
SUBSTITUTE SENATE BILL 5613

State of Washington

63rd Legislature

2013 Regular Session

By Senate Ways & Means (originally sponsored by Senators Murray, Fain, Kohl-Welles, and Keiser)

READ FIRST TIME 03/01/13.

1 AN ACT Relating to providing that certain cover charges for the
2 opportunity to dance are not considered retail sales; and amending RCW
3 82.04.050.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 82.04.050 and 2011 c 174 s 202 are each amended to
6 read as follows:

7 (1)(a) "Sale at retail" or "retail sale" means every sale of
8 tangible personal property (including articles produced, fabricated, or
9 imprinted) to all persons irrespective of the nature of their business
10 and including, among others, without limiting the scope hereof, persons
11 who install, repair, clean, alter, improve, construct, or decorate real
12 or personal property of or for consumers other than a sale to a person
13 who:

14 (i) Purchases for the purpose of resale as tangible personal
15 property in the regular course of business without intervening use by
16 such person, but a purchase for the purpose of resale by a regional
17 transit authority under RCW 81.112.300 is not a sale for resale; or

18 (ii) Installs, repairs, cleans, alters, imprints, improves,
19 constructs, or decorates real or personal property of or for consumers,

1 if such tangible personal property becomes an ingredient or component
2 of such real or personal property without intervening use by such
3 person; or

4 (iii) Purchases for the purpose of consuming the property purchased
5 in producing for sale as a new article of tangible personal property or
6 substance, of which such property becomes an ingredient or component or
7 is a chemical used in processing, when the primary purpose of such
8 chemical is to create a chemical reaction directly through contact with
9 an ingredient of a new article being produced for sale; or

10 (iv) Purchases for the purpose of consuming the property purchased
11 in producing ferrosilicon which is subsequently used in producing
12 magnesium for sale, if the primary purpose of such property is to
13 create a chemical reaction directly through contact with an ingredient
14 of ferrosilicon; or

15 (v) Purchases for the purpose of providing the property to
16 consumers as part of competitive telephone service, as defined in RCW
17 82.04.065; or

18 (vi) Purchases for the purpose of satisfying the person's
19 obligations under an extended warranty as defined in subsection (7) of
20 this section, if such tangible personal property replaces or becomes an
21 ingredient or component of property covered by the extended warranty
22 without intervening use by such person.

23 (b) The term includes every sale of tangible personal property that
24 is used or consumed or to be used or consumed in the performance of any
25 activity defined as a "sale at retail" or "retail sale" even though
26 such property is resold or used as provided in (a)(i) through (vi) of
27 this subsection following such use.

28 (c) The term also means every sale of tangible personal property to
29 persons engaged in any business that is taxable under RCW 82.04.280(1)
30 (a), (b), and (g), 82.04.290, and 82.04.2908.

31 (2) The term "sale at retail" or "retail sale" includes the sale of
32 or charge made for tangible personal property consumed and/or for labor
33 and services rendered in respect to the following:

34 (a) The installing, repairing, cleaning, altering, imprinting, or
35 improving of tangible personal property of or for consumers, including
36 charges made for the mere use of facilities in respect thereto, but
37 excluding charges made for the use of self-service laundry facilities,

1 and also excluding sales of laundry service to nonprofit health care
2 facilities, and excluding services rendered in respect to live animals,
3 birds and insects;

4 (b) The constructing, repairing, decorating, or improving of new or
5 existing buildings or other structures under, upon, or above real
6 property of or for consumers, including the installing or attaching of
7 any article of tangible personal property therein or thereto, whether
8 or not such personal property becomes a part of the realty by virtue of
9 installation, and also includes the sale of services or charges made
10 for the clearing of land and the moving of earth excepting the mere
11 leveling of land used in commercial farming or agriculture;

12 (c) The constructing, repairing, or improving of any structure
13 upon, above, or under any real property owned by an owner who conveys
14 the property by title, possession, or any other means to the person
15 performing such construction, repair, or improvement for the purpose of
16 performing such construction, repair, or improvement and the property
17 is then reconveyed by title, possession, or any other means to the
18 original owner;

19 (d) The cleaning, fumigating, razing, or moving of existing
20 buildings or structures, but does not include the charge made for
21 janitorial services; and for purposes of this section the term
22 "janitorial services" means those cleaning and caretaking services
23 ordinarily performed by commercial janitor service businesses
24 including, but not limited to, wall and window washing, floor cleaning
25 and waxing, and the cleaning in place of rugs, drapes and upholstery.
26 The term "janitorial services" does not include painting, papering,
27 repairing, furnace or septic tank cleaning, snow removal or
28 sandblasting;

29 (e) Automobile towing and similar automotive transportation
30 services, but not in respect to those required to report and pay taxes
31 under chapter 82.16 RCW;

