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**SENATE BILL 6554**

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**State of Washington**

**66th Legislature**

**2020 Regular Session**

**By** Senators Padden, Warnick, Becker, Hasegawa, and Wilson, L.

Read first time 01/22/20. Referred to Committee on Health & Long Term Care.

1 AN ACT Relating to exempting dietary supplements from sales and  
2 use tax; amending RCW 82.08.0293 and 82.12.0293; creating new  
3 sections; and repealing RCW 82.08.925 and 82.12.925.

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

5 NEW SECTION. **Sec. 1.** The legislature acknowledges that good  
6 nutrition is essential to ensuring the health of Washington  
7 residents. Scientific research indicates that dietary supplements  
8 help in managing certain health conditions and are beneficial to  
9 overall health. Preventative care, such as the use of dietary  
10 supplements, not only promotes health but also offers significant  
11 health care cost savings.

12 Many unhealthy foods, such as candy, remain tax free in  
13 Washington, while the state continues to profit from certain health-  
14 conscious items, such as dietary supplements. Under current law, only  
15 those dietary supplements that are medically prescribed qualify for a  
16 sales and use tax exemption. However, billions of out-of-pocket  
17 dollars are spent nationwide each year on dietary supplements, much  
18 of which is subject to state and local taxes in Washington.

19 The legislature recognizes the need to reduce the tax burden on  
20 Washington residents by eliminating certain taxes on products  
21 intended to promote health and well-being. It is the intent of the

1 legislature to permanently exempt dietary supplements from sales and  
2 use tax.

3 **Sec. 2.** RCW 82.08.0293 and 2019 c 8 s 401 are each amended to  
4 read as follows:

5 (1) The tax levied by RCW 82.08.020 does not apply to sales of  
6 food and food ingredients, including dietary supplements. The  
7 definitions in this subsection apply throughout this section unless  
8 the context clearly requires otherwise.

9 (a) "Food and food ingredients" means substances, whether in  
10 liquid, concentrated, solid, frozen, dried, or dehydrated form, that  
11 are sold for ingestion or chewing by humans and are consumed for  
12 their taste or nutritional value. "Food and food ingredients" does  
13 not include:

14 ~~((a))~~ (i) "Alcoholic beverages," which means beverages that are  
15 suitable for human consumption and contain one-half of one percent or  
16 more of alcohol by volume;

17 ~~((b))~~ (ii) "Tobacco," which means cigarettes, cigars, chewing  
18 or pipe tobacco, or any other item that contains tobacco; and

19 ~~((c))~~ (iii) Marijuana, useable marijuana, or marijuana-infused  
20 products.

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

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

24 (A) A vitamin;

25 (B) A mineral;

26 (C) An herb or other botanical;

27 (D) An amino acid;

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

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

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

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

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

6 (a) "Bottled water" means water that is placed in a safety sealed  
7 container or package for human consumption. Bottled water is calorie  
8 free and does not contain sweeteners or other additives except that  
9 it may contain: (i) Antimicrobial agents; (ii) fluoride; (iii)  
10 carbonation; (iv) vitamins, minerals, and electrolytes; (v) oxygen;  
11 (vi) preservatives; and (vii) only those flavors, extracts, or  
12 essences derived from a spice or fruit. "Bottled water" includes  
13 water that is delivered to the buyer in a reusable container that is  
14 not sold with the water.

15 (b) (~~"Dietary supplement" means any product, other than tobacco,~~  
16 ~~intended to supplement the diet that:~~

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

18 ~~(A) A vitamin;~~

19 ~~(B) A mineral;~~

20 ~~(C) An herb or other botanical;~~

21 ~~(D) An amino acid;~~

22 ~~(E) A dietary substance for use by humans to supplement the diet~~  
23 ~~by increasing the total dietary intake; or~~

24 ~~(F) A concentrate, metabolite, constituent, extract, or~~  
25 ~~combination of any ingredient described in this subsection;~~

26 ~~(ii) Is intended for ingestion in tablet, capsule, powder,~~  
27 ~~softgel, gelcap, or liquid form, or if not intended for ingestion in~~  
28 ~~such form, is not represented as conventional food and is not~~  
29 ~~represented for use as a sole item of a meal or of the diet; and~~

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

34 ~~(e)) (i) "Prepared food" means:~~

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

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

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

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

5 (II) Raw eggs, fish, meat, poultry, and foods containing these  
6 raw animal foods requiring cooking by the consumer as recommended by  
7 the federal food and drug administration in chapter 3, part 401.11 of  
8 The Food Code, published by the food and drug administration, as  
9 amended or renumbered as of January 1, 2003, so as to prevent  
10 foodborne illness.

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

13 (A) The seller's customary practice for that item is to  
14 physically deliver or hand a utensil to the customer with the food or  
15 food ingredient as part of the sales transaction. If the food or food  
16 ingredient is prepackaged with a utensil, the seller is considered to  
17 have physically delivered a utensil to the customer unless the food  
18 and utensil are prepackaged together by a food manufacturer  
19 classified under sector 311 of the North American industry  
20 classification system (NAICS);

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

24 (C) (I) The seller makes utensils available to its customers, and  
25 the seller has more than seventy-five percent prepared food sales.  
26 For purposes of this subsection (2) ~~((+e+))~~ (b)(ii)(C), a seller has  
27 more than seventy-five percent prepared food sales if the seller's  
28 gross retail sales of prepared food under ~~((+e+))~~ (b)(i)(A), ~~((+e+))~~  
29 (b)(i)(C), and ~~((+e+))~~ (b)(ii)(B) of this subsection equal more than  
30 seventy-five percent of the seller's gross retail sales of all food  
31 and food ingredients, including prepared food, soft drinks, and  
32 dietary supplements.

