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**HOUSE BILL 1438**

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**State of Washington**

**68th Legislature**

**2023 Regular Session**

**By** Representatives Eslick, Dent, and Chapman

Read first time 01/19/23. Referred to Committee on Regulated Substances & Gaming.

1 AN ACT Relating to authorizing bona fide charitable or nonprofit  
2 organizations to conduct Calcutta auctions on shooting sports  
3 contests; reenacting and amending RCW 82.04.050; and adding a new  
4 section to chapter 9.46 RCW.

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

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 9.46 RCW  
7 to read as follows:

8 (1) The legislature hereby authorizes bona fide charitable or  
9 nonprofit organizations to conduct, without the necessity of  
10 obtaining a permit or license to do so from the commission, shooting  
11 sports and activities sweepstakes permitting wagers of money, and the  
12 same shall not constitute gambling or lottery as otherwise prohibited  
13 in this chapter, or be subject to civil or criminal penalties  
14 thereunder, but this only when the outcome of such sweepstakes is  
15 dependent upon the score, or scores, or the shooting ability, or  
16 abilities, of a shooting sports contest between individual shooters  
17 or teams of such shooters, conducted in the following manner:

18 (a) Wagers are placed by buying tickets on any players in a  
19 shooting sports contest to "win," "place," or "show" and those  
20 holding tickets on the three winners may receive a payoff similar to  
21 the system of betting identified as parimutuel, such moneys placed as

1 wagers to be used primarily as winners' proceeds, except moneys used  
2 to defray the expenses of such shooting sports contest or otherwise  
3 used to carry out the purposes of such organization; or

4 (b) Participants in any shooting sports contest(s) pay a like sum  
5 of money into a common fund on the basis of attaining a stated number  
6 of points ascertainable from the score of such participants, and  
7 those participants attaining such stated number of points share  
8 equally in the moneys in the common fund, without any percentage of  
9 such moneys going to the sponsoring organization; or

10 (c) An auction is held in which persons may bid on the shooters  
11 or teams of shooters in the shooting sports contest, and the person  
12 placing the highest bid on the shooter or team that wins the shooting  
13 sports contest receives the proceeds of the auction and splits, at a  
14 percentage set forth by the bona fide charitable or nonprofit  
15 organization, the proceeds with the winning shooter or team of  
16 shooters, except moneys used to defray the expenses of the shooting  
17 sports sweepstakes or otherwise used to carry out the purposes of the  
18 organizations; and

19 (d) Participation is limited to members of the sponsoring  
20 organization and their bona fide guests.

21 (2) For purposes of this section, "shooting sports" means  
22 shooting sports and activities such as target shooting, skeet, trap,  
23 sporting clays, "5" stand, and archery.

24 **Sec. 2.** RCW 82.04.050 and 2021 c 296 s 8 and 2021 c 143 s 2 are  
25 each reenacted and amended to read as follows:

26 (1)(a) "Sale at retail" or "retail sale" means every sale of  
27 tangible personal property (including articles produced, fabricated,  
28 or imprinted) to all persons irrespective of the nature of their  
29 business and including, among others, without limiting the scope  
30 hereof, persons who install, repair, clean, alter, improve,  
31 construct, or decorate real or personal property of or for consumers  
32 other than a sale to a person who:

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

37 (ii) Installs, repairs, cleans, alters, imprints, improves,  
38 constructs, or decorates real or personal property of or for  
39 consumers, if such tangible personal property becomes an ingredient

1 or component of such real or personal property without intervening  
2 use by such person; or

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

10 (iv) Purchases for the purpose of consuming the property  
11 purchased in producing ferrosilicon which is subsequently used in  
12 producing magnesium for sale, if the primary purpose of such property  
13 is to create a chemical reaction directly through contact with an  
14 ingredient 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)  
20 of this section, if such tangible personal property replaces or  
21 becomes an ingredient or component of property covered by the  
22 extended warranty without intervening use by such person.

