

2026 South Dakota Legislature

Senate Bill 172**AMENDMENT 172A
FOR THE INTRODUCED BILL**

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

1 **An Act to ~~enhance the economy of South Dakota~~ reduce the state sales tax and use**
2 **tax rates on food and food ingredients to zero percent.**

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 **Section 1. That § 10-45-1 be AMENDED:**

5 **10-45-1.** Terms used in this chapter mean:

6 (1) "Agricultural purposes," the producing, raising, growing, or harvesting of food or
7 fiber upon agricultural land, including dairy products, livestock, and crops. The
8 services of custom harvesters, chemical applicators, fertilizer spreaders, hay
9 grinders, and cultivators are considered agricultural purposes. The harvesting of
10 timber on land within the state is considered an agricultural purpose;

11 (2) "Business," any activity engaged in by any person or caused to be engaged in by
12 such person with the object of gain, benefit, or advantage, either direct or indirect;

13 (3) "Candy," any preparation of sugar, honey, or other natural or artificial sweeteners
14 in combination with chocolate, fruits, nuts or other ingredients or flavorings in the
15 form of bars, drops, or pieces. The term, candy, does not include any preparation
16 containing flour and does not require refrigeration;

17 (4) "Delivery charges," charges by the retailer for preparation and delivery to a location
18 designated by the purchaser of tangible personal property, any product transferred
19 electronically, or services including transportation, shipping, postage, handling,
20 crating, and packing. The term does not include postage for direct mail;

21 (5) "Food" and "food ingredient," any substance, whether in liquid, concentrated, solid,
22 frozen, dried, or dehydrated form, that is sold for ingestion or chewing by humans
23 and is consumed for its taste or nutritional value. The term, food, does These terms
24 do not include ~~alcoholic beverages, tobacco, or prepared food.~~

25 (a) Alcoholic beverages, as defined in § 35-1-1;

- 1 **(b) Candy;**
- 2 **(c) Cannabis or cannabis products, as defined in § 34-20G-1;**
- 3 **(d) Cigarettes, as defined in § 10-50B-4;**
- 4 **(e) Prepared food;**
- 5 **(f) Soft drinks; or**
- 6 **(g) Tobacco products, as defined in § 10-50-1;**
- 7 (6) Repealed by SL 2007, ch 56, § 1.
- 8 (7) "Person," any individual, firm, copartnership, joint adventure, association, limited
9 liability company, corporation, municipal corporation, estate, trust, business trust,
10 receiver, the State of South Dakota and its political subdivisions, or any group or
11 combination acting as a unit;
- 12 (8) "Prepared food," any ~~food~~;
- 13 **(a) Food sold in a heated state or heated by the seller; ~~two~~**
- 14 **(b) Two or more food ingredients mixed or combined by the seller for sale as a**
15 **single item; or ~~food~~**
- 16 **(c) Food sold with eating utensils provided by the seller, including plates,**
17 **knives, forks, spoons, glasses, cups, napkins, or straws. ~~A, but a~~ plate does**
18 **not include a container or packaging used to transport the food.**
- 19 Prepared food does not include food that is only cut, repackaged, or pasteurized
20 by the seller, and eggs, fish, meat, poultry, and foods containing these raw animal
21 foods requiring cooking by the consumer as recommended by the Food and Drug
22 Administration in chapter 3, part 401.11 of its Food Code as of January 1, 2003,
23 so as to prevent food borne illnesses;
- 24 (8A) "Product transferred electronically," any product obtained by the purchaser by
25 means other than tangible storage media. A product transferred electronically does
26 not include any intangible such as a patent, stock, bond, goodwill, trademark,
27 franchise, or copyright;
- 28 (9) "Relief agency," the state, and county, municipality or district thereof, or any
29 agency engaged in actual relief work;
- 30 (10) "Retail sale" or "sale at retail," any sale, lease, or rental for any purpose other than
31 for resale, sublease, or subrent;
- 32 (11) "Retailer," any person engaged in the business of selling ~~tangible~~;
- 33 **(a) Tangible goods, wares, or merchandise at retail, ~~or the furnishing of gas;~~**
- 34 **(b) Gas, electricity, water, and communication service, ~~and tickets;~~**

1 (c) Tickets or admissions to places of amusement and athletic events as
 2 provided in this chapter, ~~and the sale at retail of products; and~~

3 (d) Products transferred electronically at retail.

