

Second Regular Session
Seventy-third General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 22-0158.01 Pierce Lively x2059

HOUSE BILL 22-1062

HOUSE SPONSORSHIP

McKean,

SENATE SPONSORSHIP

Hisey, Woodward

House Committees
Finance

Senate Committees

A BILL FOR AN ACT

101 CONCERNING THE EXPANSION OF THE SALES AND USE TAX EXEMPTION
102 FOR FOOD TO INCLUDE FOOD THAT IS NOT PREPARED FOR
103 DOMESTIC HOME CONSUMPTION.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill expands the state sales and use tax exemption for food, which currently exempts most food for domestic home consumption, by also exempting from state sales and use tax most food that is not for domestic home consumption and is instead prepared for on-site consumption at a restaurant, grocery store, or other establishment or to be

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

carried out and consumed without additional cooking or preparation.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 29-2-105, **amend**
3 (1)(d)(I)(C) as follows:

4 **29-2-105. Contents of sales tax ordinances and proposals.**

5 (1) The sales tax ordinance or proposal of any incorporated town, city,
6 or county adopted pursuant to this article 2 shall be imposed on the sale
7 of tangible personal property at retail or the furnishing of services, as
8 provided in subsection (1)(d) of this section. Any countywide or
9 incorporated town or city sales tax ordinance or proposal shall include the
10 following provisions:

11 (d) (I) A provision that the sale of tangible personal property and
12 services taxable pursuant to this article 2 shall be the same as the sale of
13 tangible personal property and services taxable pursuant to section
14 39-26-104, except as otherwise provided in this subsection (1)(d). The
15 sale of tangible personal property and services taxable pursuant to this
16 article 2 shall be subject to the same sales tax exemptions as those
17 specified in part 7 of article 26 of title 39; except that the sale of the
18 following may be exempted from a town, city, or county sales tax only by
19 the express inclusion of the exemption either at the time of adoption of
20 the initial sales tax ordinance or resolution or by amendment thereto:

21 (C) The exemption for sales of food specified in ~~section~~
22 ~~39-26-707(1)(e), C.R.S.~~ SECTION 39-26-707 (1)(a);

23 **SECTION 2.** In Colorado Revised Statutes, 39-26-102, **amend**
24 (4.5) as follows:

25 **39-26-102. Definitions.** As used in this article 26, unless the

1 context otherwise requires:

2 (4.5) (a) ~~"Food" means food for domestic home consumption as~~
3 ~~defined in 7 U.S.C. sec. 2012 (k), as amended, for purposes of the federal~~
4 ~~food stamp program, or any successor program, as defined in 7 U.S.C.~~
5 ~~sec. 2012 (l), as amended; except that "food" does not include carbonated~~
6 ~~water marketed in containers; chewing gum; seeds and plants to grow~~
7 ~~foods; prepared salads and salad bars; packaged and unpackaged cold~~
8 ~~sandwiches; deli trays; and hot or cold beverages served in unsealed~~
9 ~~containers or cups that are vended by or through machines or~~
10 ~~non-coin-operated coin-collecting food and snack devices on behalf of a~~
11 ~~vendor~~ OR DRINK INTENDED SOLELY OR PRIMARILY FOR HUMAN
12 CONSUMPTION; EXCEPT THAT "FOOD" DOES NOT INCLUDE ALCOHOL
13 BEVERAGES, AS DEFINED IN SECTION 44-3-103 (2).

14 (b) ~~In determining whether a food product is for domestic home~~
15 ~~consumption, unless the vendor is described in section 39-26-104 (1)(e),~~
16 ~~no inference shall be drawn from the type of vendor selling the product,~~
17 ~~the location of the product within a store, or the manner in which the~~
18 ~~product is marketed.~~

19 **SECTION 3.** In Colorado Revised Statutes, 39-26-104, **amend**
20 (1)(e) as follows:

21 **39-26-104. Property and services taxed - definitions - repeal.**

22 (1) There is levied and there shall be collected and paid a tax in the
23 amount stated in section 39-26-106 as follows:

24 (e) Upon the amount paid for ~~food or drink~~ ALCOHOL BEVERAGES,
25 AS DEFINED IN SECTION 44-3-103 (2), served or furnished in or by
26 restaurants, cafes, lunch counters, cafeterias, hotels, social clubs,
27 nightclubs, cabarets, resorts, snack bars, caterers, carryout shops, and

1 other like places of business at which ~~prepared food or drink is~~ ALCOHOL
2 BEVERAGES ARE regularly sold, including sales from pushcarts, motor
3 vehicles, and other mobile facilities. Cover charges ~~shall be~~ ARE included
4 as part of the amount paid for such ~~food or drink~~. However, ~~meals~~
5 ~~provided to employees of the places mentioned in this paragraph (c) at no~~
6 ~~charge or at a reduced charge shall be exempt from taxation under the~~
7 ~~provisions of this part 1~~ ALCOHOL BEVERAGES OR ANY ALCOHOL
8 BEVERAGES SO SERVED OR FURNISHED.

