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HOUSE BILL 2206

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State of Washington                      65th Legislature                      2017 Regular Session

By Representatives Pollet, Dolan, and Kloba

Read first time 04/21/17. Referred to Committee on Transportation.

1            AN ACT Relating to taxation of transportation network companies;  
2 amending RCW 82.04.050; and adding a new chapter to Title 46 RCW.

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

4            NEW SECTION.      **Sec. 1.**      DEFINITIONS. The definitions in this  
5 section apply throughout this chapter unless the context clearly  
6 requires otherwise.

7            (1) "Digital network" means any online-enabled technology  
8 application service, web site, or system offered or utilized by a  
9 transportation network company that enables the prearrangement of  
10 rides with transportation network company drivers.

11            (2) "Municipality" means a city, town, or code city with a  
12 certificate of incorporation, or township created by an act of the  
13 state.

14            (3) "Participating county" means any county that operates a  
15 wheelchair-accessible transportation program, as defined in this  
16 section.

17            (4) "Participating municipality" means any municipality that  
18 operates a wheelchair-accessible transportation program, as defined  
19 in this section.

20            (5) "Prearranged ride" means the provision of transportation or a  
21 trip by a transportation network company driver to a transportation

1 network company rider, beginning when a transportation network  
2 company driver accepts a ride requested by a transportation network  
3 company rider through a digital network controlled by a  
4 transportation network company, continuing while the transportation  
5 network company driver transports the transportation network company  
6 rider, and ending when the last transportation network company rider  
7 departs from the transportation network company vehicle. "Prearranged  
8 ride" does not include: (a) Transportation provided by a taxi,  
9 limousine, motor carrier as defined in RCW 81.80.010, or other for  
10 hire vehicle or pursuant to chapter 46.72, 46.73, or 81.72 RCW; (b) a  
11 shared expense carpool or vanpool arrangement or service as defined  
12 as ride sharing in RCW 46.74.010; (c) transportation provided by an  
13 auto transportation company as defined in RCW 81.68.010; or (d)  
14 transportation provided by metropolitan public transportation as  
15 defined in RCW 35.58.020.

16 (6) "Transportation network company" means a corporation,  
17 partnership, sole proprietorship, or other entity that is operating  
18 in Washington state and uses a digital network to connect  
19 transportation network company riders to transportation network  
20 company drivers who provide prearranged rides. A transportation  
21 network company is not deemed to control, direct, or manage the  
22 transportation network company vehicles or transportation network  
23 company drivers that connect to its digital network, except when  
24 agreed to by written contract. "Transportation network company" does  
25 not include a for hire transportation service, taxicab transportation  
26 service provided under chapter 46.72 or 81.72 RCW, an auto  
27 transportation company as defined in RCW 81.68.010, or metropolitan  
28 public transportation as defined in RCW 35.58.020.

29 (7) "Transportation network company driver" means an individual  
30 who:

31 (a) Receives connections to potential transportation network  
32 company riders and related services from a transportation network  
33 company; and

34 (b) Uses a transportation network company vehicle to offer or  
35 provide a prearranged ride to transportation network company riders  
36 upon connection through a digital network controlled by a  
37 transportation network company in exchange for compensation or  
38 payment of a fee.

39 (8) "Transportation network company rider" means an individual or  
40 persons who use a transportation network company's digital network to

1 connect with a transportation network company driver who provides  
2 prearranged rides to the rider in the transportation network company  
3 driver's transportation network company vehicle between points chosen  
4 by the rider.

5 (9) "Transportation network company services" means services  
6 provided by a transportation network company driver at any time that  
7 a transportation network company driver is logged in to a  
8 transportation network company's digital network or providing a  
9 prearranged ride. "Transportation network company services" do not  
10 include services provided either directly or under contract with a  
11 political subdivision or other entity exempt from federal income tax  
12 under 26 U.S.C. Sec. 115 of the federal internal revenue code.