32 (f) The furnishing of lodging and all other services by a hotel,
33 rooming house, tourist court, motel, trailer camp, and the granting of
34 any similar license to use real property, as distinguished from the
35 renting or leasing of real property, and it is presumed that the
36 occupancy of real property for a continuous period of one month or more
37 constitutes a rental or lease of real property and not a mere license
38 to use or enjoy the same. For the purposes of this subsection, it is

1 presumed that the sale of and charge made for the furnishing of lodging
2 for a continuous period of one month or more to a person is a rental or
3 lease of real property and not a mere license to enjoy the same;

4 (g) The installing, repairing, altering, or improving of digital
5 goods for consumers;

6 (h) Persons taxable under (a), (b), (c), (d), (e), (f), and (g) of
7 this subsection when such sales or charges are for property, labor and
8 services which are used or consumed in whole or in part by such persons
9 in the performance of any activity defined as a "sale at retail" or
10 "retail sale" even though such property, labor and services may be
11 resold after such use or consumption. Nothing contained in this
12 subsection may be construed to modify subsection (1) of this section
13 and nothing contained in subsection (1) of this section may be
14 construed to modify this subsection.

15 (3) The term "sale at retail" or "retail sale" includes the sale of
16 or charge made for personal, business, or professional services
17 including amounts designated as interest, rents, fees, admission, and
18 other service emoluments however designated, received by persons
19 engaging in the following business activities:

20 (a)(i) Amusement and recreation services including but not limited
21 to golf, pool, billiards, skating, bowling, ski lifts and tows, day
22 trips for sightseeing purposes, and others, when provided to consumers.

23 (ii) Amusement and recreation services do not include the
24 opportunity to dance provided by an establishment in exchange for a
25 cover charge.

26 (iii) For purposes of this subsection (3)(a):

27 (A) "Cover charge" means a charge, regardless of its label, to
28 enter an establishment or added to the purchaser's bill by an
29 establishment or otherwise collected after entrance to the
30 establishment, and the purchaser is provided the opportunity to dance
31 in exchange for payment of the charge.

32 (B) "Opportunity to dance" means that an establishment provides a
33 designated physical space, on either a temporary or permanent basis,
34 where customers are allowed to dance and the establishment either
35 advertises or otherwise makes customers aware that it has an area for
36 dancing;

37 (b) Abstract, title insurance, and escrow services;

38 (c) Credit bureau services;

1 (d) Automobile parking and storage garage services;

2 (e) Landscape maintenance and horticultural services but excluding
3 (i) horticultural services provided to farmers and (ii) pruning,
4 trimming, repairing, removing, and clearing of trees and brush near
5 electric transmission or distribution lines or equipment, if performed
6 by or at the direction of an electric utility;

7 (f) Service charges associated with tickets to professional
8 sporting events; and

9 (g) The following personal services: Physical fitness services,
10 tanning salon services, tattoo parlor services, steam bath services,
11 turkish bath services, escort services, and dating services.

12 (4)(a) The term also includes the renting or leasing of tangible
13 personal property to consumers.

14 (b) The term does not include the renting or leasing of tangible
15 personal property where the lease or rental is for the purpose of
16 sublease or subrent.

17 (5) The term also includes the providing of "competitive telephone
18 service," "telecommunications service," or "ancillary services," as
19 those terms are defined in RCW 82.04.065, to consumers.

20 (6)(a) The term also includes the sale of prewritten computer
21 software to a consumer, regardless of the method of delivery to the end
22 user. For purposes of this subsection (6)(a), the sale of prewritten
23 computer software includes the sale of or charge made for a key or an
24 enabling or activation code, where the key or code is required to
25 activate prewritten computer software and put the software into use.
26 There is no separate sale of the key or code from the prewritten
27 computer software, regardless of how the sale may be characterized by
28 the vendor or by the purchaser.

29 The term "retail sale" does not include the sale of or charge made
30 for:

31 (i) Custom software; or

32 (ii) The customization of prewritten computer software.

33 (b)(i) The term also includes the charge made to consumers for the
34 right to access and use prewritten computer software, where possession
35 of the software is maintained by the seller or a third party,
36 regardless of whether the charge for the service is on a per use, per
37 user, per license, subscription, or some other basis.

1 (ii)(A) The service described in (b)(i) of this subsection (6)
2 includes the right to access and use prewritten computer software to
3 perform data processing.

4 (B) For purposes of this subsection (6)(b)(ii), "data processing"
5 means the systematic performance of operations on data to extract the
6 required information in an appropriate form or to convert the data to
7 usable information. Data processing includes check processing, image
8 processing, form processing, survey processing, payroll processing,
9 claim processing, and similar activities.

