ENROLLED

House Bill 2515

BY DELEGATES BUTLER, CADLE, WILSON, ELLINGTON, SHOTT, HOWELL, HARDY, KUMP, PACK, STORCH AND FAST

[Passed March 6, 2019; in effect ninety days from passage.]
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By Delegates Butler, Cadle, Wilson, Ellington, Shott, Howell, Hardy, Kump, Pack, Storch and Fast

[Passed March 6, 2019; in effect ninety days from passage.]
AN ACT to amend and reenact §11-15-9i of the Code of West Virginia, 1931, as amended relating to exempting from state sales and use tax the sale and installation of mobility enhancing equipment installed in a new or used motor vehicle for the use of a person with physical disabilities and the sale and installation for the repair or replacement parts of mobility enhancing equipment; and establishing a definition for mobility enhancing equipment.

Be it enacted by the Legislature of West Virginia:

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-9i. Exempt drugs, durable medical equipment, mobility enhancing equipment and prosthetic devices.

(a) Notwithstanding any provision of this article, article 15A or article 15B of this chapter, the purchase by a health care provider of drugs, durable medical equipment, mobility enhancing equipment and prosthetic devices, all as defined in §11-15B-2 of this code, to be dispensed upon prescription and intended for use in the diagnosis, cure, mitigation, treatment or prevention of injury or disease are exempt from the tax imposed by this article: Provided, That the exemption provided for the purchase by a health care provider of durable medical equipment is suspended for the period beginning on and after July 1, 2016, and continuing until June 30, 2018. On and after July 1, 2018, the exemption is reestablished.

(b) Notwithstanding any provision of this article, article 15A or article 15B of this chapter, the purchase of durable medical equipment, as defined in §11-15B-2 of this code, to be dispensed upon prescription by a health care provider and intended for use in the diagnosis, cure, mitigation, treatment or prevention of injury or disease is exempt from the tax imposed by this article: Provided, That the durable medical equipment is purchased by an individual for exclusive use by the purchaser or another individual and used predominantly by the recipient individual in his or her home environment.

(1) Effective Dates. — The provisions of this subsection shall apply to purchases made on and after July 1, 2016.
(2) Per se exemption. — The exemption set forth by this subsection shall be given without
the necessity of an exemption certificate, direct pay permit or refund or credit request.

(c) Notwithstanding any provision of this article, article 15A, or article 15B of this chapter,
the sale and installation of mobility enhancing equipment, as defined in §11-15B-2 of this code,
installed in a new or used motor vehicle for the use of a person with physical disabilities are
exempt from the taxes imposed by this article. Any sale and installation for the repair or
replacement parts of mobility enhancing equipment, whether the repair or replacement parts are
purchased separately or in conjunction with the mobility enhancing equipment, and whether the
parts continue the original function or enhance the functionality of the mobility enhancing
equipment, are exempt from the taxes imposed by this article.

(d) Definitions. — The following definitions shall apply:

(1) For purposes of this section, “used predominantly by the recipient individual in his or
her home environment”, with reference to durable medical equipment, means that the equipment
is sold to an individual for use by the individual purchaser or by another individual at home,
regardless of where the individual resides. For purposes of this definition, the term “home” means
and includes facilities such as nursing homes, assisted care centers and school dormitories, of
which a user or purchaser is a resident. A purchase of such equipment shall not be disqualified
from the exemption because the equipment is incidentally used on the streets, in commercial
establishments, in public places and in locations other than the home, so long as use in the home
is the predominant use. For purposes of this definition, the term “individual” means and is limited
to a single, separate human being and specifically excludes any health care provider, or provider
of nursing services, personal care services, behavioral care services, residential care or assisted
living care, or any entity or organization other than a human being.

(2) When the equipment is sold to a facility such as a hospital, nursing home, medical
clinic, dental office, chiropractor, or optician office, then this shall not constitute a use of the
equipment by the recipient individual in his or her home environment. The fact that a nursing
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home may use the equipment only for its residents does not make the equipment exempt for
home use: *Provided,* That nothing in this section shall be interpreted to void or abrogate lawful
assertion and application of the purchases for resale exemption as it may apply to any purchaser
of durable medical equipment.

(3) For purposes of this section, "health care provider" means any person licensed to
prescribe drugs, durable medical equipment, mobility enhancing equipment and prosthetic
devices intended for use in the diagnosis, cure, mitigation, treatment, or prevention of injury or
disease. For purposes of this section, the term "health care provider" includes any hospital,
medical clinic, nursing home or provider of inpatient hospital services and any provider of
outpatient hospital services, physician services, nursing services, ambulance services, surgical
services, or veterinary services: *Provided,* That the amendment to this subsection enacted during
the 2009 regular legislative session shall be effective on or after July 1, 2009.

(4) The term "durable medical goods", as used in this article, means "durable medical
equipment" as defined in §11-15B-2 of this code.

(5) For purposes of this section, the term "nursing home or facility" means any institution,
residence or place, or any part or unit thereof, however named, in this state which is advertised,
offered, maintained, or operated by the ownership or management, whether for a consideration
or not, for the express or implied purpose of providing accommodations and care, for a period of
more than 24 hours, for four or more persons who are ill or otherwise incapacitated and in need
of extensive, ongoing nursing care due to physical or mental impairment, or which provides
services for the rehabilitation of persons who are convalescing from illness or incapacitation:
*Provided,* That the care or treatment in a household, whether for compensation or not, of any
person related by blood or marriage, within the degree of consanguinity of second cousin to the
head of the household, or his or her spouse, may not be deemed to constitute a nursing home
within the meaning of this article.
(6) For purposes of this section, the term “assisted care center” means any living facility, residence or place of accommodation, however named, available for four or more residents, in this state which is advertised, offered, maintained or operated by the ownership or management, whether for a consideration or not, for the express or implied purpose of having personal assistance or supervision, or both, provided to any residents therein who are dependent upon the services of others by reason of physical or mental impairment, and who may also require nursing care at a level that is not greater than limited and intermittent nursing care: Provided, That the care or treatment in a household, whether for compensation or not, of any person related by blood or marriage, within the degree of consanguinity of second cousin to the head of the household, or his or her spouse, may not be deemed to constitute an assisted living residence within the meaning of this article.

(7) For purposes of this section, the term “school dormitory” means housing or a unit of housing provided primarily for students as a temporary or permanent dwelling place or abode and owned, operated, or controlled by an institution of higher education, and shall be synonymous with the term “residence hall”.

(8) For purposes of this section, the term “mobility enhancing equipment” means “mobility enhancing equipment” as defined in §11-15B-2 of this code.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within is approved this the 25th day of March, 2019.

Governor
PRESENTED TO THE GOVERNOR

MAR 18 2019

Time  11:12am