13 (10) "Transportation network company vehicle" means a vehicle  
14 that:

15 (a) Is used by a transportation network company driver to provide  
16 a prearranged ride;

17 (b) Is owned, leased, or otherwise authorized for use by the  
18 transportation network company driver;

19 (c) Is not a taxicab, limousine, commuter ride-sharing vehicle,  
20 for hire vehicle, auto transportation company vehicle, or  
21 metropolitan public transportation vehicle for purposes of chapter  
22 35.58, 46.72, 46.72A, 46.73, 46.74, 46.76, 81.68, or 81.72 RCW; and

23 (d) Has a seating capacity of fewer than eight persons, excluding  
24 the driver.

25 (11) "Wheelchair-accessible for hire vehicle" means a taxicab,  
26 for hire vehicle, or transportation network company vehicle that is  
27 designed or modified to transport passengers in wheelchairs or other  
28 mobility devices and conform to the requirements of the federal  
29 Americans with disabilities act. Services provided by wheelchair-  
30 accessible for hire vehicles do not include for hire transportation  
31 services provided under chapter 46.72 RCW or taxicab transportation  
32 services provided under chapter 81.72 RCW.

33 (12) "Wheelchair-accessible for hire vehicle operator" means an  
34 individual who owns or drives, or both, a vehicle designed or  
35 modified to transport passengers in wheelchairs or other mobility  
36 devices and conforms to the requirements of the federal Americans  
37 with disabilities act.

38 (13) "Wheelchair-accessible transportation program" means a  
39 program operated by a municipality or county to provide reimbursement  
40 for wheelchair-accessible for hire vehicle operators for, but is not

1 limited to: Costs associated with converting or purchasing a  
2 wheelchair-accessible for hire vehicle; costs for a transportation  
3 network company, taxicab company, or other for hire vehicle company  
4 that are common carriers to provide wheelchair-accessible vehicle  
5 rides to customers when the cost to provide the ride exceeds the cost  
6 charged to the customer; or extra fuel and maintenance costs. The  
7 wheelchair-accessible transportation program must be authorized by  
8 the department.

9 NEW SECTION. **Sec. 2.** WHEELCHAIR-ACCESSIBLE SURCHARGE. (1) Each  
10 prearranged ride provided by a transportation network company driver  
11 to a transportation network company rider that originates in a  
12 participating municipality or participating county must be assessed a  
13 ten cent per trip surcharge to offset costs associated with improving  
14 transportation options for individuals with disabilities.

15 (2) Using geographic information system data, a transportation  
16 network company must determine where each prearranged ride  
17 originated. If the ride originated within the incorporated boundaries  
18 of a municipality, the ride originated in the municipality. If the  
19 ride originated outside of the incorporated boundaries of a  
20 municipality and within the boundaries of a county of this state, the  
21 ride originated in the county.

22 (3) Within thirty days of the end of each calendar quarter, a  
23 transportation network company must submit to the department:

24 (a) The total amount of passenger surcharge revenue collected by  
25 a transportation network company on behalf of transportation network  
26 company drivers; and

27 (b) A report listing the percentage of the yearly total amount of  
28 passenger surcharge revenue generated from trips that originated in  
29 each participating municipality and participating county during the  
30 reporting period.

31 (4) Within sixty days of the end of each calendar quarter, the  
32 department must distribute the passenger surcharge revenue collected  
33 under subsection (1) of this section to each participating  
34 municipality or participating county where a trip originated during  
35 the reporting period. The distribution to each participating  
36 municipality or participating county must be proportionate to the  
37 percentage of the yearly total amount of surcharge revenue that  
38 originated in each participating municipality or participating  
39 county. The funds collected by each participating municipality or

1 participating county under this subsection must be allocated to a  
2 wheelchair-accessible transportation program.

3 (5) Any municipality or county may operate a wheelchair-  
4 accessible transportation program.

5 NEW SECTION. **Sec. 3.** MCKINNEY-VENTO SURCHARGE—INTENT—FINDINGS.  
6 The legislature finds that the federal McKinney-Vento homeless  
7 assistance act provides students experiencing homelessness with the  
8 right to continue attending their school of origin. The legislature  
9 further finds that the act requires school districts to provide  
10 transportation to students who elect to remain at their school of  
11 origin. The legislature further finds that school districts use a  
12 variety of methods to transport students to their school of origin,  
13 including school buses, public transit, vans, and taxis. The  
14 legislature further finds that transportation network companies are  
15 overtaking the taxi industry. The legislature further finds that it  
16 is the policy of many transportation network companies to prohibit  
17 drivers from providing rides to unaccompanied minors. The legislature  
18 further finds these policies exclude transportation network companies  
19 from providing rides to students experiencing homelessness.  
20 Therefore, it is the intent of the legislature to assess a surcharge  
21 on all prearranged rides provided by a transportation network company  
22 driver to a transportation network company rider to offset school  
23 district costs associated with providing transportation to students  
24 experiencing homelessness.