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

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

31 (2) The term "sale at retail" or "retail sale" includes the sale  
32 of or charge made for tangible personal property consumed and/or for  
33 labor 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,  
36 including charges made for the mere use of facilities in respect  
37 thereto, but excluding charges made for the use of self-service  
38 laundry facilities, and also excluding sales of laundry service to  
39 nonprofit health care facilities, and excluding services rendered in  
40 respect to live animals, birds and insects;

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

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

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

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

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

1 that the sale of and charge made for the furnishing of lodging  
2 offered regularly for public occupancy for periods of less than a  
3 month constitutes a license to use or enjoy the property subject to  
4 sales and use tax and not a rental or lease of property;

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

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

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

21 (a) Abstract, title insurance, and escrow services;

22 (b) Credit bureau services;

23 (c) Automobile parking and storage garage services;

24 (d) Landscape maintenance and horticultural services but  
25 excluding (i) horticultural services provided to farmers and (ii)  
26 pruning, trimming, repairing, removing, and clearing of trees and  
27 brush near electric transmission or distribution lines or equipment,  
28 if performed by or at the direction of an electric utility;

29 (e) Service charges associated with tickets to professional  
30 sporting events;

31 (f) The following personal services: Tanning salon services,  
32 tattoo parlor services, steam bath services, turkish bath services,  
33 escort services, and dating services; and

34 (g)(i) Operating an athletic or fitness facility, including all  
35 charges for the use of such a facility or for any associated services  
36 and amenities, except as provided in (g)(ii) of this subsection.

37 (ii) Notwithstanding anything to the contrary in (g)(i) of this  
38 subsection (3), the term "sale at retail" and "retail sale" under  
39 this subsection does not include:

1 (A) Separately stated charges for the use of an athletic or  
2 fitness facility where such use is primarily for a purpose other than  
3 engaging in or receiving instruction in a physical fitness activity;

4 (B) Separately stated charges for the use of a discrete portion  
5 of an athletic or fitness facility, other than a pool, where such  
6 discrete portion of the facility does not by itself meet the  
7 definition of "athletic or fitness facility" in this subsection;

8 (C) Separately stated charges for services, such as advertising,  
9 massage, nutritional consulting, and body composition testing, that  
10 do not require the customer to engage in physical fitness activities  
11 to receive the service. The exclusion in this subsection  
12 (3)(g)(ii)(C) does not apply to personal training services and  
13 instruction in a physical fitness activity;

14 (D) Separately stated charges for physical therapy provided by a  
15 physical therapist, as those terms are defined in RCW 18.74.010, or  
16 occupational therapy provided by an occupational therapy  
17 practitioner, as those terms are defined in RCW 18.59.020, when  
18 performed pursuant to a referral from an authorized health care  
19 practitioner or in consultation with an authorized health care  
20 practitioner. For the purposes of this subsection (3)(g)(ii)(D), an  
21 authorized health care practitioner means a health care practitioner  
22 licensed under chapter 18.83, 18.25, 18.36A, 18.57, 18.71, or 18.71A  
23 RCW, or, until July 1, 2022, chapter 18.57A RCW;

24 (E) Rent or association fees charged by a landlord or residential  
25 association to a tenant or residential owner with access to an  
26 athletic or fitness facility maintained by the landlord or  
27 residential association, unless the rent or fee varies depending on  
28 whether the tenant or owner has access to the facility;

29 (F) Services provided in the regular course of employment by an  
30 employee with access to an athletic or fitness facility maintained by  
31 the employer for use without charge by its employees or their family  
32 members;

33 (G) The provision of access to an athletic or fitness facility by  
34 an educational institution to its students and staff. However,  
35 charges made by an educational institution to its alumni or other  
36 members of the public for the use of any of the educational  
37 institution's athletic or fitness facilities are a retail sale under  
38 this subsection (3)(g). For purposes of this subsection  
39 (3)(g)(ii)(G), "educational institution" has the same meaning as in  
40 RCW 82.04.170;

1 (H) Yoga, chi gong, or martial arts classes, training, or events  
2 held at a community center, park, school gymnasium, college or  
3 university, hospital or other medical facility, private residence, or  
4 any other facility that is not operated within and as part of an  
5 athletic or fitness facility.