10 (7) The term also includes the sale of or charge made for an
11 extended warranty to a consumer. For purposes of this subsection,
12 "extended warranty" means an agreement for a specified duration to
13 perform the replacement or repair of tangible personal property at no
14 additional charge or a reduced charge for tangible personal property,
15 labor, or both, or to provide indemnification for the replacement or
16 repair of tangible personal property, based on the occurrence of
17 specified events. The term "extended warranty" does not include an
18 agreement, otherwise meeting the definition of extended warranty in
19 this subsection, if no separate charge is made for the agreement and
20 the value of the agreement is included in the sales price of the
21 tangible personal property covered by the agreement. For purposes of
22 this subsection, "sales price" has the same meaning as in RCW
23 82.08.010.

24 (8)(a) The term also includes the following sales to consumers of
25 digital goods, digital codes, and digital automated services:

26 (i) Sales in which the seller has granted the purchaser the right
27 of permanent use;

28 (ii) Sales in which the seller has granted the purchaser a right of
29 use that is less than permanent;

30 (iii) Sales in which the purchaser is not obligated to make
31 continued payment as a condition of the sale; and

32 (iv) Sales in which the purchaser is obligated to make continued
33 payment as a condition of the sale.

34 (b) A retail sale of digital goods, digital codes, or digital
35 automated services under this subsection (8) includes any services
36 provided by the seller exclusively in connection with the digital
37 goods, digital codes, or digital automated services, whether or not a
38 separate charge is made for such services.

1 (c) For purposes of this subsection, "permanent" means perpetual or
2 for an indefinite or unspecified length of time. A right of permanent
3 use is presumed to have been granted unless the agreement between the
4 seller and the purchaser specifies or the circumstances surrounding the
5 transaction suggest or indicate that the right to use terminates on the
6 occurrence of a condition subsequent.

7 (9) The term also includes the charge made for providing tangible
8 personal property along with an operator for a fixed or indeterminate
9 period of time. A consideration of this is that the operator is
10 necessary for the tangible personal property to perform as designed.
11 For the purpose of this subsection (9), an operator must do more than
12 maintain, inspect, or set up the tangible personal property.

13 (10) The term does not include the sale of or charge made for labor
14 and services rendered in respect to the building, repairing, or
15 improving of any street, place, road, highway, easement, right-of-way,
16 mass public transportation terminal or parking facility, bridge,
17 tunnel, or trestle which is owned by a municipal corporation or
18 political subdivision of the state or by the United States and which is
19 used or to be used primarily for foot or vehicular traffic including
20 mass transportation vehicles of any kind.

21 (11) The term also does not include sales of chemical sprays or
22 washes to persons for the purpose of postharvest treatment of fruit for
23 the prevention of scald, fungus, mold, or decay, nor does it include
24 sales of feed, seed, seedlings, fertilizer, agents for enhanced
25 pollination including insects such as bees, and spray materials to:
26 (a) Persons who participate in the federal conservation reserve
27 program, the environmental quality incentives program, the wetlands
28 reserve program, and the wildlife habitat incentives program, or their
29 successors administered by the United States department of agriculture;
30 (b) farmers for the purpose of producing for sale any agricultural
31 product; and (c) farmers acting under cooperative habitat development
32 or access contracts with an organization exempt from federal income tax
33 under 26 U.S.C. Sec. 501(c)(3) of the federal internal revenue code or
34 the Washington state department of fish and wildlife to produce or
35 improve wildlife habitat on land that the farmer owns or leases.

36 (12) The term does not include the sale of or charge made for labor
37 and services rendered in respect to the constructing, repairing,
38 decorating, or improving of new or existing buildings or other

1 structures under, upon, or above real property of or for the United
2 States, any instrumentality thereof, or a county or city housing
3 authority created pursuant to chapter 35.82 RCW, including the
4 installing, or attaching of any article of tangible personal property
5 therein or thereto, whether or not such personal property becomes a
6 part of the realty by virtue of installation. Nor does the term
7 include the sale of services or charges made for the clearing of land
8 and the moving of earth of or for the United States, any
9 instrumentality thereof, or a county or city housing authority. Nor
10 does the term include the sale of services or charges made for cleaning
11 up for the United States, or its instrumentalities, radioactive waste
12 and other by-products of weapons production and nuclear research and
13 development.

14 (13) The term does not include the sale of or charge made for
15 labor, services, or tangible personal property pursuant to agreements
16 providing maintenance services for bus, rail, or rail fixed guideway
17 equipment when a regional transit authority is the recipient of the
18 labor, services, or tangible personal property, and a transit agency,
19 as defined in RCW 81.104.015, performs the labor or services.

20 (14) The term does not include the sale for resale of any service
21 described in this section if the sale would otherwise constitute a
22 "sale at retail" and "retail sale" under this section.

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