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**SENATE BILL 5136**

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**State of Washington**

**68th Legislature**

**2023 Regular Session**

**By** Senator Fortunato

Prefiled 01/04/23.

1 AN ACT Relating to permanently exempting from sales and use tax  
2 clothing, products for children, and prepared food; amending RCW  
3 82.08.0293; adding new sections to chapter 82.08 RCW; adding new  
4 sections to chapter 82.12 RCW; and creating a new section.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 82.08  
7 RCW to read as follows:

8 (1) The tax levied by RCW 82.08.020 does not apply to sales of  
9 clothing and footwear for human use.

10 (2) For the purposes of this section:

11 (a)(i) "Clothing" means all human wearing apparel suitable for  
12 general use. "Clothing" also includes:

13 (A) Protective equipment necessary for the daily work of the  
14 user; and

15 (B) Sewing equipment and supplies.

16 (ii) "Clothing" does not include: Clothing accessories or  
17 equipment, fur clothing, and sport or recreational equipment.

18 (b) "Clothing accessories or equipment" means incidental items  
19 worn on the person or in conjunction with clothing that are sold  
20 separately.

1 (c) "Fur clothing" means clothing that is required to be labeled  
2 as a fur product under 15 U.S.C. Sec. 69, and the value of the fur  
3 components in the product is more than three times the value of the  
4 next most valuable tangible component. For the purposes of this  
5 subsection, "fur" means any animal skin or part thereof with hair,  
6 fleece, or fur fibers attached thereto, either in its raw or  
7 processed state, but does not include such skins that have been  
8 converted into leather or suede, or which in processing the hair,  
9 fleece, or fur fiber has been completely removed.

10 (d) "Protective equipment" means items for human wear and  
11 designed as protection of the wearer against injury or disease or as  
12 protections against damage or injury of other persons or property but  
13 not suitable for general use.

14 (e) "Sewing equipment and supplies" means sewing materials  
15 including, but not limited to: Fabrics, thread, knitting yarn,  
16 buttons, and zippers, purchased by noncommercial purchasers for  
17 incorporation into clothing as a constituent part thereof.

18 (f) "Sport or recreational equipment" means items designed for  
19 human use and worn in conjunction with an athletic or recreational  
20 activity that are not suitable for general use.

21 NEW SECTION. **Sec. 2.** A new section is added to chapter 82.12  
22 RCW to read as follows:

23 (1) The provisions of this chapter do not apply with respect to  
24 the use of clothing and footwear for human use.

25 (2) The definitions in section 1 of this act apply to this  
26 section.

27 NEW SECTION. **Sec. 3.** A new section is added to chapter 82.08  
28 RCW to read as follows:

29 (1) The tax levied by RCW 82.08.020 does not apply to sales of  
30 products for young children.

31 (2) For the purposes of this section, "products for young  
32 children" means products specifically designed for the use by or care  
33 of infants and children under the age of five, as indicated by label  
34 on the product or product packaging, or other statement by the  
35 manufacturer of the product's intended use, or is a product commonly  
36 recognized by consumers as being intended for use by infants and  
37 children under the age of five including, but not limited to: Diaper  
38 changing products, such as diapers, wipes, changing pads, and

1 changing tables; hygiene and health products, such as lotions,  
2 creams, soaps, and infant and toddler bathtubs; feeding products,  
3 such as bottles, bottle cleaning devices, sippy cups, infant and  
4 toddler spoons, bowls, and plates, and highchairs; sleep products,  
5 such as cribs, crib mattresses, bassinets, bedside sleepers, toddler  
6 beds, and baby monitors; infant and child car and booster seats;  
7 gates and enclosures; infant and toddler swings, walkers, and other  
8 carriers; strollers; and toys designed specifically for infants and  
9 children under the age of five.

10 NEW SECTION. **Sec. 4.** A new section is added to chapter 82.12  
11 RCW to read as follows:

12 (1) The provisions of this chapter do not apply with respect to  
13 the use of products for young children.

14 (2) The definition in section 3 of this act applies to this  
15 section.

16 **Sec. 5.** RCW 82.08.0293 and 2022 c 16 s 152 are each amended to  
17 read as follows:

18 (1) The tax levied by RCW 82.08.020 does not apply to sales of  
19 food and food ingredients. "Food and food ingredients" means  
20 substances, whether in liquid, concentrated, solid, frozen, dried, or  
21 dehydrated form, that are sold for ingestion or chewing by humans and  
22 are consumed for their taste or nutritional value. "Food and food  
23 ingredients" includes "prepared food." "Food and food ingredients"  
24 does not include:

25 (a) "Alcoholic beverages," which means beverages that are  
26 suitable for human consumption and contain one-half of one percent or  
27 more of alcohol by volume;

28 (b) "Tobacco," which means cigarettes, cigars, chewing or pipe  
29 tobacco, or any other item that contains tobacco; and

30 (c) Cannabis, useable cannabis, or cannabis-infused products.