6 (iii) Nothing in (g)(ii) of this subsection (3) may be construed  
7 to affect the taxation of sales made by the operator of an athletic  
8 or fitness facility, where such sales are defined as a retail sale  
9 under any provision of this section other than this subsection (3).

10 (iv) For the purposes of this subsection (3)(g), the following  
11 definitions apply:

12 (A) "Athletic or fitness facility" means an indoor or outdoor  
13 facility or portion of a facility that is primarily used for:  
14 Exercise classes; strength and conditioning programs; personal  
15 training services; tennis, racquetball, handball, squash, or  
16 pickleball; or other activities requiring the use of exercise or  
17 strength training equipment, such as treadmills, elliptical machines,  
18 stair climbers, stationary cycles, rowing machines, pilates  
19 equipment, balls, climbing ropes, jump ropes, and weightlifting  
20 equipment.

21 (B) "Martial arts" means any of the various systems of training  
22 for physical combat or self-defense. "Martial arts" includes, but is  
23 not limited to, karate, kung fu, tae kwon do, Krav Maga, boxing,  
24 kickboxing, jujitsu, shootfighting, wrestling, aikido, judo, hapkido,  
25 Kendo, tai chi, and mixed martial arts.

26 (C) "Physical fitness activities" means activities that involve  
27 physical exertion for the purpose of improving or maintaining the  
28 general fitness, strength, flexibility, conditioning, or health of  
29 the participant. "Physical fitness activities" includes participating  
30 in yoga, chi gong, or martial arts.

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

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

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

39 (6)(a) The term also includes the sale of prewritten computer  
40 software to a consumer, regardless of the method of delivery to the

1 end user. For purposes of (a) and (b) of this subsection, the sale of  
2 prewritten computer software includes the sale of or charge made for  
3 a key or an enabling or activation code, where the key or code is  
4 required to activate prewritten computer software and put the  
5 software into use. There is no separate sale of the key or code from  
6 the prewritten computer software, regardless of how the sale may be  
7 characterized by the vendor or by the purchaser.

8 (b) The term "retail sale" does not include the sale of or charge  
9 made for:

10 (i) Custom software; or

11 (ii) The customization of prewritten computer software.

12 (c)(i) The term also includes the charge made to consumers for  
13 the right to access and use prewritten computer software, where  
14 possession of the software is maintained by the seller or a third  
15 party, regardless of whether the charge for the service is on a per  
16 use, per user, per license, subscription, or some other basis.

17 (ii)(A) The service described in (c)(i) of this subsection (6)  
18 includes the right to access and use prewritten computer software to  
19 perform data processing.

20 (B) For purposes of this subsection (6)(c)(ii), "data processing"  
21 means the systematic performance of operations on data to extract the  
22 required information in an appropriate form or to convert the data to  
23 usable information. Data processing includes check processing, image  
24 processing, form processing, survey processing, payroll processing,  
25 claim processing, and similar activities.

26 (7) The term also includes the sale of or charge made for an  
27 extended warranty to a consumer. For purposes of this subsection,  
28 "extended warranty" means an agreement for a specified duration to  
29 perform the replacement or repair of tangible personal property at no  
30 additional charge or a reduced charge for tangible personal property,  
31 labor, or both, or to provide indemnification for the replacement or  
32 repair of tangible personal property, based on the occurrence of  
33 specified events. The term "extended warranty" does not include an  
34 agreement, otherwise meeting the definition of extended warranty in  
35 this subsection, if no separate charge is made for the agreement and  
36 the value of the agreement is included in the sales price of the  
37 tangible personal property covered by the agreement. For purposes of  
38 this subsection, "sales price" has the same meaning as in RCW  
39 82.08.010.

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

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

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

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

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

11 (b) A retail sale of digital goods, digital codes, or digital  
12 automated services under this subsection (8) includes any services  
13 provided by the seller exclusively in connection with the digital  
14 goods, digital codes, or digital automated services, whether or not a  
15 separate charge is made for such services.