33 (II) However, even if a seller has more than seventy-five percent  
34 prepared food sales, four servings or more of food or food  
35 ingredients packaged for sale as a single item and sold for a single  
36 price are not "sold with utensils provided by the seller" unless the  
37 seller's customary practice for the package is to physically hand or  
38 otherwise deliver a utensil to the customer as part of the sales  
39 transaction. Whenever available, the number of servings included in a  
40 package of food or food ingredients must be determined based on the

1 manufacturer's product label. If no label is available, the seller  
2 must reasonably determine the number of servings.

3 (III) The seller must determine a single prepared food sales  
4 percentage annually for all the seller's establishments in the state  
5 based on the prior year of sales. The seller may elect to determine  
6 its prepared food sales percentage based either on the prior calendar  
7 year or on the prior fiscal year. A seller may not change its elected  
8 method for determining its prepared food percentage without the  
9 written consent of the department. The seller must determine its  
10 annual prepared food sales percentage as soon as possible after  
11 accounting records are available, but in no event later than ninety  
12 days after the beginning of the seller's calendar or fiscal year. A  
13 seller may make a good faith estimate of its first annual prepared  
14 food sales percentage if the seller's records for the prior year are  
15 not sufficient to allow the seller to calculate the prepared food  
16 sales percentage. The seller must adjust its good faith estimate  
17 prospectively if its relative sales of prepared foods in the first  
18 ninety days of operation materially depart from the seller's  
19 estimate.

20 (iii) "Prepared food" does not include the following items, if  
21 sold without eating utensils provided by the seller:

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

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

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

31 (~~(d)~~) (c) "Soft drinks" means nonalcoholic beverages that  
32 contain natural or artificial sweeteners. Soft drinks do not include  
33 beverages that contain: Milk or milk products; soy, rice, or similar  
34 milk substitutes; or greater than fifty percent of vegetable or fruit  
35 juice by volume.

36 (3) Notwithstanding anything in this section to the contrary, the  
37 exemption of "food and food ingredients" provided in this section  
38 applies to food and food ingredients that are furnished, prepared, or  
39 served as meals:

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

4 (b) That are provided to senior citizens, individuals with  
5 disabilities, or low-income persons by a not-for-profit organization  
6 organized under chapter 24.03 or 24.12 RCW; or

7 (c) That are provided to residents, sixty-two years of age or  
8 older, of a qualified low-income senior housing facility by the  
9 lessor or operator of the facility. The sale of a meal that is billed  
10 to both spouses of a marital community or both domestic partners of a  
11 domestic partnership meets the age requirement in this subsection  
12 (3)(c) if at least one of the spouses or domestic partners is at  
13 least sixty-two years of age. For purposes of this subsection,  
14 "qualified low-income senior housing facility" means a facility:

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

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

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

23 (4)(a) Subsection (1) of this section notwithstanding, the retail  
24 sale of food and food ingredients is subject to sales tax under RCW  
25 82.08.020 if the food and food ingredients are sold through a vending  
26 machine. Except as provided in (b) of this subsection, the selling  
27 price of food and food ingredients sold through a vending machine for  
28 purposes of RCW 82.08.020 is fifty-seven percent of the gross  
29 receipts.

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

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

38 **Sec. 3.** RCW 82.12.0293 and 2017 3rd sp.s. c 28 s 102 are each  
39 amended to read as follows:

1 (1) The provisions of this chapter do not apply in respect to the  
2 use of food and food ingredients for human consumption. "Food and  
3 food ingredients" has the same meaning as in RCW 82.08.0293.

4 (2) The exemption of "food and food ingredients" provided for in  
5 subsection (1) of this section does not apply to prepared food, soft  
6 drinks, or bottled water(~~(, or dietary supplements)~~). "Prepared  
7 food," "soft drinks," and "bottled water(~~(, " and "dietary  
8 supplements)~~)" have the same meanings as in RCW 82.08.0293.

9 (3) Notwithstanding anything in this section to the contrary, the  
10 exemption of "food and food ingredients" provided in this section  
11 applies to food and food ingredients which are furnished, prepared,  
12 or served as meals:

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

16 (b) Which are provided to senior citizens, individuals with  
17 disabilities, or low-income persons by a not-for-profit organization  
18 organized under chapter 24.03 or 24.12 RCW; or

19 (c) That are provided to residents, sixty-two years of age or  
20 older, of a qualified low-income senior housing facility by the  
21 lessor or operator of the facility. The sale of a meal that is billed  
22 to both spouses of a marital community or both domestic partners of a  
23 domestic partnership meets the age requirement in this subsection  
24 (3)(c) if at least one of the spouses or domestic partners is at  
25 least sixty-two years of age. For purposes of this subsection,  
26 "qualified low-income senior housing facility" has the same meaning  
27 as in RCW 82.08.0293.

28 NEW SECTION. **Sec. 4.** The following acts or parts of acts are  
29 each repealed:

30 (1) RCW 82.08.925 (Exemptions—Dietary supplements) and 2003 c 168  
31 s 302; and

32 (2) RCW 82.12.925 (Exemptions—Dietary supplements) and 2003 c 168  
33 s 304.

34 NEW SECTION. **Sec. 5.** The provisions of RCW 82.32.805 and  
35 82.32.808 do not apply to this act.

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