paragraph shall not exceed Twenty-five Thousand
9 Dollars (\$25,000.00) per year per individual while the
10 disabled veteran is living. Sales qualifying for the
11 exemption authorized by this paragraph shall not
12 exceed One Thousand Dollars (\$1,000.00) per year for
13 an unremarried surviving spouse. Upon request of the
14 Tax Commission, a person asserting or claiming the
15 exemption authorized by this paragraph shall provide a
16 statement, executed under oath, that the total sales
17 amounts for which the exemption is applicable have not
18 exceeded Twenty-five Thousand Dollars (\$25,000.00) per
19 year per living disabled veteran or One Thousand
20 Dollars (\$1,000.00) per year for an unremarried
21 surviving spouse. If the amount of such exempt sales
22 exceeds such amount, the sales tax in excess of the
23 authorized amount shall be treated as a direct sales
24 tax liability and may be recovered by the Tax

1 Commission in the same manner provided by law for
2 other taxes including penalty and interest. The Tax
3 Commission shall promulgate any rules necessary to
4 implement the provisions of this paragraph, which
5 shall include rules providing for the disclosure of
6 information about persons eligible for the exemption
7 authorized in this paragraph to the Oklahoma
8 Department of Veteran's Affairs, as authorized in
9 Section 205 of this title. For purposes of the
10 exemption authorized by this subparagraph, if the
11 disability determination that would have been made
12 while the disabled veteran was still living is not
13 made final until after the death of the disabled
14 veteran, the exemption authorized by this subparagraph
15 may still be claimed by the surviving spouse;

16 35. Sales of electricity to the operator, specifically
17 designated by the Corporation Commission, of a spacing unit or lease
18 from which oil is produced or attempted to be produced using
19 enhanced recovery methods including, but not limited to, increased
20 pressure in a producing formation through the use of water or
21 saltwater if the electrical usage is associated with and necessary
22 for the operation of equipment required to inject or circulate
23 fluids in a producing formation for the purpose of forcing oil or
24 petroleum into a wellbore for eventual recovery and production from

1 the wellhead. In order to be eligible for the sales tax exemption
2 authorized by this paragraph, the total content of oil recovered
3 after the use of enhanced recovery methods shall not exceed one
4 percent (1%) by volume. The exemption authorized by this paragraph
5 shall be applicable only to the state sales tax rate and shall not
6 be applicable to any county or municipal sales tax rate;

7 36. Sales of intrastate charter and tour bus transportation.
8 As used in this paragraph, "intrastate charter and tour bus
9 transportation" means the transportation of persons from one
10 location in this state to another location in this state in a motor
11 vehicle which has been constructed in such a manner that it may
12 lawfully carry more than eighteen persons, and which is ordinarily
13 used or rented to carry persons for compensation. Provided, this
14 exemption shall not apply to regularly scheduled bus transportation
15 for the general public;

16 37. Sales of vitamins, minerals, and dietary supplements by a
17 licensed chiropractor to a person who is the patient of such
18 chiropractor at the physical location where the chiropractor
19 provides chiropractic care or services to such patient. The
20 provisions of this paragraph shall not be applicable to any drug,
21 medicine, or substance for which a prescription by a licensed
22 physician is required;

23 38. Sales of goods, wares, merchandise, tangible personal
24 property, machinery, and equipment to a web search portal located in

1 this state which derives at least eighty percent (80%) of its annual
2 gross revenue from the sale of a product or service to an out-of-
3 state buyer or consumer. For purposes of this paragraph, "web
4 search portal" means an establishment classified under NAICS code
5 519130 which operates websites that use a search engine to generate
6 and maintain extensive databases of Internet addresses and content
7 in an easily searchable format;

8 39. Sales of tangible personal property consumed or
9 incorporated in the construction or expansion of a facility for a
10 corporation organized under Section 437 et seq. of Title 18 of the
11 Oklahoma Statutes as a rural electric cooperative. For purposes of
12 this paragraph, sales made to a contractor or subcontractor that has
13 previously entered into a contractual relationship with a rural
14 electric cooperative for construction or expansion of a facility
15 shall be considered sales made to a rural electric cooperative;

16 40. Sales of tangible personal property or services to a
17 business primarily engaged in the repair of consumer electronic
18 goods including, but not limited to, cell phones, compact disc
19 players, personal computers, MP3 players, digital devices for the
20 storage and retrieval of information through hard-wired or wireless
21 computer or Internet connections, if the devices are sold to the
22 business by the original manufacturer of such devices and the
23 devices are repaired, refitted or refurbished for sale by the entity
24 qualifying for the exemption authorized by this paragraph directly

1 to retail consumers or if the devices are sold to another business
2 entity for sale to retail consumers;

3 41. On or after July 1, 2019, and prior to July 1, 2024, sales
4 or leases of rolling stock when sold or leased by the manufacturer,
5 regardless of whether the purchaser is a public services corporation
6 engaged in business as a common carrier of property or passengers by
7 railway, for use or consumption by a common carrier directly in the
8 rendition of public service. For purposes of this paragraph,
9 "rolling stock" means locomotives, autocars, and railroad cars and
10 "sales or leases" includes railroad car maintenance and retrofitting
11 of railroad cars for their further use only on the railways; and

12 42. Sales of gold, silver, platinum, palladium or other bullion
13 items such as coins and bars and legal tender of any nation, which
14 legal tender is sold according to its value as precious metal or as
15 an investment. As used in the paragraph, "bullion" means any
16 precious metal including, but not limited to, gold, silver,
17 platinum, and palladium, that is in such a state or condition that
18 its value depends upon its precious metal content and not its form.
19 The exemption authorized by this paragraph shall not apply to
20 fabricated metals that have been processed or manufactured for
21 artistic use or as jewelry.

22 SECTION 2. This act shall become effective July 1, 2023.

23 SECTION 3. It being immediately necessary for the preservation
24 of the public peace, health or safety, an emergency is hereby

1 declared to exist, by reason whereof this act shall take effect and
2 be in full force from and after its passage and approval.

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