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

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

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

36 (11) The term also does not include sales of chemical sprays or  
37 washes to persons for the purpose of postharvest treatment of fruit  
38 for the prevention of scald, fungus, mold, or decay, nor does it  
39 include sales of feed, seed, seedlings, fertilizer, agents for  
40 enhanced pollination including insects such as bees, and spray

1 materials to: (a) Persons who participate in the federal conservation  
2 reserve program, the environmental quality incentives program, the  
3 wetlands reserve program, and the wildlife habitat incentives  
4 program, or their successors administered by the United States  
5 department of agriculture; (b) farmers for the purpose of producing  
6 for sale any agricultural product; (c) farmers for the purpose of  
7 providing bee pollination services; and (d) farmers acting under  
8 cooperative habitat development or access contracts with an  
9 organization exempt from federal income tax under 26 U.S.C. Sec.  
10 501(c)(3) of the federal internal revenue code or the Washington  
11 state department of fish and wildlife to produce or improve wildlife  
12 habitat on land that the farmer owns or leases.

13 (12) The term does not include the sale of or charge made for  
14 labor and services rendered in respect to the constructing,  
15 repairing, decorating, or improving of new or existing buildings or  
16 other structures under, upon, or above real property of or for the  
17 United States, any instrumentality thereof, or a county or city  
18 housing authority created pursuant to chapter 35.82 RCW, including  
19 the installing, or attaching of any article of tangible personal  
20 property therein or thereto, whether or not such personal property  
21 becomes a part of the realty by virtue of installation. Nor does the  
22 term include the sale of services or charges made for the clearing of  
23 land and the moving of earth of or for the United States, any  
24 instrumentality thereof, or a county or city housing authority. Nor  
25 does the term include the sale of services or charges made for  
26 cleaning up for the United States, or its instrumentalities,  
27 radioactive waste and other by-products of weapons production and  
28 nuclear research and development.

29 (13) The term does not include the sale of or charge made for  
30 labor, services, or tangible personal property pursuant to agreements  
31 providing maintenance services for bus, rail, or rail fixed guideway  
32 equipment when a regional transit authority is the recipient of the  
33 labor, services, or tangible personal property, and a transit agency,  
34 as defined in RCW 81.104.015, performs the labor or services.

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

38 (15)(a) The term "sale at retail" or "retail sale" includes  
39 amounts charged, however labeled, to consumers to engage in any of  
40 the activities listed in this subsection (15)(a), including the

1 furnishing of any associated equipment or, except as otherwise  
2 provided in this subsection, providing instruction in such  
3 activities, where such charges are not otherwise defined as a "sale  
4 at retail" or "retail sale" in this section:

5 (i) (A) Golf, including any variant in which either golf balls or  
6 golf clubs are used, such as miniature golf, hitting golf balls at a  
7 driving range, and golf simulators, and including fees charged by a  
8 golf course to a player for using his or her own cart. However,  
9 charges for golf instruction are not a retail sale, provided that if  
10 the instruction involves the use of a golfing facility that would  
11 otherwise require the payment of a fee, such as green fees or driving  
12 range fees, such fees, including the applicable retail sales tax,  
13 must be separately identified and charged by the golfing facility  
14 operator to the instructor or the person receiving the instruction.

15 (B) Notwithstanding (a) (i) (A) of this subsection (15) and except  
16 as otherwise provided in this subsection (15) (a) (i) (B), the term  
17 "sale at retail" or "retail sale" does not include amounts charged to  
18 participate in, or conduct, a golf tournament or other competitive  
19 event. However, amounts paid by event participants to the golf  
20 facility operator are retail sales under this subsection (15) (a) (i).  
21 Likewise, amounts paid by the event organizer to the golf facility  
22 are retail sales under this subsection (15) (a) (i), if such amounts  
23 vary based on the number of event participants;

24 (ii) Ballooning, hang gliding, indoor or outdoor sky diving,  
25 paragliding, parasailing, and similar activities;

26 (iii) Air hockey, billiards, pool, foosball, darts, shuffleboard,  
27 ping pong, and similar games;

