

# 2022 SPECIAL SESSION I

## HOUSE SUBSTITUTE

22208236D

### HOUSE BILL NO. 90

#### AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Joint Conference Committee  
on June 1, 2022)

(Patron Prior to Substitute—Delegate McNamara)

*A BILL to amend and reenact § 58.1-611.1 of the Code of Virginia, relating to sales tax; exemption for food purchased for human consumption and essential personal hygiene products.*

**Be it enacted by the General Assembly of Virginia:**

**1. That § 58.1-611.1 of the Code of Virginia is amended and reenacted as follows:**

**§ 58.1-611.1. Exemption for food purchased for human consumption and essential personal hygiene products.**

A. ~~The~~ *Before January 1, 2023, the tax imposed by §§ 58.1-603 and 58.1-604 on food purchased for human consumption and essential personal hygiene products shall be one and one-half percent of the gross sales price. The revenue from the tax shall be distributed as follows: (i) the revenue from the tax at the rate of one-half percent shall be distributed as provided in subsection A of § 58.1-638 and (ii) the revenue from the tax at the rate of one percent shall be distributed as provided in subsections B, C, and D of § 58.1-638.*

B. ~~The provisions of this section shall not affect the imposition of tax on food purchased for human consumption and essential personal hygiene products pursuant to §§ 58.1-605 and 58.1-606.~~

~~C. On and after January 1, 2023, and except for taxes imposed pursuant to §§ 58.1-605 and 58.1-606, no tax shall be imposed under this chapter, or pursuant to any authority granted under this chapter, on food purchased for human consumption or essential personal hygiene products.~~

~~C. Beginning February 1, 2023, an amount equal to the revenue that would have been distributed pursuant to clause (ii) of subsection A shall be distributed as provided in subsections B, C, and D of § 58.1-638 based on the estimates of the population of cities and counties ages five to 19.~~

D. 1. As used in this section, "food purchased for human consumption" has the same meaning as "food" defined in the Food Stamp Act of 1977, 7 U.S.C. § 2012, as amended, and federal regulations adopted pursuant to that Act, except it shall not include seeds and plants which produce food for human consumption. For the purpose of this section, "food purchased for human consumption" shall not include food sold by any retail establishment where the gross receipts derived from the sale of food prepared by such retail establishment for immediate consumption on or off the premises of the retail establishment constitutes more than 80 percent of the total gross receipts of that retail establishment, including but not limited to motor fuel purchases, regardless of whether such prepared food is consumed on the premises of that retail establishment. For purposes of this section, "retail establishment" means each place of business for which any "dealer," as defined in § 58.1-612, is required to apply for and receive a certificate of registration pursuant to § 58.1-613.

2. As used in this section, "essential personal hygiene products" means (i) nondurable incontinence products such as diapers, disposable undergarments, pads, and bed sheets and (ii) menstrual cups and pads, pantyliners, sanitary napkins, tampons, and other products used to absorb or contain menstrual flow. "Essential personal hygiene products" does not include any item that is otherwise exempt pursuant to this chapter.

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