

# HOUSE BILL No. 4366

February 19, 2009, Introduced by Rep. Rocca and referred to the Committee on Tax Policy.

A bill to amend 1933 PA 167, entitled  
"General sales tax act,"  
by amending section 4g (MCL 205.54g), as amended by 2004 PA 173.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 4g. (1) The following are exempt from the tax under this  
2 act:

3           (a) Sales of drugs for human use that can only be legally  
4 dispensed by prescription, **NONPRESCRIPTION MEDICINES OR DRUGS FOR**  
5 **HUMAN USE**, or food or food ingredients, except prepared food  
6 intended for immediate human consumption.

7           (b) The deposit on a returnable container for a beverage or  
8 the deposit on a carton or case that is used for returnable  
9 containers.

10           (c) Food or tangible personal property purchased under the  
11 federal food stamp program or meals eligible to be purchased under

1 the federal food stamp program.

2 (d) Fruit or vegetable seeds and fruit or vegetable plants if  
3 purchased at a place of business authorized to accept food stamps  
4 by the food and nutrition service of the United States department  
5 of agriculture or a place of business that has made a complete and  
6 proper application for authorization to accept food stamps but has  
7 been denied authorization and provides proof of denial to the  
8 department of treasury.

9 (e) Live animals purchased with the intent to be slaughtered  
10 for human consumption.

11 (2) Food or drink heated or cooled mechanically, electrically,  
12 or by other artificial means to an average temperature above 75  
13 degrees Fahrenheit or below 65 degrees Fahrenheit before sale and  
14 sold from a vending machine, except milk, nonalcoholic beverages in  
15 a sealed container, and fresh fruit, is subject to the tax under  
16 this act. The tax due under this act on the sale of food or drink  
17 from a vending machine selling both taxable items and items exempt  
18 under this subsection shall be calculated under this act based on 1  
19 of the following as determined by the taxpayer:

20 (a) Actual gross proceeds from sales at retail.

21 (b) Forty-five percent of proceeds from the sale of items  
22 subject to tax under this act or exempt from the tax levied under  
23 this act, other than from the sale of carbonated beverages.

24 (3) "Food and food ingredients" means substances, whether in  
25 liquid, concentrated, solid, frozen, dried, or dehydrated form,  
26 that are sold for ingestion or chewing by humans and are consumed  
27 for their taste or nutritional value. Food and food ingredients do

1 not include alcoholic beverages and tobacco.

2 (4) "NONPRESCRIPTION MEDICINES OR DRUGS FOR HUMAN USE" MEANS A  
3 MEDICINE OR DRUG, WHETHER APPLIED TOPICALLY OR INGESTED, THAT IS  
4 PREPACKAGED AND FULLY PREPARED BY THE MANUFACTURER OR PRODUCER FOR  
5 USE BY AN INDIVIDUAL, HAS A PRIMARY FUNCTION TO ALLEVIATE OR  
6 PREVENT DISCOMFORT OR PAIN, AND IS SOLD OVER THE COUNTER WITHOUT  
7 THE REQUIREMENT OF A WRITTEN PRESCRIPTION PRESCRIBED BY A LICENSED  
8 PHYSICIAN OR OTHER HEALTH PROFESSIONAL AS DEFINED BY SECTION 3501  
9 OF THE INSURANCE CODE OF 1956, 1956 PA 218, MCL 500.3501.

10 (5) ~~(4)~~—"Prepared food" means the following:

11 (a) Food sold in a heated state or that is heated by the  
12 seller.

13 (b) Two or more food ingredients mixed or combined by the  
14 seller for sale as a single item.

15 (c) Food sold with eating utensils provided by the seller,  
16 including knives, forks, spoons, glasses, cups, napkins, straws, or  
17 plates, but not including a container or packaging used to  
18 transport the food.

19 (6) ~~(5)~~—Prepared food does not include the following:

20 (a) Food that is only cut, repackaged, or pasteurized by the  
21 seller.

22 (b) Raw eggs, fish, meat, poultry, and foods containing those  
23 raw items requiring cooking by the consumer in recommendations  
24 contained in section 3-401.11 of part 3-4 of chapter 3 of the 2001  
25 food code published by the food and drug administration of the  
26 public health service of the department of health and human  
27 services, to prevent foodborne illness.

1           (c) Food sold in an unheated state by weight or volume as a  
2 single item, without eating utensils.

3           (d) Bakery items, including bread, rolls, buns, biscuits,  
4 bagels, croissants, pastries, doughnuts, danish, cakes, tortes,  
5 pies, tarts, muffins, bars, cookies, and tortillas, sold without  
6 eating utensils.

7           (7) ~~(6)~~—"Prepared food intended for immediate consumption"  
8 means prepared food.