9 **SECTION 4.** In Colorado Revised Statutes, 39-26-707, **amend**
10 (1), (1.5)(a), and (2)(e); and **repeal** (2)(a), (2)(b), (2)(c), (2)(f), (2)(g), and
11 (4) as follows:

12 **39-26-707. Food, meals, beverages, and packaging -**
13 **definitions.** (1) The following ~~shall be~~ ARE exempt from taxation under
14 the provisions of part 1 of this article 26:

15 (a) All sales of food; ~~purchased with food stamps~~. For the
16 ~~purposes of this subsection (1)(a), "food" has the same meaning as~~
17 ~~provided in 7 U.S.C. sec. 2012, as such section exists on October 1, 1987,~~
18 ~~or is thereafter amended.~~

19 (b) All sales of food ~~purchased with funds provided by the special~~
20 ~~supplemental food program for women, infants, and children, as provided~~
21 ~~for in 42 U.S.C. sec. 1786. For the purposes of this paragraph (b), "food"~~
22 ~~shall have the same meaning as provided in 42 U.S.C. sec. 1786, as such~~
23 ~~section exists on October 1, 1987, or is thereafter amended.~~

24 (c) ~~Any sale of any article to a retailer or vendor of food, meals,~~
25 ~~or beverages, which article is to be furnished to a consumer or user for~~
26 ~~use with articles of tangible personal property purchased at retail, if a~~
27 ~~separate charge is not made for the article to the consumer or user, if such~~

1 article becomes the property of the consumer or user, together with the
2 food, meals, or beverages purchased, and if a tax is paid on the retail sale
3 as required by section 39-26-104 (1)(a) or (1)(c); except that, on or after
4 March 1, 2010, any such article that is nonessential to the consumer or
5 user, as determined by rules of the department of revenue promulgated in
6 accordance with article 4 of title 24, C.R.S., shall be subject to state sales
7 taxation;

8 (d) Any sale of any container or bag to a retailer or vendor of
9 food, meals, or beverages, which container or bag is to be furnished to a
10 consumer or user for the purpose of packaging or bagging articles of
11 tangible personal property purchased at retail, if a separate charge is not
12 made for the container or bag to the consumer or user, if such container
13 or bag becomes the property of the consumer or user, together with the
14 food, meals, or beverages purchased, and if a tax is paid on the retail sale
15 as required by section 39-26-104 (1)(a) or (1)(c); except that, on and after
16 March 1, 2010, any such container or bag that is nonessential to the
17 consumer or user, as determined by rules of the department of revenue
18 promulgated in accordance with article 4 of title 24, C.R.S., shall be
19 subject to state sales taxation;

20 (e) Commencing January 1, 1980, all sales of food; and

21 (f) (I) (A) On and after July 1, 2016, all sales of food, food
22 products, snacks, beverages, and meals provided for consumption by
23 residents on the premises of a retirement community;

24 (B) On and after July 1, 2016, all sales to a retirement community
25 of food, food products, snacks, beverages, and meals for purposes of a
26 sale described in sub-subparagraph (A) of this subparagraph (I);

27 (C) On and after July 1, 2016, All sales of any container, bag, or

1 article used by or furnished to a consumer for the purpose of packaging,
2 bagging, or use with food, food products, snacks, beverages, and meals
3 provided for consumption by residents on the premises of a retirement
4 community; and

5 (D) ~~On and after July 1, 2016,~~ All sales to a retirement community
6 of any container, bag, or article used by or furnished to a consumer for
7 purposes of a sale described in sub-subparagraph (A) of this subparagraph
8 ~~(F) THE SALE OF FOOD PROVIDED FOR CONSUMPTION BY RESIDENTS ON THE~~
9 ~~PREMISES OF A RETIREMENT COMMUNITY.~~

10 (II) ~~For purposes of this paragraph (f), "food" includes prepared~~
11 ~~salads, salad bars, and packaged and unpackaged cold sandwiches.~~

12 (1.5) (a) ~~Notwithstanding the provisions of paragraph (c) of~~
13 ~~subsection (1) SUBSECTION (1)(a) of this section,~~ on and after May 1,
14 2010, sales of candy and soft drinks shall be subject to state sales
15 taxation.