25 NEW SECTION. **Sec. 4.** MCKINNEY—VENTO SURCHARGE. (1) In addition  
26 to the surcharge assessed under section 2 of this act, each  
27 prearranged ride provided by a transportation network company driver  
28 to a transportation network company rider must be assessed a ten cent  
29 per trip surcharge to offset costs associated with providing  
30 transportation to students experiencing homelessness.

31 (2) The surcharge assessed under subsection (1) of this section  
32 must be remitted to the state treasurer for deposit in the education  
33 legacy trust account to support expenditures related to the federal  
34 McKinney-Vento homeless assistance act, including transportation,  
35 within thirty days of the end of each calendar quarter.

36 (3) The office of the superintendent of public instruction must  
37 publish an annual report summarizing the following information:

1 (a) The number of students experiencing homelessness that require  
2 transportation to their school of origin;

3 (b) The number of students experiencing homelessness that were  
4 provided transportation with the support of revenue generated from  
5 the surcharge assessed under subsection (1) of this section; and

6 (c) A summary of the expenditures made with the revenue generated  
7 from the surcharge assessed under subsection (1) of this section,  
8 including the percentage that was allocated to offset costs  
9 associated with providing transportation to students experiencing  
10 homelessness.

11 **Sec. 5.** RCW 82.04.050 and 2015 3rd sp.s. c 6 s 1105 are each  
12 amended to read as follows:

13 RETAIL SALE. (1)(a) "Sale at retail" or "retail sale" means every  
14 sale of tangible personal property (including articles produced,  
15 fabricated, or imprinted) to all persons irrespective of the nature  
16 of their business and including, among others, without limiting the  
17 scope hereof, persons who install, repair, clean, alter, improve,  
18 construct, or decorate real or personal property of or for consumers  
19 other than a sale to a person who:

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

24 (ii) Installs, repairs, cleans, alters, imprints, improves,  
25 constructs, or decorates real or personal property of or for  
26 consumers, if such tangible personal property becomes an ingredient  
27 or component of such real or personal property without intervening  
28 use by such person; or

29 (iii) Purchases for the purpose of consuming the property  
30 purchased in producing for sale as a new article of tangible personal  
31 property or substance, of which such property becomes an ingredient  
32 or component or is a chemical used in processing, when the primary  
33 purpose of such chemical is to create a chemical reaction directly  
34 through contact with an ingredient of a new article being produced  
35 for sale; or

36 (iv) Purchases for the purpose of consuming the property  
37 purchased in producing ferrosilicon which is subsequently used in  
38 producing magnesium for sale, if the primary purpose of such property

1 is to create a chemical reaction directly through contact with an  
2 ingredient of ferrosilicon; or

3 (v) Purchases for the purpose of providing the property to  
4 consumers as part of competitive telephone service, as defined in RCW  
5 82.04.065; or

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

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

16 (c) The term also means every sale of tangible personal property  
17 to persons engaged in any business that is taxable under RCW  
18 82.04.280(1) (a), (b), and (g), 82.04.290, and 82.04.2908.

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

22 (a) The installing, repairing, cleaning, altering, imprinting, or  
23 improving of tangible personal property of or for consumers,  
24 including charges made for the mere use of facilities in respect  
25 thereto, but excluding charges made for the use of self-service  
26 laundry facilities, and also excluding sales of laundry service to  
27 nonprofit health care facilities, and excluding services rendered in  
28 respect to live animals, birds and insects;

29 (b) The constructing, repairing, decorating, or improving of new  
30 or existing buildings or other structures under, upon, or above real  
31 property of or for consumers, including the installing or attaching  
32 of any article of tangible personal property therein or thereto,  
33 whether or not such personal property becomes a part of the realty by  
34 virtue of installation, and also includes the sale of services or  
35 charges made for the clearing of land and the moving of earth  
36 excepting the mere leveling of land used in commercial farming or  
37 agriculture;

