

INITIATED STATUTE

Concerning the elimination of state and local taxes, fees, and other governmental charges on food.

SECTION 1. Declaration of the People of the State of Colorado.

The people of the state of Colorado find and declare that:

- (1) Food is a necessity of life and should not be subject to state or local taxes or governmental fees imposed on the sale of food.
- (2) The distinction between food for domestic home consumption and food for immediate consumption creates unnecessary complexity and inequity in the tax code for producers and consumers.
- (3) The classification of certain food products for taxation purposes is arbitrary and inconsistent and results in unequal treatment of food products intended for human consumption.
- (4) Uniform statewide treatment of the taxation of food is a matter of statewide concern.
- (5) The people intend that all food and drink for human consumption, except alcohol beverages and specifically excluded products, be exempt from state and local sales and use taxation.
- (6) This act is not intended to impair the obligation of any existing bonded indebtedness lawfully secured by sales or use tax revenues prior to the effective date of this act.
- (7) The people further find that citizens do not have equal access to the referendum power at all levels of local government, including counties and certain special districts. Because voters cannot uniformly challenge local taxation through referendum at those levels of government, statewide voter action is necessary to ensure consistent and fair treatment of the taxation of food throughout Colorado.
- (8) The people further find that Article X, Section 20 of the Colorado Constitution, known as the Taxpayer's Bill of Rights (TABOR), requires voter approval for new taxes and tax rate increases. Governmental entities have at times imposed fees or other charges that function similarly to taxes in order to avoid voter consent requirements. Therefore, it is necessary to clarify that taxes, fees, charges, and other governmental assessments imposed upon the sale or purchase of food are

prohibited, except for regulatory licensing and inspection fees that are limited to recovering the reasonable costs of administering regulatory programs.

(9) The people further find that eliminating taxes and similar governmental charges on food will reduce the financial burden on residents of the state and promote uniform treatment of food purchases across Colorado. Any reduction in governmental revenue resulting from this act is outweighed by the public benefit of ensuring that food, a basic necessity of life, is not subject to taxation.

SECTION 2. In Colorado Revised Statutes, 39-26-102, amend subsection (4.5) to read:

39-26-102. Definitions.

(4.5)(a) “Food” means any food or drink intended for human consumption, whether liquid, solid, frozen, prepared, or unprepared, and whether sold for domestic home consumption or immediate consumption, including beverages such as juice, water, milk, tea, coffee, soda, energy drinks, sports drinks, and other non-alcoholic beverages, as well as ice intended for human consumption, regardless of packaging, labeling, or the location or manner in which the item is sold or prepared.

“Food” does not include:

- (I) Alcohol beverages as defined in section 44-3-103(2);
- (II) Any product required to be labeled with a “Supplement Facts” panel under federal law;
- (III) Any drug, medicine, or medical device, whether dispensed by prescription or sold over the counter;
- (IV) Any product containing marijuana or marijuana concentrate as defined in section 44-10-103, or otherwise regulated under article 10 of title 44;
- (V) Tobacco products or nicotine products.

(b) The classification of an item as food under this subsection (4.5) does not depend on whether the item is packaged or labeled. Food includes unpackaged, bulk, fresh, frozen, prepared, or otherwise unlabeled items intended for human consumption. The absence of a federal or state labeling requirement shall not be used to determine that an item is not food.

SECTION 3. In Colorado Revised Statutes, 39-26-707, amend subsection (1)(a) and repeal subsection (1.5)(a) to read:

39-26-707. Food, meals, beverages, and packaging — definitions.

(1)(a) All sales of food, as defined in section 39-26-102(4.5), are exempt from taxation under part 1 of this article 26.

(1.5)(a) Repealed.

SECTION 4. In Colorado Revised Statutes, 39-26-104(1)(e), amend to read:

39-26-104. Property and services taxed.

(1)(e) There is levied and shall be collected a tax upon the amount paid for alcoholic beverages, as defined in section 44-3-103(2), served or furnished in or by restaurants, cafes, lunch counters, cafeterias, hotels, social clubs, nightclubs, cabarets, resorts, snack bars, caterers, carryout shops, and other like places of business at which prepared food or drink is regularly sold.

Cover charges shall be included as part of the amount paid for such alcohol beverages.

SECTION 5. Statewide Preemption of Local Taxation of Food.

(1) Notwithstanding any provision of a municipal charter, ordinance, resolution, special district regulation, or other local law to the contrary, no municipality, county, city and county, home-rule municipality, or special district shall impose or collect sales tax, use tax, fee, charge, or other governmental assessment imposed on or measured by the sale or purchase of food as defined in section 39-26-102(4.5), except for alcoholic beverages.

(2) Nothing in this section shall be construed to prohibit regulatory licensing or inspection fees imposed on food establishments, provided that such fees are imposed solely to recover the direct and indirect costs of administering a regulatory program and are not based upon, measured by, or imposed upon the sale or purchase of food.

(3) Any local law inconsistent with this section is hereby superseded.

(4) The regulation of sales and use taxation of food is declared to be a matter of statewide concern.

SECTION 6. Protection of Existing Bonded Obligations; Automatic Sunset.

(1) Nothing in this act shall be construed to impair the obligation of any bonded indebtedness or other contractual pledge of sales or use tax revenues lawfully authorized and outstanding prior to January 1, 2028.

(2) For purposes of this section, “bonded indebtedness” means bonds, notes, certificates of participation, lease-purchase agreements, or other evidences of indebtedness secured by a pledge of sales or use tax revenues issued or entered into by a municipality, county, city and county, home-rule municipality, or special district prior to January 1, 2028.

(3) A local government that pledged sales or use tax revenues derived from food to secure such bonded indebtedness prior to January 1, 2028 may continue to impose

and collect such tax solely to the extent necessary to satisfy scheduled principal and interest payments on that indebtedness. The authority granted in subsection (3) shall not extend to any refinancing, reissuance, extension, or modification except for refinancing that reduces the interest rate or total repayment cost and does not extend the final maturity date beyond the maturity date in effect on January 1, 2028.

(4) Upon satisfaction of the bonded indebtedness described in subsection (3), no further sales or use tax shall be imposed or collected on food as defined in section 39-26-102(4.5).

(5) No bonded indebtedness issued on or after January 1, 2028, may pledge or rely upon revenue derived from the sale of food.

SECTION 7. Effective Date and Applicability.

This act takes effect January 1, 2028, and applies to sales, storage, use, or consumption occurring on or after January 1, 2028.