

SENATE BILL No. 1081

September 5, 2018, Introduced by Senators WARREN, GREGORY and HOOD and referred to the Committee on Finance.

A bill to amend 1937 PA 94, entitled
"Use tax act,"
by amending section 4d (MCL 205.94d), as amended by 2015 PA 172.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 4d. (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, over-the-counter drugs for human use
5 that are legally dispensed by prescription, or food or food
6 ingredients, except prepared food intended for immediate human
7 consumption. As used in this subdivision, "over-the-counter drug"
8 means a drug that is labeled in accordance with the format and
9 content requirements required for labeling over-the-counter drugs

1 under 21 CFR 201.66.

2 (b) The deposit on a returnable container for a beverage or
3 the deposit on a carton or case that is used for returnable
4 containers.

5 (c) Food or tangible personal property purchased under the
6 federal food stamp program or meals sold by a person exempt from
7 the tax under this act eligible to be purchased under the federal
8 food stamp program.

9 (d) Fruit or vegetable seeds and fruit or vegetable plants if
10 purchased at a place of business authorized to accept food stamps
11 by the Food and Nutrition Service of the United States Department
12 of Agriculture or a place of business that has made a complete and
13 proper application for authorization to accept food stamps but has
14 been denied authorization and provides proof of denial to the
15 department of treasury.

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

18 **(F) SALES OF MARIHUANA OR MARIHUANA-DERIVED PRODUCTS THAT BEAR**
19 **THE UNIVERSAL SYMBOL AND LABEL REQUIRED UNDER THE MEDICAL MARIHUANA**
20 **FACILITIES LICENSING ACT, 2016 PA 281, MCL 333.27101 TO 333.27801,**
21 **AND THE MARIHUANA TRACKING ACT, 2016 PA 282, MCL 333.27901 TO**
22 **333.27904.**

23 (2) Food or drink heated or cooled mechanically, electrically,
24 or by other artificial means to an average temperature above 75
25 degrees Fahrenheit or below 65 degrees Fahrenheit before sale and
26 sold from a vending machine, except milk, nonalcoholic beverages in
27 a sealed container, and fresh fruit, is subject to the tax under

1 this act. The tax due under this act on the sale of food or drink
2 from a vending machine selling both taxable items and items exempt
3 under this subsection shall be calculated under this act ~~after~~
4 ~~December 31, 1994~~ based on 1 of the following as determined by the
5 taxpayer:

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

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

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

15 (4) "Prepared food" means the following:

16 (a) Food sold in a heated state or that is heated by the
17 seller.

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

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

24 (5) Prepared food does not include the following:

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

27 (b) Raw eggs, fish, meat, poultry, and foods containing those

1 raw items requiring cooking by the consumer in recommendations
2 contained in section 3-401.11 of part 3-4 of chapter 3 of the 2001
3 food code published by the Food and Drug Administration of the
4 Public Health Service of the Department of Health and Human
5 Services, to prevent foodborne illness.

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

8 (d) Bakery items, including bread, rolls, buns, biscuits,
9 bagels, croissants, pastries, doughnuts, danish, cakes, tortes,
10 pies, tarts, muffins, bars, cookies, and tortillas, sold without
11 eating utensils.

12 (6) "Prepared food intended for immediate consumption" means
13 prepared food.

14 Enacting section 1. This amendatory act takes effect 90 days
15 after the date it is enacted into law.