

First Regular Session  
Seventy-fourth General Assembly  
STATE OF COLORADO

DRAFT  
9.2.22

**BILL 7**

LLS NO. 23-0128.01 Pierce Lively x2059

**INTERIM COMMITTEE BILL**

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**Legislative Oversight Committee Concerning Tax Policy**

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**BILL TOPIC: "Sales Tax Computer Software"**

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**A BILL FOR AN ACT**

101 **CONCERNING MODIFICATION OF THE EXTENT TO WHICH COMPUTER**  
102 **SOFTWARE IS SUBJECT TO STATE SALES AND USE TAX.**

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**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/>.)*

**Legislative Oversight Committee Concerning Tax Policy.** The downloaded software tax exemption exempts certain software that is downloaded at the time of purchase from sales tax by modifying the definition of tangible personal property. The bill modifies this exemption so that all software that is designed for repeated sale or license qualifies as tangible personal property and thus is subject to sales tax.

*Capital letters or bold & italic numbers indicate new material to be added to existing statute.  
Dashes through the words indicate deletions from existing statute.*

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

2           **SECTION 1. Legislative declaration.** (1) The general assembly  
3 hereby finds and declares that:

4           (a) The downloaded software tax exemption, by modifying the  
5 definition of tangible personal property to not include certain types of  
6 software, exempts certain software that is downloaded at the time of  
7 purchase from sales tax;

8           (b) The primary purpose of this tax exemption was to resolve  
9 taxpayer confusion and decrease administrative burden by clarifying the  
10 definition of tangible personal property as it relates to software;

11           (c) The primary purpose of this act is to further resolve taxpayer  
12 confusion and decrease administrative burden by simplifying the tax  
13 exemption to make it clear that only computer software that is designed  
14 for repeated sale or license qualifies as personal tangible property and is  
15 subject to sales tax; and

16           (d) This change will only cause a de minimis revenue gain that is  
17 incidental to the act's primary purpose.

18           **SECTION 2.** In Colorado Revised Statutes, 39-26-102, **amend**  
19 (5.7), (15)(c)(I) introductory portion, (15)(c)(I)(A), (15)(c)(I)(C), and  
20 (15)(c)(II) introductory portion; **repeal** (15)(c)(I)(B), (15)(c)(II)(E), and  
21 (15)(c)(II)(G); and **add** (15)(c)(II)(B.5) as follows:

22           **39-26-102. Definitions.** As used in this article 26, unless the  
23 context otherwise requires:

24           (5.7) "Mainframe computer access" means the provision of access  
25 to computer equipment for the purpose of storing or processing data.  
26 "Mainframe computer access" does not include the provision of access to

1 computer equipment for the purpose of examining or acquiring data  
2 maintained by the vendor. "~~Mainframe computer access~~" does not include  
3 ~~the provision of access to computer equipment incident to electronic~~  
4 ~~computer software delivery, as defined in subsection (15)(c)(H)(C) of this~~  
5 ~~section, or incident to the use of computer software hosted by an~~  
6 ~~application service provider, as defined in subsection (15)(c)(H)(A) of~~  
7 ~~this section.~~

8 (15) (c) (I) "~~Tangible personal property~~" ~~commencing July 1,~~  
9 ~~2012, shall include~~ INCLUDES computer software if the computer software  
10 meets all of the following criteria:

11 (A) The computer software is ~~prepackaged~~ DESIGNED for repeated  
12 sale or license; AND

13 (B) ~~The use of the computer software is governed by a tear-open~~  
14 ~~nonnegotiable license agreement; and~~

15 (C) The computer software is delivered to the customer in a  
16 tangible medium, ~~Computer software is not delivered to the customer in~~  
17 ~~a tangible medium if it is~~ provided through an application service  
18 provider, delivered by electronic computer software delivery, or  
19 transferred by load and leave computer software delivery.

20 (II) As used in this ~~paragraph (c)~~ SUBSECTION (15)(c), unless the  
21 context otherwise requires:

22 (B.5) "DESIGNED FOR REPEATED SALE OR LICENSE" MEANS  
23 COMPUTER SOFTWARE THAT IS DESIGNED FOR REPEATED SALE OR LICENSE  
24 IN THE SAME FORM TO MULTIPLE USERS WITHOUT SUBSTANTIAL  
25 MODIFICATION.

26 (E) "~~Prepackaged for repeated sale or license~~" means computer  
27 software that is ~~prepackaged for repeated sale or license in the same form~~

1 ~~to multiple users without modification, and is typically sold in a~~  
2 ~~shrink-wrapped box.~~

3 (G) ~~"Tear-open nonnegotiable license agreement" means a license~~  
4 ~~agreement contained on or in the package, which by its terms becomes~~  
5 ~~effective upon opening of the package and accepting the licensing~~  
6 ~~agreement. "Tear-open nonnegotiable license agreement" does not~~  
7 ~~include a written license agreement or contract signed by the licensor and~~  
8 ~~the licensee.~~

9 **SECTION 3. Act subject to petition - effective date -**  
10 **applicability.** (1) This act takes effect January 1, 2024; except that, if a  
11 referendum petition is filed pursuant to section 1 (3) of article V of the  
12 state constitution against this act or an item, section, or part of this act  
13 within the ninety-day period after final adjournment of the general  
14 assembly, then the act, item, section, or part will not take effect unless  
15 approved by the people at the general election to be held in November  
16 2024 and, in such case, will take effect on the date of the official  
17 declaration of the vote thereon by the governor.

18 (2) This act applies to retail sales of computer software made on  
19 or after the applicable effective date of this act.