

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 566

A bill to amend 1937 PA 94, entitled
"Use tax act,"
by amending section 2b (MCL 205.92b), as amended by 2008 PA 439.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2b. As used in this act:

2 (a) "Alcoholic beverage" means a beverage suitable for human
3 consumption that contains 1/2 of 1% or more of alcohol by volume.

4 (b) "Computer" means an electronic device that accepts
5 information in digital or similar form and manipulates it for a
6 result based on a sequence of instructions.

7 (c) "Computer software" means a set of coded instructions
8 designed to cause a computer or automatic data processing equipment
9 to perform a task.

10 (d) "Delivered electronically" means delivered from the seller
11 to the purchaser by means other than tangible storage media.

1 (e) "Delivery charges" means charges by the seller for
2 preparation and delivery to a location designated by the purchaser
3 of tangible personal property or services. Delivery charges
4 include, but are not limited to, transportation, shipping, postage,
5 handling, crating, and packing. Beginning September 1, 2004,
6 delivery charges do not include the charges for delivery of direct
7 mail if the charges are separately stated on an invoice or similar
8 billing document given to the purchaser. If a shipment includes
9 both exempt property and taxable property, the seller shall
10 allocate the delivery charge using 1 of the following methods:

11 (i) Multiply the delivery price by a fraction, the numerator
12 of which is the total sales prices of the taxable property and the
13 denominator of which is the total sales prices of all property in
14 the shipment.

15 (ii) Multiply the delivery price by a fraction, the numerator
16 of which is the total weight of the taxable property and the
17 denominator of which is the total weight of all property in the
18 shipment.

19 **(F) "DENTAL PROSTHESIS" MEANS A BRIDGE, CROWN, DENTURE, OR**
20 **OTHER SIMILAR ARTIFICIAL DEVICE USED TO REPAIR OR REPLACE INTRAORAL**
21 **DEFECTS SUCH AS MISSING TEETH, MISSING PARTS OF TEETH, AND MISSING**
22 **SOFT OR HARD STRUCTURES OF THE JAW OR PALATE.**

23 **(G) ~~(f)~~**"Dietary supplement" means any product, other than
24 tobacco, intended to supplement the diet that is all of the
25 following:

26 (i) Required to be labeled as a dietary supplement
27 identifiable by the "supplemental facts" box found on the label as

1 required by 21 CFR 101.36.

2 (ii) Contains 1 or more of the following dietary ingredients:

3 (A) A vitamin.

4 (B) A mineral.

5 (C) An herb or other botanical.

6 (D) An amino acid.

7 (E) A dietary substance for use by humans to supplement the
8 diet by increasing the total dietary intake.

9 (F) A concentrate, metabolite, constituent, extract, or
10 combination of any ingredient listed in sub-subparagraphs (A)
11 through (E).

12 (iii) Intended for ingestion in tablet, capsule, powder,
13 softgel, gelcap, or liquid form, or if not intended for ingestion
14 in 1 of those forms, is not represented as conventional food or for
15 use as a sole item of a meal or of the diet.

16 (H) ~~(g)~~ "Direct mail" means printed material delivered or
17 distributed by United States mail or other delivery service to a
18 mass audience or to addresses on a mailing list provided by the
19 purchaser or at the direction of the purchaser when the cost of the
20 items is not billed directly to the recipients, including tangible
21 personal property supplied directly or indirectly by the purchaser
22 to the direct mail seller for inclusion in the package containing
23 the printed material but not including multiple items of printed
24 material delivered to a single address.

25 (I) ~~(h)~~ "Drug" means a compound, substance, or preparation, or
26 any component of a compound, substance, or preparation, other than
27 food or food ingredients, dietary supplements, or alcoholic

1 beverages, intended for human use that is 1 or more of the
2 following:

3 (i) Recognized in the official United States ~~pharmacopoeia,~~
4 **PHARMACOPOEIA**, official homeopathic pharmacopoeia of the United
5 States, or official national formulary, or in any of their
6 supplements.

7 (ii) Intended for use in the diagnosis, cure, mitigation,
8 treatment, or prevention of disease.

9 (iii) Intended to affect the structure or any function of the
10 body.

11 **(J)** ~~(i)~~—"Durable medical equipment" means equipment for home
12 use, other than mobility enhancing equipment, dispensed pursuant to
13 a prescription, including durable medical equipment repair or
14 replacement parts, that does all of the following:

15 (i) Can withstand repeated use.

16 (ii) Is primarily and customarily used to serve a medical
17 purpose.

18 (iii) Is not useful generally to a person in the absence of
19 illness or injury.

