

**SSB 5096** - S AMD TO S AMD (S-1657.6/21) **406**  
By Senator Fortunato

**NOT ADOPTED 03/06/2021**

1 On page 12, line 3, after "treasury." insert "By July 1, 2023,  
2 and by each July 1st thereafter, the state treasurer shall, to the  
3 extent funds are available, transfer from the taxpayer fairness  
4 account to the general fund an amount equal to the estimated decrease  
5 in general fund revenues resulting from the sales and use tax  
6 exemptions provided in sections 116 through 118 of this act."

7 On page 12, after line 32, insert the following:

8 **"NEW SECTION. Sec. 116.** A new section is added to chapter 82.08  
9 RCW to read as follows:

10 (1) The tax levied by RCW 82.08.020 does not apply to sales of  
11 clothing and footwear for human use.

12 (2) The definitions in this subsection apply throughout this  
13 section unless the context clearly requires otherwise.

14 (a)(i) "Clothing" means all human wearing apparel suitable for  
15 general use. "Clothing" also includes:

16 (A) Protective equipment necessary for the daily work of the  
17 user; and

18 (B) Sewing equipment and supplies.

19 (ii) "Clothing" does not include: Clothing accessories or  
20 equipment, fur clothing, and sport or recreational equipment.

21 (b) "Clothing accessories or equipment" means incidental items  
22 worn on the person or in conjunction with clothing that are sold  
23 separately.

24 (c) "Fur clothing" means clothing that is required to be labeled  
25 as a fur product under 15 U.S.C. Sec. 69, and the value of the fur  
26 components in the product is more than three times the value of the  
27 next most valuable tangible component. For the purposes of this  
28 subsection, "fur" means any animal skin or part thereof with hair,  
29 fleece, or fur fibers attached thereto, either in its raw or  
30 processed state, but does not include such skins that have been  
31 converted into leather or suede, or which in processing the hair,  
32 fleece, or fur fiber has been completely removed.

1 (d) "Protective equipment" means items for human wear and  
2 designed as protection of the wearer against injury or disease or as  
3 protections against damage or injury of other persons or property but  
4 not suitable for general use.

5 (e) "Sewing equipment and supplies" means sewing materials  
6 including, but not limited to: Fabrics, thread, knitting yarn,  
7 buttons, and zippers, purchased by noncommercial purchasers for  
8 incorporation into clothing as a constituent part thereof.

9 (f) "Sport or recreational equipment" means items designed for  
10 human use and worn in conjunction with an athletic or recreational  
11 activity that are not suitable for general use.

12 **Sec. 117.** RCW 82.08.0293 and 2019 c 8 s 401 are each amended to  
13 read as follows:

14 (1) The tax levied by RCW 82.08.020 does not apply to sales of  
15 food and food ingredients. "Food and food ingredients" means  
16 substances, whether in liquid, concentrated, solid, frozen, dried, or  
17 dehydrated form, that are sold for ingestion or chewing by humans and  
18 are consumed for their taste or nutritional value. "Food and food  
19 ingredients" includes "prepared food." "Food and food ingredients"  
20 does not include:

21 (a) "Alcoholic beverages," which means beverages that are  
22 suitable for human consumption and contain one-half of one percent or  
23 more of alcohol by volume;

24 (b) "Tobacco," which means cigarettes, cigars, chewing or pipe  
25 tobacco, or any other item that contains tobacco; and

26 (c) Marijuana, useable marijuana, or marijuana-infused products.

27 (2) The exemption of "food and food ingredients" provided for in  
28 subsection (1) of this section does not apply to (~~prepared food,~~)  
29 soft drinks, bottled water, or dietary supplements. The definitions  
30 in this subsection apply throughout this section unless the context  
31 clearly requires otherwise.

32 (a) "Bottled water" means water that is placed in a safety sealed  
33 container or package for human consumption. Bottled water is calorie  
34 free and does not contain sweeteners or other additives except that  
35 it may contain: (i) Antimicrobial agents; (ii) fluoride; (iii)  
36 carbonation; (iv) vitamins, minerals, and electrolytes; (v) oxygen;  
37 (vi) preservatives; and (vii) only those flavors, extracts, or  
38 essences derived from a spice or fruit. "Bottled water" includes

1 water that is delivered to the buyer in a reusable container that is  
2 not sold with the water.