31 (2) The exemption of "food and food ingredients" provided for in  
32 subsection (1) of this section does not apply to (~~prepared food,~~)  
33 soft drinks, bottled water, or dietary supplements. The definitions  
34 in this subsection apply throughout this section unless the context  
35 clearly requires otherwise.

36 (a) "Bottled water" means water that is placed in a safety sealed  
37 container or package for human consumption. Bottled water is calorie  
38 free and does not contain sweeteners or other additives except that

1 it may contain: (i) Antimicrobial agents; (ii) fluoride; (iii)  
2 carbonation; (iv) vitamins, minerals, and electrolytes; (v) oxygen;  
3 (vi) preservatives; and (vii) only those flavors, extracts, or  
4 essences derived from a spice or fruit. "Bottled water" includes  
5 water that is delivered to the buyer in a reusable container that is  
6 not sold with the water.

7 (b) "Dietary supplement" means any product, other than tobacco,  
8 intended to supplement the diet that:

9 (i) Contains one or more of the following dietary ingredients:

10 (A) A vitamin;

11 (B) A mineral;

12 (C) An herb or other botanical;

13 (D) An amino acid;

14 (E) A dietary substance for use by humans to supplement the diet  
15 by increasing the total dietary intake; or

16 (F) A concentrate, metabolite, constituent, extract, or  
17 combination of any ingredient described in this subsection;

18 (ii) Is intended for ingestion in tablet, capsule, powder,  
19 softgel, gelcap, or liquid form, or if not intended for ingestion in  
20 such form, is not represented as conventional food and is not  
21 represented for use as a sole item of a meal or of the diet; and

22 (iii) Is required to be labeled as a dietary supplement,  
23 identifiable by the "supplement facts" box found on the label as  
24 required pursuant to 21 C.F.R. Sec. 101.36, as amended or renumbered  
25 as of January 1, 2003.

26 (c) (i) "Prepared food" means:

27 (A) Food sold in a heated state or heated by the seller;

28 (B) Food sold with eating utensils provided by the seller,  
29 including plates, knives, forks, spoons, glasses, cups, napkins, or  
30 straws. A plate does not include a container or packaging used to  
31 transport the food; or

32 (C) Two or more food ingredients mixed or combined by the seller  
33 for sale as a single item, except:

34 (I) Food that is only cut, repackaged, or pasteurized by the  
35 seller; or

36 (II) Raw eggs, fish, meat, poultry, and foods containing these  
37 raw animal foods requiring cooking by the consumer as recommended by  
38 the federal food and drug administration in chapter 3, part 401.11 of  
39 The Food Code, published by the food and drug administration, as

1 amended or renumbered as of January 1, 2003, so as to prevent  
2 foodborne illness.

3 (ii) Food is "sold with eating utensils provided by the seller"  
4 if:

5 (A) The seller's customary practice for that item is to  
6 physically deliver or hand a utensil to the customer with the food or  
7 food ingredient as part of the sales transaction. If the food or food  
8 ingredient is prepackaged with a utensil, the seller is considered to  
9 have physically delivered a utensil to the customer unless the food  
10 and utensil are prepackaged together by a food manufacturer  
11 classified under sector 311 of the North American industry  
12 classification system (NAICS);

13 (B) A plate, glass, cup, or bowl is necessary to receive the food  
14 or food ingredient, and the seller makes those utensils available to  
15 its customers; or

16 (C) (I) The seller makes utensils available to its customers, and  
17 the seller has more than (~~seventy-five~~) 75 percent prepared food  
18 sales. For purposes of this subsection (2)(c)(ii)(C), a seller has  
19 more than (~~seventy-five~~) 75 percent prepared food sales if the  
20 seller's gross retail sales of prepared food under (c)(i)(A),  
21 (c)(i)(C), and (c)(ii)(B) of this subsection equal more than  
22 (~~seventy-five~~) 75 percent of the seller's gross retail sales of all  
23 food and food ingredients, including prepared food, soft drinks, and  
24 dietary supplements.

25 (II) However, even if a seller has more than (~~seventy-five~~) 75  
26 percent prepared food sales, four servings or more of food or food  
27 ingredients packaged for sale as a single item and sold for a single  
28 price are not "sold with utensils provided by the seller" unless the  
29 seller's customary practice for the package is to physically hand or  
30 otherwise deliver a utensil to the customer as part of the sales  
31 transaction. Whenever available, the number of servings included in a  
32 package of food or food ingredients must be determined based on the  
33 manufacturer's product label. If no label is available, the seller  
34 must reasonably determine the number of servings.