28 (iv) Access to amusement park, theme park, and water park  
29 facilities, including but not limited to charges for admission and  
30 locker or cabana rentals. Discrete charges for rides or other  
31 attractions or entertainment that are in addition to the charge for  
32 admission are not a retail sale under this subsection (15) (a) (iv).  
33 For the purposes of this subsection, an amusement park or theme park  
34 is a location that provides permanently affixed amusement rides,  
35 games, and other entertainment, but does not include parks or zoos  
36 for which the primary purpose is the exhibition of wildlife, or  
37 fairs, carnivals, and festivals as defined in (b) (i) of this  
38 subsection;

39 (v) Batting cage activities;

1 (vi) Bowling, but not including competitive events, except that  
2 amounts paid by the event participants to the bowling alley operator  
3 are retail sales under this subsection (15)(a)(vi). Likewise, amounts  
4 paid by the event organizer to the operator of the bowling alley are  
5 retail sales under this subsection (15)(a)(vi), if such amounts vary  
6 based on the number of event participants;

7 (vii) Climbing on artificial climbing structures, whether indoors  
8 or outdoors;

9 (viii) Day trips for sightseeing purposes;

10 (ix) Bungee jumping, zip lining, and riding inside a ball,  
11 whether inflatable or otherwise;

12 (x) Horseback riding offered to the public, where the seller  
13 furnishes the horse to the buyer and providing instruction is not the  
14 primary focus of the activity, including guided rides, but not  
15 including therapeutic horseback riding provided by an instructor  
16 certified by a nonprofit organization that offers national or  
17 international certification for therapeutic riding instructors;

18 (xi) Fishing, including providing access to private fishing areas  
19 and charter or guided fishing, except that fishing contests and  
20 license fees imposed by a government entity are not a retail sale  
21 under this subsection;

22 (xii) Guided hunting and hunting at game farms and shooting  
23 preserves, except that hunting contests and license fees imposed by a  
24 government entity are not a retail sale under this subsection;

25 (xiii) Swimming, but only in respect to (A) recreational or  
26 fitness swimming that is open to the public, such as open swim, lap  
27 swimming, and special events like kids night out and pool parties  
28 during open swim time, and (B) pool parties for private events, such  
29 as birthdays, family gatherings, and employee outings. Fees for  
30 swimming lessons, to participate in swim meets and other  
31 competitions, or to join a swim team, club, or aquatic facility are  
32 not retail sales under this subsection (15)(a)(xiii);

33 (xiv) Go-karting, bumper cars, and other motorized activities  
34 where the seller provides the vehicle and the premises where the  
35 buyer will operate the vehicle;

36 (xv) Indoor or outdoor playground activities, such as inflatable  
37 bounce structures and other inflatables; mazes; trampolines; slides;  
38 ball pits; games of tag, including laser tag and soft-dart tag; and  
39 human gyroscope rides, regardless of whether such activities occur at  
40 the seller's place of business, but not including playground

1 activities provided for children by a licensed child day care center  
2 or licensed family day care provider as those terms are defined in  
3 RCW 43.216.010;

4 (xvi) (A) Shooting sports and activities, such as target shooting,  
5 skeet, trap, sporting clays, "5" stand, and archery, but only in  
6 respect to discrete charges to members of the public to engage in  
7 these activities, but not including fees to enter a competitive  
8 event, instruction that is entirely or predominately classroom based,  
9 or to join or renew a membership at a club, range, or other facility.

10 (B) Notwithstanding (a) (xvi) (A) of this subsection (15) and  
11 except as otherwise provided in this subsection (15) (a) (xvi) (B), the  
12 term "sale at retail" or "retail sale" does not include amounts  
13 charged to participate in, or conduct, a shooting sports and  
14 activities contest or competitive event. However, amounts paid by  
15 event participants to the shooting sports and activities operator are  
16 retail sales under this subsection (15) (a) (xvi). Likewise, amounts  
17 paid by the event organizer to the shooting sports and activities  
18 facility are retail sales under this subsection (15) (a) (xvi), if such  
19 amounts vary based on the number of event participants;