3 (b) "Dietary supplement" means any product, other than tobacco,  
4 intended to supplement the diet that:

5 (i) Contains one or more of the following dietary ingredients:

6 (A) A vitamin;

7 (B) A mineral;

8 (C) An herb or other botanical;

9 (D) An amino acid;

10 (E) A dietary substance for use by humans to supplement the diet  
11 by increasing the total dietary intake; or

12 (F) A concentrate, metabolite, constituent, extract, or  
13 combination of any ingredient described in this subsection;

14 (ii) Is intended for ingestion in tablet, capsule, powder,  
15 softgel, gelcap, or liquid form, or if not intended for ingestion in  
16 such form, is not represented as conventional food and is not  
17 represented for use as a sole item of a meal or of the diet; and

18 (iii) Is required to be labeled as a dietary supplement,  
19 identifiable by the "supplement facts" box found on the label as  
20 required pursuant to 21 C.F.R. Sec. 101.36, as amended or renumbered  
21 as of January 1, 2003.

22 (c) (i) "Prepared food" means:

23 (A) Food sold in a heated state or heated by the seller;

24 (B) Food sold with eating utensils provided by the seller,  
25 including plates, knives, forks, spoons, glasses, cups, napkins, or  
26 straws. A plate does not include a container or packaging used to  
27 transport the food; or

28 (C) Two or more food ingredients mixed or combined by the seller  
29 for sale as a single item, except:

30 (I) Food that is only cut, repackaged, or pasteurized by the  
31 seller; or

32 (II) Raw eggs, fish, meat, poultry, and foods containing these  
33 raw animal foods requiring cooking by the consumer as recommended by  
34 the federal food and drug administration in chapter 3, part 401.11 of  
35 The Food Code, published by the food and drug administration, as  
36 amended or renumbered as of January 1, 2003, so as to prevent  
37 foodborne illness.

38 (ii) Food is "sold with eating utensils provided by the seller"  
39 if:

1 (A) The seller's customary practice for that item is to  
2 physically deliver or hand a utensil to the customer with the food or  
3 food ingredient as part of the sales transaction. If the food or food  
4 ingredient is prepackaged with a utensil, the seller is considered to  
5 have physically delivered a utensil to the customer unless the food  
6 and utensil are prepackaged together by a food manufacturer  
7 classified under sector 311 of the North American industry  
8 classification system (NAICS);

9 (B) A plate, glass, cup, or bowl is necessary to receive the food  
10 or food ingredient, and the seller makes those utensils available to  
11 its customers; or

12 (C) (I) The seller makes utensils available to its customers, and  
13 the seller has more than seventy-five percent prepared food sales.  
14 For purposes of this subsection (2)(c)(ii)(C), a seller has more than  
15 seventy-five percent prepared food sales if the seller's gross retail  
16 sales of prepared food under (c)(i)(A), (c)(i)(C), and (c)(ii)(B) of  
17 this subsection equal more than seventy-five percent of the seller's  
18 gross retail sales of all food and food ingredients, including  
19 prepared food, soft drinks, and dietary supplements.

20 (II) However, even if a seller has more than seventy-five percent  
21 prepared food sales, four servings or more of food or food  
22 ingredients packaged for sale as a single item and sold for a single  
23 price are not "sold with utensils provided by the seller" unless the  
24 seller's customary practice for the package is to physically hand or  
25 otherwise deliver a utensil to the customer as part of the sales  
26 transaction. Whenever available, the number of servings included in a  
27 package of food or food ingredients must be determined based on the  
28 manufacturer's product label. If no label is available, the seller  
29 must reasonably determine the number of servings.

30 (III) The seller must determine a single prepared food sales  
31 percentage annually for all the seller's establishments in the state  
32 based on the prior year of sales. The seller may elect to determine  
33 its prepared food sales percentage based either on the prior calendar  
34 year or on the prior fiscal year. A seller may not change its elected  
35 method for determining its prepared food percentage without the  
36 written consent of the department. The seller must determine its  
37 annual prepared food sales percentage as soon as possible after  
38 accounting records are available, but in no event later than ninety  
39 days after the beginning of the seller's calendar or fiscal year. A  
40 seller may make a good faith estimate of its first annual prepared

1 food sales percentage if the seller's records for the prior year are  
2 not sufficient to allow the seller to calculate the prepared food  
3 sales percentage. The seller must adjust its good faith estimate  
4 prospectively if its relative sales of prepared foods in the first  
5 ninety days of operation materially depart from the seller's  
6 estimate.