35 (III) The seller must determine a single prepared food sales  
36 percentage annually for all the seller's establishments in the state  
37 based on the prior year of sales. The seller may elect to determine  
38 its prepared food sales percentage based either on the prior calendar  
39 year or on the prior fiscal year. A seller may not change its elected  
40 method for determining its prepared food percentage without the

1 written consent of the department. The seller must determine its  
2 annual prepared food sales percentage as soon as possible after  
3 accounting records are available, but in no event later than  
4 (~~ninety~~) 90 days after the beginning of the seller's calendar or  
5 fiscal year. A seller may make a good faith estimate of its first  
6 annual prepared food sales percentage if the seller's records for the  
7 prior year are not sufficient to allow the seller to calculate the  
8 prepared food sales percentage. The seller must adjust its good faith  
9 estimate prospectively if its relative sales of prepared foods in the  
10 first ninety days of operation materially depart from the seller's  
11 estimate.

12 (iii) "Prepared food" (~~does not~~) includes the following  
13 items (~~, if sold without eating utensils provided by the seller~~):

14 (A) Food sold by a seller whose proper primary NAICS  
15 classification is manufacturing in sector 311, except subsector 3118  
16 (bakeries), as provided in the "North American industry  
17 classification system—United States, 2002";

18 (B) Food sold in an unheated state by weight or volume as a  
19 single item; or

20 (C) Bakery items. The term "bakery items" includes bread, rolls,  
21 buns, biscuits, bagels, croissants, pastries, donuts, Danish, cakes,  
22 tortes, pies, tarts, muffins, bars, cookies, or tortillas.

23 (d) "Soft drinks" means nonalcoholic beverages that contain  
24 natural or artificial sweeteners. Soft drinks do not include  
25 beverages that contain: Milk or milk products; soy, rice, or similar  
26 milk substitutes; or greater than fifty percent of vegetable or fruit  
27 juice by volume.

28 (3) Notwithstanding anything in this section to the contrary, the  
29 exemption of "food and food ingredients" provided in this section  
30 applies to food and food ingredients that are furnished, prepared, or  
31 served as meals:

32 (a) Under a state administered nutrition program for the aged as  
33 provided for in the older Americans act (P.L. 95-478 Title III) and  
34 RCW 74.38.040(6);

35 (b) That are provided to senior citizens, individuals with  
36 disabilities, or low-income persons by a nonprofit organization  
37 organized under chapter 24.03A or 24.12 RCW; or

38 (c) That are provided to residents, (~~sixty-two~~) 62 years of age  
39 or older, of a qualified low-income senior housing facility by the  
40 lessor or operator of the facility. The sale of a meal that is billed

1 to both spouses of a marital community or both domestic partners of a  
2 domestic partnership meets the age requirement in this subsection  
3 (3)(c) if at least one of the spouses or domestic partners is at  
4 least ((~~sixty-two~~) 62) years of age. For purposes of this subsection,  
5 "qualified low-income senior housing facility" means a facility:

6 (i) That meets the definition of a qualified low-income housing  
7 project under 26 U.S.C. Sec. 42 of the federal internal revenue code,  
8 as existing on August 1, 2009;

9 (ii) That has been partially funded under 42 U.S.C. Sec. 1485;  
10 and

11 (iii) For which the lessor or operator has at any time been  
12 entitled to claim a federal income tax credit under 26 U.S.C. Sec. 42  
13 of the federal internal revenue code.

14 (4)(a) Subsection (1) of this section notwithstanding, the retail  
15 sale of food and food ingredients is subject to sales tax under RCW  
16 82.08.020 if the food and food ingredients are sold through a vending  
17 machine. Except as provided in (b) of this subsection, the selling  
18 price of food and food ingredients sold through a vending machine for  
19 purposes of RCW 82.08.020 is ((~~fifty-seven~~) 57) percent of the gross  
20 receipts.

21 (b) For soft drinks, bottled water, and hot prepared food and  
22 food ingredients, other than food and food ingredients which are  
23 heated after they have been dispensed from the vending machine, the  
24 selling price is the total gross receipts of such sales divided by  
25 the sum of one plus the sales tax rate expressed as a decimal.

26 (c) For tax collected under this subsection (4), the requirements  
27 that the tax be collected from the buyer and that the amount of tax  
28 be stated as a separate item are waived.

29 NEW SECTION. **Sec. 6.** RCW 82.32.805 and 82.32.808 do not apply  
30 to this act.

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