20 (xvii) Paintball and airsoft activities;

21 (xviii) Skating, including ice skating, roller skating, and  
22 inline skating, but only in respect to discrete charges to members of  
23 the public to engage in skating activities, but not including skating  
24 lessons, competitive events, team activities, or fees to join or  
25 renew a membership at a skating facility, club, or other  
26 organization;

27 (xix) Nonmotorized snow sports and activities, such as downhill  
28 and cross-country skiing, snowboarding, ski jumping, sledding, snow  
29 tubing, snowshoeing, and similar snow sports and activities, whether  
30 engaged in outdoors or in an indoor facility with or without snow,  
31 but only in respect to discrete charges to the public for the use of  
32 land or facilities to engage in nonmotorized snow sports and  
33 activities, such as fees, however labeled, for the use of ski lifts  
34 and tows and daily or season passes for access to trails or other  
35 areas where nonmotorized snow sports and activities are conducted.  
36 However, fees for the following are not retail sales under this  
37 subsection (15) (a) (xix): (A) Instructional lessons; (B) permits  
38 issued by a governmental entity to park a vehicle on or access public  
39 lands; and (C) permits or leases granted by an owner of private

1 timberland for recreational access to areas used primarily for  
2 growing and harvesting timber; and

3 (xx) Scuba diving; snorkeling; river rafting; surfing;  
4 kiteboarding; flyboarding; water slides; inflatables, such as water  
5 pillows, water trampolines, and water rollers; and similar water  
6 sports and activities.

7 (b) Notwithstanding anything to the contrary in this subsection  
8 (15), the term "sale at retail" or "retail sale" does not include  
9 charges:

10 (i) Made for admission to, and rides or attractions at, fairs,  
11 carnivals, and festivals. For the purposes of this subsection, fairs,  
12 carnivals, and festivals are events that do not exceed 21 days and a  
13 majority of the amusement rides, if any, are not affixed to real  
14 property;

15 (ii) Made by an educational institution to its students and staff  
16 for activities defined as retail sales by (a)(i) through (xx) of this  
17 subsection. However, charges made by an educational institution to  
18 its alumni or other members of the general public for these  
19 activities are a retail sale under this subsection (15). For purposes  
20 of this subsection (15)(b)(ii), "educational institution" has the  
21 same meaning as in RCW 82.04.170;

22 (iii) Made by a vocational school for commercial diver training  
23 that is licensed by the workforce training and education coordinating  
24 board under chapter 28C.10 RCW; or

25 (iv) Made for day camps offered by a nonprofit organization or  
26 state or local governmental entity that provide youth not older than  
27 age 18, or that are focused on providing individuals with  
28 disabilities or mental illness, the opportunity to participate in a  
29 variety of supervised activities.

30 (16)(a) The term "sale at retail" or "retail sale" includes the  
31 purchase or acquisition of tangible personal property and specified  
32 services by a person who receives either a qualifying grant exempt  
33 from tax under RCW 82.04.767 or 82.16.320 or a grant deductible under  
34 RCW 82.04.4339, except for transactions excluded from the definition  
35 of "sale at retail" or "retail sale" by any other provision of this  
36 section. Nothing in this subsection (16) may be construed to limit  
37 the application of any other provision of this section to purchases  
38 by a recipient of either a qualifying grant exempt from tax under RCW  
39 82.04.767 or a grant deductible under RCW 82.04.4339, or by any other  
40 person.

1 (b) For purposes of this subsection (16), "specified services"  
2 means:

3 (i) The constructing, repairing, decorating, or improving of new  
4 or existing buildings or other structures under, upon, or above real  
5 property, including the installing or attaching of any article of  
6 tangible personal property therein or thereto, whether or not such  
7 personal property becomes a part of the realty by virtue of  
8 installation;

9 (ii) The clearing of land or the moving of earth, whether or not  
10 associated with activities described in (b)(i) of this subsection  
11 (16);

12 (iii) The razing or moving of existing buildings or structures;  
13 and

14 (iv) Landscape maintenance and horticultural services.

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