7 (iii) "Prepared food" (~~does not include~~) includes the following  
8 items, if sold without eating utensils provided by the seller:

9 (A) Food sold by a seller whose proper primary NAICS  
10 classification is manufacturing in sector 311, except subsector 3118  
11 (bakeries), as provided in the "North American industry  
12 classification system—United States, 2002";

13 (B) Food sold in an unheated state by weight or volume as a  
14 single item; or

15 (C) Bakery items. The term "bakery items" includes bread, rolls,  
16 buns, biscuits, bagels, croissants, pastries, donuts, Danish, cakes,  
17 tortes, pies, tarts, muffins, bars, cookies, or tortillas.

18 (d) "Soft drinks" means nonalcoholic beverages that contain  
19 natural or artificial sweeteners. Soft drinks do not include  
20 beverages that contain: Milk or milk products; soy, rice, or similar  
21 milk substitutes; or greater than fifty percent of vegetable or fruit  
22 juice by volume.

23 (3) Notwithstanding anything in this section to the contrary, the  
24 exemption of "food and food ingredients" provided in this section  
25 applies to food and food ingredients that are furnished, prepared, or  
26 served as meals:

27 (a) Under a state administered nutrition program for the aged as  
28 provided for in the older Americans act (P.L. 95-478 Title III) and  
29 RCW 74.38.040(6);

30 (b) That are provided to senior citizens, individuals with  
31 disabilities, or low-income persons by a not-for-profit organization  
32 organized under chapter 24.03 or 24.12 RCW; or

33 (c) That are provided to residents, sixty-two years of age or  
34 older, of a qualified low-income senior housing facility by the  
35 lessor or operator of the facility. The sale of a meal that is billed  
36 to both spouses of a marital community or both domestic partners of a  
37 domestic partnership meets the age requirement in this subsection

38 (3)(c) if at least one of the spouses or domestic partners is at  
39 least sixty-two years of age. For purposes of this subsection,  
40 "qualified low-income senior housing facility" means a facility:

1 (i) That meets the definition of a qualified low-income housing  
2 project under 26 U.S.C. Sec. 42 of the federal internal revenue code,  
3 as existing on August 1, 2009;

4 (ii) That has been partially funded under 42 U.S.C. Sec. 1485;  
5 and

6 (iii) For which the lessor or operator has at any time been  
7 entitled to claim a federal income tax credit under 26 U.S.C. Sec. 42  
8 of the federal internal revenue code.

9 (4)(a) Subsection (1) of this section notwithstanding, the retail  
10 sale of food and food ingredients is subject to sales tax under RCW  
11 82.08.020 if the food and food ingredients are sold through a vending  
12 machine. Except as provided in (b) of this subsection, the selling  
13 price of food and food ingredients sold through a vending machine for  
14 purposes of RCW 82.08.020 is fifty-seven percent of the gross  
15 receipts.

16 (b) For soft drinks, bottled water, and hot prepared food and  
17 food ingredients, other than food and food ingredients which are  
18 heated after they have been dispensed from the vending machine, the  
19 selling price is the total gross receipts of such sales divided by  
20 the sum of one plus the sales tax rate expressed as a decimal.

21 (c) For tax collected under this subsection (4), the requirements  
22 that the tax be collected from the buyer and that the amount of tax  
23 be stated as a separate item are waived.

24 NEW SECTION. Sec. 118. A new section is added to chapter 82.12  
25 RCW to read as follows:

26 (1) The provisions of this chapter do not apply with respect to  
27 the use of clothing and footwear for human use.

28 (2) For the purposes of this section, definitions, conditions,  
29 and requirements in section 116 of this act apply to this section."

30 On page 13, after line 20, insert the following:

31 "NEW SECTION. Sec. 206. Sections 116 through 118 of this act  
32 take effect January 1, 2023."

**SSB 5096 - S AMD TO S AMD (S-1657.6/21) 406**  
By Senator Fortunato

**NOT ADOPTED 03/06/2021**

1        On page 13, beginning on line 24, after "assets;" strike all  
2 material through "emergency." on line 27 and insert "amending RCW  
3 82.08.0293; adding a new section to chapter 82.04 RCW; adding a new  
4 section to chapter 82.08 RCW; adding a new section to chapter 82.12  
5 RCW; adding a new chapter to Title 82 RCW; creating new sections;  
6 prescribing penalties; providing an effective date; and declaring an  
7 emergency."

EFFECT: Provides sales and use tax exemptions for clothing and prepared food. Backfills revenue impact to the state general fund by using capital gains tax revenues deposited into the taxpayer fairness account to the extent funds are available in the taxpayer fairness account.

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