38 (c) The constructing, repairing, or improving of any structure  
39 upon, above, or under any real property owned by an owner who conveys  
40 the property by title, possession, or any other means to the person

1 performing such construction, repair, or improvement for the purpose  
2 of performing such construction, repair, or improvement and the  
3 property is then reconveyed by title, possession, or any other means  
4 to the original owner;

5 (d) The cleaning, fumigating, razing, or moving of existing  
6 buildings or structures, but does not include the charge made for  
7 janitorial services; and for purposes of this section the term  
8 "janitorial services" means those cleaning and caretaking services  
9 ordinarily performed by commercial janitor service businesses  
10 including, but not limited to, wall and window washing, floor  
11 cleaning and waxing, and the cleaning in place of rugs, drapes and  
12 upholstery. The term "janitorial services" does not include painting,  
13 papering, repairing, furnace or septic tank cleaning, snow removal or  
14 sandblasting;

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

18 (f) The furnishing of lodging and all other services by a hotel,  
19 rooming house, tourist court, motel, trailer camp, and the granting  
20 of any similar license to use real property, as distinguished from  
21 the renting or leasing of real property, and it is presumed that the  
22 occupancy of real property for a continuous period of one month or  
23 more constitutes a rental or lease of real property and not a mere  
24 license to use or enjoy the same. For the purposes of this  
25 subsection, it is presumed that the sale of and charge made for the  
26 furnishing of lodging for a continuous period of one month or more to  
27 a person is a rental or lease of real property and not a mere license  
28 to enjoy the same;

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

31 (h) Persons taxable under (a), (b), (c), (d), (e), (f), and (g)  
32 of this subsection when such sales or charges are for property, labor  
33 and services which are used or consumed in whole or in part by such  
34 persons in the performance of any activity defined as a "sale at  
35 retail" or "retail sale" even though such property, labor and  
36 services may be resold after such use or consumption. Nothing  
37 contained in this subsection may be construed to modify subsection  
38 (1) of this section and nothing contained in subsection (1) of this  
39 section may be construed to modify this subsection.



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

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

7 (b) Credit bureau services;

8 (c) Automobile parking and storage garage services;

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

14 (e) Service charges associated with tickets to professional  
15 sporting events;

16 (f) The following personal services: Tanning salon services,  
17 tattoo parlor services, steam bath services, Turkish bath services,  
18 escort services, and dating services; and

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

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

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

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

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

38 (D) Separately stated charges for physical therapy provided by a  
39 physical therapist, as those terms are defined in RCW 18.74.010, or  
40 occupational therapy provided by an occupational therapy

1 practitioner, as those terms are defined in RCW 18.59.020, when  
2 performed pursuant to a referral from an authorized health care  
3 practitioner or in consultation with an authorized health care  
4 practitioner. For the purposes of this subsection (3)(g)(ii)(D), an  
5 authorized health care practitioner means a health care practitioner  
6 licensed under chapter 18.83, 18.25, 18.36A, 18.57, 18.57A, 18.71, or  
7 18.71A RCW;

8 (E) Rent or association fees charged by a landlord or residential  
9 association to a tenant or residential owner with access to an  
10 athletic or fitness facility maintained by the landlord or  
11 residential association, unless the rent or fee varies depending on  
12 whether the tenant or owner has access to the facility;

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

17 (G) The provision of access to an athletic or fitness facility by  
18 an educational institution to its students and staff. However,  
19 charges made by an educational institution to its alumni or other  
20 members of the public for the use of any of the educational  
21 institution's athletic or fitness facilities are a retail sale under  
22 this subsection (3)(g). For purposes of this subsection  
23 (3)(g)(ii)(G), "educational institution" has the same meaning as in  
24 RCW 82.04.170; and

25 (H) Yoga, tai chi, or chi gong classes held at a community  
26 center, park, gymnasium, college or university, hospital or other  
27 medical facility, private residence, or any facility that is not  
28 primarily used for physical fitness activities other than yoga, tai  
29 chi, or chi gong classes.