4 ~~The term also includes~~ does not include any person ~~subject to the tax imposed by~~
 5 ~~§§ 10-45-4 and 10-45-5. The~~ that engages in the isolated or occasional sale of
 6 tangible personal property or of any product transferred electronically at retail ~~by~~
 7 a, provided the person who does not hold himself or herself itself out to the public
 8 as engaging in the business of selling ~~such~~ tangible personal property or products
 9 transferred electronically at retail ~~does not constitute such person a retailer;~~

10 (12) "Sale," any transfer, exchange, or barter, conditional or otherwise, in any manner
 11 or by any means whatsoever, for a consideration; ~~and~~

12 (13) "Soft drinks," any nonalcoholic beverages that contain natural or artificial
 13 sweeteners. The term, soft drinks, does not include any beverage that contains
 14 milk or milk products, soy, rice or similar milk substitutes, or greater than fifty
 15 percent of vegetable or fruit juice by volume; and

16 (14) "Tangible personal property," personal property that can be seen, weighed,
 17 measured, felt, or touched, or that is in any other manner perceptible to the
 18 senses. The term includes electricity, water, gas, steam, and prewritten computer
 19 software.

20 **Section 2. That a NEW SECTION be added to chapter 10-45:**

21 The rate imposed by this chapter upon the gross receipts of all sales of food and
 22 food ingredients, as defined by § 10-45-1, is zero percent.

23 **Section 3. That § 10-46-1 be AMENDED:**

24 **10-46-1.** Terms, as used in this chapter mean:

25 (1) "Business," any activity engaged in by any person or caused to be engaged in by
 26 such person with the object of gain, benefit, or advantage, either direct or indirect;

27 (2) "Candy," any preparation of sugar, honey, or other natural or artificial sweeteners
 28 in combination with chocolate, fruits, nuts or other ingredients or flavorings in the
 29 form of bars, drops, or pieces. The term, candy, does not include any preparation
 30 containing flour and does not require refrigeration;

31 (3) "Delivery charges," charges by the retailer for preparation and delivery to a location
 32 designated by the purchaser of tangible personal property, any product transferred

- 1 electronically, or services including transportation, shipping, postage, handling,
 2 crating, and packing. The term does not include postage for direct mail;
- 3 (4) "Fair market value," the price at which a willing seller and willing buyer will trade.
 4 Fair market value ~~shall~~ must be determined at the time of purchase. If a public
 5 corporation is supplying tangible personal property or any product transferred
 6 electronically that ~~will~~ is to be used in the performance of a contract, fair market
 7 value ~~shall~~ must be determined pursuant to § 5-18B-7. This definition also applies
 8 to chapter 10-45;
- 9 (5) "Food" and "food ingredient," any substance, whether in liquid, concentrated, solid,
 10 frozen, dried, or dehydrated form, that is sold for ingestion or chewing by humans
 11 and is consumed for its taste or nutritional value. ~~The term, food, does~~ These terms
 12 do not include alcoholic beverages, tobacco, or prepared food:
- 13 (a) Alcoholic beverages, as defined in § 35-1-1;
 14 (b) Candy;
 15 (c) Cannabis or cannabis products, as defined in § 43-20G-1;
 16 (d) Cigarettes, as defined in § 10-50B-4;
 17 (e) Prepared food;
 18 (f) Soft drinks; or
 19 (g) Tobacco products, as defined in § 34-20G-1;
- 20 (6) "Included in the measure of tax," the tangible personal property, any product
 21 transferred electronically, or the service was purchased from a retailer licensed
 22 under chapter 10-45 and that retailer has included the tax in the amount received
 23 from the sale;
- 24 (7) "In this state" or "in the state," within the exterior limits of the State of South
 25 Dakota and includes all territory within ~~such~~ the limits owned by or ceded to the
 26 United States of America;
- 27 (8) "Prepared food," any ~~food~~ two
 28 (a) Food sold in a heated state or heated by the seller; ~~two~~
 29 (b) Two or more food ingredients mixed or combined by the seller for sale as a
 30 single item; or ~~food~~
 31 (c) Food sold with eating utensils provided by the seller, including plates,
 32 knives, forks, spoons, glasses, cups, napkins, or straws. ~~A plate, but~~ does
 33 not include a container or packaging used to transport the food.
 34 Prepared food does not include food that is only cut, repackaged, or pasteurized
 35 by the seller, and eggs, fish, meat, poultry, and foods containing these raw animal