20 (iv) Is not worn in or on the body.

21 **(K)** ~~(j)~~—"Durable medical equipment repair or replacement
22 parts" includes all components or attachments used in conjunction
23 with durable medical equipment.

24 **(L)** ~~(k)~~—"Electronic" means relating to technology having
25 electrical, digital, magnetic, wireless, optical, electromagnetic,
26 or similar capabilities.

27 **(M)** ~~(l)~~—"Lease or rental" means any transfer of possession or

1 control of tangible personal property for a fixed or indeterminate
2 term for consideration and may include future options to purchase
3 or extend. This definition applies only to leases and rentals
4 entered into after September 1, 2004 and has no retroactive impact
5 on leases and rentals that existed on that date. Lease or rental
6 does not include the following subparagraphs (i) through (iii) and
7 includes subparagraph (iv):

8 (i) A transfer of possession or control of tangible personal
9 property under a security agreement or deferred payment plan that
10 requires the transfer of title upon completion of the required
11 payments.

12 (ii) A transfer of possession or control of tangible personal
13 property under an agreement requiring transfer of title upon
14 completion of the required payments and payment of an option price
15 that does not exceed \$100.00 or 1% of the total required payments,
16 whichever is greater.

17 (iii) The provision of tangible personal property along with
18 an operator for a fixed or indeterminate period of time, where that
19 operator is necessary for the equipment to perform as designed. To
20 be necessary, an operator must do more than maintain, inspect, or
21 set up the tangible personal property.

22 (iv) An agreement covering motor vehicles or trailers if the
23 amount of consideration may be increased or decreased by reference
24 to the amount realized upon sale or disposition of the property as
25 defined in 26 USC 7701(h)(1).

26 **(N)** ~~(m)~~—"Mobility enhancing equipment" means equipment, other
27 than durable medical equipment or a motor vehicle or equipment on a

1 motor vehicle normally provided by a motor vehicle manufacturer,
2 dispensed pursuant to a prescription, including repair or
3 replacement parts for that equipment, that is all of the following:

4 (i) Primarily and customarily used to provide or increase the
5 ability to move from 1 place to another and is appropriate for use
6 at home or on a motor vehicle.

7 (ii) Not generally used by a person with normal mobility.

8 (O) ~~(n)~~ "Prescription" means an order, formula, or recipe,
9 issued in any form of oral, written, electronic, or other means of
10 transmission by a licensed physician or other health professional
11 as defined in section 3501 of the insurance code of 1956, 1956 PA
12 218, MCL 500.3501. For a hearing aid, prescription includes an
13 order, instruction, or direction of a hearing aid dealer or
14 salesperson licensed under article 13 of the occupational code,
15 1980 PA 299, MCL 339.1301 to 339.1309.

16 (P) ~~(e)~~ "Prewritten computer software" means computer
17 software, including prewritten upgrades, that is delivered by any
18 means and that is not designed and developed by the author or other
19 creator to the specifications of a specific purchaser. Prewritten
20 computer software includes all of the following:

21 (i) Any combination of 2 or more prewritten computer software
22 programs or portions of prewritten computer software programs.

23 (ii) Computer software designed and developed by the author or
24 other creator to the specifications of a specific purchaser if it
25 is sold to a person other than that specific purchaser.

26 (iii) The modification or enhancement of prewritten computer
27 software or portions of prewritten computer software where the

1 modification or enhancement is designed and developed to the
2 specifications of a specific purchaser unless there is a
3 reasonable, separately stated charge or an invoice or other
4 statement of the price is given to the purchaser for the
5 modification or enhancement. If a person other than the original
6 author or creator modifies or enhances prewritten computer
7 software, that person is considered to be the author or creator of
8 only that person's modifications or enhancements.

9 **(Q)** ~~(p)~~—"Prosthetic device" means a replacement, corrective,
10 or supportive device, other than contact lenses and dental
11 prosthesis, dispensed pursuant to a prescription, including repair
12 or replacement parts for that device, worn on or in the body to do
13 1 or more of the following:

14 (i) Artificially replace a missing portion of the body.

15 (ii) Prevent or correct a physical deformity or malfunction of
16 the body.

17 (iii) Support a weak or deformed portion of the body.

18 **(R)** ~~(q)~~—"Tobacco" means cigarettes, cigars, chewing or pipe
19 tobacco, or any other item that contains tobacco.

20 Enacting section 1. This amendatory act is retroactive and is
21 effective beginning July 1, 2017.

22 Enacting section 2. This amendatory act does not take effect
23 unless House Bill No. 5164 of the 99th Legislature is enacted into
24 law.