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

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

36 (A) "Athletic or fitness facility" means an indoor or outdoor  
37 facility or portion of a facility that is primarily used for:  
38 Exercise classes; strength and conditioning programs; personal  
39 training services; tennis, racquetball, handball, squash, or  
40 pickleball; yoga; boxing, kickboxing, wrestling, martial arts, or

1 mixed martial arts training; or other activities requiring the use of  
2 exercise or strength training equipment, such as treadmills,  
3 elliptical machines, stair climbers, stationary cycles, rowing  
4 machines, pilates equipment, balls, climbing ropes, jump ropes, and  
5 weightlifting equipment.

6 (B) "Physical fitness activities" means activities that involve  
7 physical exertion for the purpose of improving or maintaining the  
8 general fitness, strength, flexibility, conditioning, or health of  
9 the participant.

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

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

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

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

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

29 (i) Custom software; or

30 (ii) The customization of prewritten computer software.

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

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

39 (B) For purposes of this subsection (6)(c)(ii), "data processing"  
40 means the systematic performance of operations on data to extract the

1 required information in an appropriate form or to convert the data to  
2 usable information. Data processing includes check processing, image  
3 processing, form processing, survey processing, payroll processing,  
4 claim processing, and similar activities.

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

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

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

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

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

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

29 (b) A retail sale of digital goods, digital codes, or digital  
30 automated services under this subsection (8) includes any services  
31 provided by the seller exclusively in connection with the digital  
32 goods, digital codes, or digital automated services, whether or not a  
33 separate charge is made for such services.

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

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

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

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

32 (12) The term does not include the sale of or charge made for  
33 labor and services rendered in respect to the constructing,  
34 repairing, decorating, or improving of new or existing buildings or  
35 other structures under, upon, or above real property of or for the  
36 United States, any instrumentality thereof, or a county or city  
37 housing authority created pursuant to chapter 35.82 RCW, including  
38 the installing, or attaching of any article of tangible personal  
39 property therein or thereto, whether or not such personal property  
40 becomes a part of the realty by virtue of installation. Nor does the

1 term include the sale of services or charges made for the clearing of  
2 land and the moving of earth of or for the United States, any  
3 instrumentality thereof, or a county or city housing authority. Nor  
4 does the term include the sale of services or charges made for  
5 cleaning up for the United States, or its instrumentalities,  
6 radioactive waste and other by-products of weapons production and  
7 nuclear research and development.

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

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

17 (15)(a) The term "sale at retail" or "retail sale" includes  
18 amounts charged, however labeled, to consumers to engage in any of  
19 the activities listed in this subsection (15)(a), including the  
20 furnishing of any associated equipment or, except as otherwise  
21 provided in this subsection, providing instruction in such  
22 activities, where such charges are not otherwise defined as a "sale  
23 at retail" or "retail sale" in this section:

24 (i)(A) Golf, including any variant in which either golf balls or  
25 golf clubs are used, such as miniature golf, hitting golf balls at a  
26 driving range, and golf simulators, and including fees charged by a  
27 golf course to a player for using his or her own cart. However,  
28 charges for golf instruction are not a retail sale, provided that if  
29 the instruction involves the use of a golfing facility that would  
30 otherwise require the payment of a fee, such as green fees or driving  
31 range fees, such fees, including the applicable retail sales tax,  
32 must be separately identified and charged by the golfing facility  
33 operator to the instructor or the person receiving the instruction.

34 (B) Notwithstanding (a)(i)(A) of this subsection (15) and except  
35 as otherwise provided in this subsection (15)(a)(i)(B), the term  
36 "sale at retail" or "retail sale" does not include amounts charged to  
37 participate in, or conduct, a golf tournament or other competitive  
38 event. However, amounts paid by event participants to the golf  
39 facility operator are retail sales under this subsection (15)(a)(i).  
40 Likewise, amounts paid by the event organizer to the golf facility

1 are retail sales under this subsection (15)(a)(i), if such amounts  
2 vary based on the number of event participants;

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

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

7 (iv) Access to amusement park, theme park, and water park  
8 facilities, including but not limited to charges for admission and  
9 locker or cabana rentals. Discrete charges for rides or other  
10 attractions or entertainment that are in addition to the charge for  
11 admission are not a retail sale under this subsection (15)(a)(iv).  
12 For the purposes of this subsection, an amusement park or theme park  
13 is a location that provides permanently affixed amusement rides,  
14 games, and other entertainment, but does not include parks or zoos  
15 for which the primary purpose is the exhibition of wildlife, or  
16 fairs, carnivals, and festivals as defined in (b)(i) of this  
17 subsection;