16 (2) The following shall be exempt from taxation under the
17 provisions of part 2 of this article 26:

18 (a) ~~Effective January 1, 1980, the storage, use, or consumption of~~
19 ~~food or meals that are provided to employees of the places described in~~
20 ~~section 39-26-104 (1)(c), if such are provided to such employees at no~~
21 ~~charge or at a reduced charge;~~

22 (b) ~~The storage, use, or consumption of any article by a retailer or~~
23 ~~vendor of food, meals, or beverages, which article is to be furnished to a~~
24 ~~consumer or user for use with articles of tangible personal property~~
25 ~~purchased at retail, if a separate charge is not made for the article to the~~
26 ~~consumer or user, if the article becomes the property of the consumer or~~
27 ~~user, together with the food, meals, or beverages purchased, and if a tax~~

1 is paid on the retail sale as required by section 39-26-104 (1)(a) or (1)(c);
2 except that, on and after March 1, 2010, any such article stored, used, or
3 consumed that is nonessential to the end consumer or user, as determined
4 by rules of the department of revenue promulgated in accordance with
5 article 4 of title 24, C.R.S., shall be subject to state use taxation;

6 (c) The storage, use, or consumption of any container or bag by
7 a retailer or vendor of food, meals, or beverages, which container or bag
8 is to be furnished to a consumer or user for the purpose of packaging or
9 bagging articles of tangible personal property purchased at retail, if a
10 separate charge is not made for the container or bag to the consumer or
11 user, if the container or bag becomes the property of the consumer or
12 user, together with the food, meals, or beverages purchased, and if a tax
13 is paid on the retail sale as required by section 39-26-104 (1)(a) or (1)(c);
14 except that, on and after March 1, 2010, any such container or bag stored,
15 used, or consumed that is nonessential to the end consumer or user, as
16 determined by rules of the department of revenue promulgated in
17 accordance with article 4 of title 24, C.R.S., shall be subject to state use
18 taxation;

19 (e) (I) (A) On and after July 1, 2016, the storage, use, or
20 consumption of food, food products, snacks, beverages, and meals
21 provided for consumption by residents on the premises of a retirement
22 community;

23 (B) On and after July 1, 2016, the storage, use, or consumption by
24 a retirement community of food, food products, snacks, beverages, and
25 meals for purposes of a sale described in sub-subparagraph (A) of
26 subparagraph (I) of paragraph (f) of subsection (1) of this section;

27 (C) On and after July 1, 2016, the storage, use, or consumption of

1 any container, bag, or article used by or furnished to a consumer for the
2 purpose of packaging, bagging, or use with food ~~food products, snacks,~~
3 ~~beverages, and meals~~ provided for consumption by residents on the
4 premises of a retirement community; and

5 (D) On and after July 1, 2016, the storage, use, or consumption by
6 a retirement community of any container, bag, or article used by or
7 furnished to a consumer for purposes of ~~a sale described in~~
8 ~~sub-subparagraph (A) of subparagraph (I) of paragraph (f) of subsection~~
9 ~~(1) of this section~~ THE SALE OF FOOD PROVIDED FOR CONSUMPTION BY
10 RESIDENTS ON THE PREMISES OF A RETIREMENT COMMUNITY.

11 (II) ~~For purposes of this paragraph (e), "food" includes prepared~~
12 ~~salads, salad bars, and packaged and unpackaged cold sandwiches.~~

13 (f) ~~The storage, use, or consumption of all food purchased with~~
14 ~~food stamps. For purposes of this subsection (2)(f), "food" has the same~~
15 ~~meaning as provided in 7 U.S.C. sec. 2012, as such section exists on~~
16 ~~October 1, 1987, or is thereafter amended.~~

17 (g) ~~The storage, use, or consumption of all food purchased with~~
18 ~~funds provided by the special supplemental food program for women,~~
19 ~~infants, and children, as provided for in 42 U.S.C. sec. 1786. For the~~
20 ~~purposes of this subsection (2)(g), "food" has the same meaning as~~
21 ~~provided in 42 U.S.C. sec. 1786, as such section exists on October 1,~~
22 ~~1987, or is thereafter amended.~~

23 (4) ~~For any return made prior to June 1, 2010, a person who sells~~
24 ~~or stores, uses, or consumes items described in paragraphs (c) and (d) of~~
25 ~~subsection (1) and paragraphs (b) and (c) of subsection (2) of this section~~
26 ~~that are nonessential to the end consumer or user shall not be liable for~~
27 ~~any interest or other penalty imposed as a result of an error made in~~

1 ~~connection with the elimination of the exemption for such nonessential~~
2 ~~items from state sales and use tax by House Bill 10-1194, enacted in~~
3 ~~2010.~~

4 **SECTION 5. Act subject to petition - effective date -**
5 **applicability.** (1) This act takes effect January 1, 2023; except that, if a
6 referendum petition is filed pursuant to section 1 (3) of article V of the
7 state constitution against this act or an item, section, or part of this act
8 within the ninety-day period after final adjournment of the general
9 assembly, then the act, item, section, or part will not take effect unless
10 approved by the people at the general election to be held in November
11 2022 and, in such case, will take effect January 1, 2023, or on the date of
12 the official declaration of the vote thereon by the governor, whichever is
13 later.

14 (2) This act applies to sales, storage, use, or consumption of food
15 on or after the applicable effective date of this act.