1 foods requiring cooking by the consumer as recommended by the Food and Drug
2 Administration in chapter 3, part 401.11 of its Food Code as of January 1, 2003,
3 so as to prevent food borne illnesses;

4 (8A) "Product transferred electronically," any product obtained by the purchaser by
5 means other than tangible storage media. A product transferred electronically does
6 not include any intangible such as a patent, stock, bond, goodwill, trademark,
7 franchise, or copyright;

8 (9) "Purchase," any transfer, exchange, or barter, conditional or otherwise, in any
9 manner or by any means whatsoever, for a consideration. A transaction, whereby
10 the possession of property is transferred but the seller retains the title as security
11 for the payment of the price, is a purchase;

12 (10) "Purchase price," ~~shall have~~ the same meaning as gross receipts defined in chapter
13 10-45;

14 (11) "Retailer," any person performing services in this state or engaged in the business
15 of selling tangible personal property or products transferred electronically for use,
16 storage or other consumption within the meaning of this chapter. However, if in
17 the opinion of the secretary of revenue, it is necessary for the efficient
18 administration of this chapter to regard any salesmen, representatives, truckers,
19 peddlers, or canvassers as agents of the dealers, distributors, supervisors,
20 employers, or persons under whom they operate or from whom they obtain the
21 tangible personal property or any product transferred electronically sold by them
22 irrespective of whether they are making sales on their own behalf or on behalf of
23 such dealers, distributors, supervisors, employers, or persons, the secretary of
24 revenue may so regard them and may regard the dealers, distributors, supervisors,
25 employers, or persons as retailers for purposes of this chapter;

26 (12) "Retailer maintaining a place of business in the state," any retailer having or
27 maintaining within this state, directly or by a subsidiary, an office, distribution
28 house, sales house, warehouse, or other place of business, or any agents operating
29 within the state under the authority of the retailer or its subsidiary, irrespective of
30 whether such place of business or agent is located here permanently or temporarily
31 or whether such retailer or subsidiary is admitted to do business within this state
32 pursuant to the laws of the State of South Dakota granting the rights of foreign
33 corporations to do business in this state;

- 1 (13) "Secretary," the secretary of the Department of Revenue or any duly authorized
2 and appointed assistant, deputies, or agents of the secretary charged with the
3 administration or enforcement of this chapter;
- 4 (14) "Soft drinks," any nonalcoholic beverages that contain natural or artificial
5 sweeteners. The term, soft drinks, does not include any beverage that contains
6 milk or milk products, soy, rice or similar milk substitutes, or greater than fifty
7 percent of vegetable or fruit juice by volume;
- 8 (15) "Storage," any keeping or retention in this state for use or other consumption in
9 the State of South Dakota for any purpose except sale in the regular course of
10 business;
- 11 (16) "Tangible personal property," personal property that can be seen, weighed,
12 measured, felt, or touched, or that is in any other manner perceptible to the senses
13 if furnished or delivered to consumers or users within this state. The term includes
14 electricity, water, gas, steam, and prewritten computer software; and
- 15 (17) "Use," the exercise of right or power over tangible personal property or any product
16 transferred electronically incidental to the ownership of that property, except that
17 it does not include the sale of that property in the regular course of business. Use
18 also includes the use of the types of services, the gross receipts from the sale of
19 which are to be included in the measure of the tax imposed by chapter 10-45, and
20 the delivery or causing delivery into this state of tangible personal property or any
21 product transferred electronically intended to advertise any product or service or
22 promote or facilitate any sale to South Dakota residents.

23 **Section 4. That a NEW SECTION be added to chapter 10-46:**

24 The rate of tax imposed by this chapter upon the use, storage, or consumption in
25 this state of food and food ingredients is zero percent.
26