18 (v) Batting cage activities;

19 (vi) Bowling, but not including competitive events, except that  
20 amounts paid by the event participants to the bowling alley operator  
21 are retail sales under this subsection (15)(a)(vi). Likewise, amounts  
22 paid by the event organizer to the operator of the bowling alley are  
23 retail sales under this subsection (15)(a)(vi), if such amounts vary  
24 based on the number of event participants;

25 (vii) Climbing on artificial climbing structures, whether indoors  
26 or outdoors;

27 (viii) Day trips for sightseeing purposes;

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

30 (x) Horseback riding offered to the public, where the seller  
31 furnishes the horse to the buyer and providing instruction is not the  
32 primary focus of the activity, including guided rides, but not  
33 including therapeutic horseback riding provided by an instructor  
34 certified by a nonprofit organization that offers national or  
35 international certification for therapeutic riding instructors;

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

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

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

12 (xiv) Go-karting, bumper cars, and other motorized activities  
13 where the seller provides the vehicle and the premises where the  
14 buyer will operate the vehicle;

15 (xv) Indoor or outdoor playground activities, such as inflatable  
16 bounce structures and other inflatables; mazes; trampolines; slides;  
17 ball pits; games of tag, including laser tag and soft-dart tag; and  
18 human gyroscope rides, regardless of whether such activities occur at  
19 the seller's place of business, but not including playground  
20 activities provided for children by a licensed child day care center  
21 or licensed family day care provider as those terms are defined in  
22 RCW 43.215.010;

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

29 (xvii) Paintball and airsoft activities;

30 (xviii) Skating, including ice skating, roller skating, and  
31 inline skating, but only in respect to discrete charges to members of  
32 the public to engage in skating activities, but not including skating  
33 lessons, competitive events, team activities, or fees to join or  
34 renew a membership at a skating facility, club, or other  
35 organization;

36 (xix) Nonmotorized snow sports and activities, such as downhill  
37 and cross-country skiing, snowboarding, ski jumping, sledding, snow  
38 tubing, snowshoeing, and similar snow sports and activities, whether  
39 engaged in outdoors or in an indoor facility with or without snow,  
40 but only in respect to discrete charges to the public for the use of



1 land or facilities to engage in nonmotorized snow sports and  
2 activities, such as fees, however labeled, for the use of ski lifts  
3 and tows and daily or season passes for access to trails or other  
4 areas where nonmotorized snow sports and activities are conducted.  
5 However, fees for the following are not retail sales under this  
6 subsection (15)(a)(xix): (A) Instructional lessons; (B) permits  
7 issued by a governmental entity to park a vehicle on or access public  
8 lands; and (C) permits or leases granted by an owner of private  
9 timberland for recreational access to areas used primarily for  
10 growing and harvesting timber; and

11 (xx) Scuba diving; snorkeling; river rafting; surfing;  
12 kiteboarding; flyboarding; water slides; inflatables, such as water  
13 pillows, water trampolines, and water rollers; and similar water  
14 sports and activities.

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

18 (i) Made for admission to, and rides or attractions at, fairs,  
19 carnivals, and festivals. For the purposes of this subsection, fairs,  
20 carnivals, and festivals are events that do not exceed twenty-one  
21 days and a majority of the amusement rides, if any, are not affixed  
22 to real property;

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

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

33 (iv) Made for day camps offered by a nonprofit organization or  
34 state or local governmental entity that provide youth not older than  
35 age eighteen, or that are focused on providing individuals with  
36 disabilities or mental illness, the opportunity to participate in a  
37 variety of supervised activities.

38 (16) The term "sale at retail" or "retail sale" also includes the  
39 amount charged for or sale of labor and services, however labeled,  
40 received by a transportation network company driver for providing a

1 prearranged ride to a transportation network company rider. The  
2 definitions in section 1 of this act apply to this subsection.

3 NEW SECTION. **Sec. 6.** Sections 1 through 4 of this act  
4 constitute a new chapter in Title 46 RCW.

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