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HOUSE BILL 1038

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State of Washington

54th Legislature

1995 Regular Session

By Representatives Huff, Buck, Foreman and Fuhrman

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1 AN ACT Relating to excluding utility line clearing from the  
2 definition of retail sale; amending RCW 82.04.050; providing an  
3 effective date; and declaring an emergency.

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

5 **Sec. 1.** RCW 82.04.050 and 1993 sp.s. c 25 s 301 are each amended  
6 to read as follows:

7 (1) "Sale at retail" or "retail sale" means every sale of tangible  
8 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 presents a resale certificate under RCW 82.04.470 and who:

14 (a) Purchases for the purpose of resale as tangible personal  
15 property in the regular course of business without intervening use by  
16 such person; or

17 (b) Installs, repairs, cleans, alters, imprints, improves,  
18 constructs, or decorates real or personal property of or for consumers,  
19 if such tangible personal property becomes an ingredient or component

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

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

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

14 (e) Purchases for the purpose of providing the property to  
15 consumers as part of competitive telephone service, as defined in RCW  
16 82.04.065. The term shall include every sale of tangible personal  
17 property which is used or consumed or to be used or consumed in the  
18 performance of any activity classified as a "sale at retail" or "retail  
19 sale" even though such property is resold or utilized as provided in  
20 (a), (b), (c), (d), or (e) of this subsection following such use. The  
21 term also means every sale of tangible personal property to persons  
22 engaged in any business which is taxable under RCW 82.04.280 (2) and  
23 (7) and 82.04.290.

24 (2) The term "sale at retail" or "retail sale" shall include the  
25 sale of or charge made for tangible personal property consumed and/or  
26 for labor and services rendered in respect to the following:

27 (a) The installing, repairing, cleaning, altering, imprinting, or  
28 improving of tangible personal property of or for consumers, including  
29 charges made for the mere use of facilities in respect thereto, but  
30 excluding sales of laundry service to members by nonprofit associations  
31 composed exclusively of nonprofit hospitals, and excluding services  
32 rendered in respect to live animals, birds and insects;

33 (b) The constructing, repairing, decorating, or improving of new or  
34 existing buildings or other structures under, upon, or above real  
35 property of or for consumers, including the installing or attaching of  
36 any article of tangible personal property therein or thereto, whether  
37 or not such personal property becomes a part of the realty by virtue of  
38 installation, and shall also include the sale of services or charges

1 made for the clearing of land and the moving of earth excepting the  
2 mere leveling of land used in commercial farming or agriculture;

3 (c) The charge for labor and services rendered in respect to  
4 constructing, repairing, or improving any structure upon, above, or  
5 under any real property owned by an owner who conveys the property by  
6 title, possession, or any other means to the person performing such  
7 construction, repair, or improvement for the purpose of performing such  
8 construction, repair, or improvement and the property is then  
9 reconveyed by title, possession, or any other means to the original  
10 owner;

11 (d) The sale of or charge made for labor and services rendered in  
12 respect to the cleaning, fumigating, razing or moving of existing  
13 buildings or structures, but shall not include the charge made for  
14 janitorial services; and for purposes of this section the term  
15 "janitorial services" shall mean those cleaning and caretaking services  
16 ordinarily performed by commercial janitor service businesses  
17 including, but not limited to, wall and window washing, floor cleaning  
18 and waxing, and the cleaning in place of rugs, drapes and upholstery.  
19 The term "janitorial services" does not include painting, papering,  
20 repairing, furnace or septic tank cleaning, snow removal or  
21 sandblasting;

22 (e) The sale of or charge made for labor and services rendered in  
23 respect to automobile towing and similar automotive transportation  
24 services, but not in respect to those required to report and pay taxes  
25 under chapter 82.16 RCW;

26 (f) The sale of and charge made for the furnishing of lodging and  
27 all other services by a hotel, rooming house, tourist court, motel,  
28 trailer camp, and the granting of any similar license to use real  
29 property, as distinguished from the renting or leasing of real  
30 property, and it shall be presumed that the occupancy of real property  
31 for a continuous period of one month or more constitutes a rental or  
32 lease of real property and not a mere license to use or enjoy the same;

33 (g) The sale of or charge made for tangible personal property,  
34 labor and services to persons taxable under (a), (b), (c), (d), (e),  
35 and (f) of this subsection when such sales or charges are for property,  
36 labor and services which are used or consumed in whole or in part by  
37 such persons in the performance of any activity defined as a "sale at  
38 retail" or "retail sale" even though such property, labor and services  
39 may be resold after such use or consumption. Nothing contained in this

1 subsection shall be construed to modify subsection (1) of this section  
2 and nothing contained in subsection (1) of this section shall be  
3 construed to modify this subsection.

4 (3) The term "sale at retail" or "retail sale" shall include the  
5 sale of or charge made for personal, business, or professional services  
6 including amounts designated as interest, rents, fees, admission, and  
7 other service emoluments however designated, received by persons  
8 engaging in the following business activities:

9 (a) Amusement and recreation services including but not limited to  
10 golf, pool, billiards, skating, bowling, ski lifts and tows, and  
11 others;

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

13 (c) Credit bureau services;

14 (d) Automobile parking and storage garage services;

15 (e) Landscape maintenance and horticultural services but excluding  
16 (i) horticultural services provided to farmers and (ii) pruning,  
17 trimming, repairing, removing, and clearing of trees and brush near  
18 electric supply lines and equipment, if performed by or at the  
19 direction of an electric utility company;

20 (f) Service charges associated with tickets to professional  
21 sporting events;

22 (g) Guided tours and guided charters; and

23 (h) The following personal services: Physical fitness services,  
24 tanning salon services, tattoo parlor services, massage services, steam  
25 bath services, turkish bath services, escort services, and dating  
26 services.

27 (4) The term shall also include the renting or leasing of tangible  
28 personal property to consumers and the rental of equipment with an  
29 operator.

30 (5) The term shall also include the providing of telephone service,  
31 as defined in RCW 82.04.065, to consumers.

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

1 (7) The term shall also not include sales of feed, seed, seedlings,  
2 fertilizer, agents for enhanced pollination including insects such as  
3 bees, and spray materials to persons who participate in the federal  
4 conservation reserve program or its successor administered by the  
5 United States department of agriculture, or to farmers for the purpose  
6 of producing for sale any agricultural product, nor shall it include  
7 sales of chemical sprays or washes to persons for the purpose of post-  
8 harvest treatment of fruit for the prevention of scald, fungus, mold,  
9 or decay.

10 (8) The term shall not include the sale of or charge made for labor  
11 and services rendered in respect to the constructing, repairing,  
12 decorating, or improving of new or existing buildings or other  
13 structures under, upon, or above real property of or for the United  
14 States, any instrumentality thereof, or a county or city housing  
15 authority created pursuant to chapter 35.82 RCW, including the  
16 installing, or attaching of any article of tangible personal property  
17 therein or thereto, whether or not such personal property becomes a  
18 part of the realty by virtue of installation. Nor shall the term  
19 include the sale of services or charges made for the clearing of land  
20 and the moving of earth of or for the United States, any  
21 instrumentality thereof, or a county or city housing authority.

22 NEW SECTION. **Sec. 2.** This act is necessary for the immediate  
23 preservation of the public peace, health, or safety, or support of the  
24 state government and its existing public institutions, and shall take  
25 effect July 1, 1995.

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