

"E"
cont.

1 **SECTION 2161o.** 76.635 (1) (b) of the statutes is amended to read:

2 76.635 (1) (b) "Certified capital investment" has the meaning given in s. ~~560.30~~
3 ~~(4)~~ 560.29 (1) (b).

4 **SECTION 2161p.** 76.635 (1) (c) of the statutes is amended to read:

5 76.635 (1) (c) "Investment date" has the meaning given in s. ~~560.30 (6)~~ 560.29
6 (1) (d).

7 **SECTION 2161q.** 76.635 (1) (d) of the statutes is amended to read:

8 76.635 (1) (d) "Investment pool" has the meaning given in s. ~~560.30 (7)~~ 560.29
9 (1) (e).

10 **SECTION 2161r.** 76.635 (1) (e) of the statutes is amended to read:

11 76.635 (1) (e) "Qualified investment" has the meaning given in s. ~~560.30 (11)~~
12 560.29 (1) (g).

13 **SECTION 2161s.** 76.635 (4) (a) of the statutes is amended to read:

14 76.635 (4) (a) If a certified capital company is decertified, or an investment pool
15 is disqualified, under s. ~~560.37, 2005 stats.~~, before the certified capital company
16 fulfills the investment requirement under s. 560.34 (1m) (a) 1., 2005 stats., with
17 respect to the investment pool, any insurer that has received a credit under this
18 section with respect to that investment pool shall repay that credit to the
19 commissioner of insurance, for deposit in the general fund, and may not claim more
20 credit in respect to that investment pool.

21 **SECTION 2161t.** 76.635 (4) (b) of the statutes is amended to read:

22 76.635 (4) (b) If a certified capital company fulfills the investment requirement
23 under s. 560.34 (1m) (a) 1., 2005 stats., with respect to an investment pool but the
24 certified capital company is decertified, or an investment pool is disqualified, under
25 s. ~~560.37, 2005 stats.~~, before the certified capital company fulfills the investment

1 requirement under s. 560.34 (1m) (a) 2., 2005 stats., for that investment pool, any
2 insurer that has received a credit under this section with respect to that investment
3 pool shall repay all credits that were claimed for taxable years after the taxable year
4 that includes the 3rd anniversary of the investment date of the investment pool and
5 may claim no more credits for taxable years after the taxable year that includes the
6 3rd anniversary of the investment date of the investment pool.

7 **SECTION 2162.** 76.636 (1) (e) of the statutes is amended to read:

8 76.636 (1) (e) "Member of a targeted group" means a person who resides in an
9 area designated by the federal government as an economic revitalization area, a
10 person who is employed in an unsubsidized job but meets the eligibility requirements
11 under s. 49.145 (2) and (3) for a Wisconsin Works employment position, a person who
12 is employed in a trial job, as defined in s. 49.141 (1) (n), or in a real work, real pay
13 project position under s. 49.147 (3m), a person who is eligible for child care assistance
14 under s. 49.155, a person who is a vocational rehabilitation referral, an economically
15 disadvantaged youth, an economically disadvantaged veteran, a supplemental
16 security income recipient, a general assistance recipient, an economically
17 disadvantaged ex-convict, a qualified summer youth employee, as defined in 26 USC
18 51 (d) (7), a dislocated worker, as defined in 29 USC 2801 (9), or a food stamp
19 recipient, if the person has been certified in the manner under s. 71.47 (1dj) (am) 3.
20 by a designated local agency, as defined in s. 71.47 (1dj) (am) 2.

21 **SECTION 2163.** 76.636 (2) (b) of the statutes is amended to read:

22 76.636 (2) (b) The amount determined by multiplying the amount determined
23 under s. 560.785 (1) (b) by the number of full-time jobs created in a development zone
24 and filled by a member of a targeted group and by then subtracting the subsidies paid

1 under s. 49.147 (3) (a) or the subsidies and reimbursements paid under s. 49.147 (3m)
2 (c) for those jobs.

3 **SECTION 2164.** 76.636 (2) (c) of the statutes is amended to read:

4 76.636 (2) (c) The amount determined by multiplying the amount determined
5 under s. 560.785 (1) (c) by the number of full-time jobs created in a development zone
6 and not filled by a member of a targeted group and by then subtracting the subsidies
7 paid under s. 49.147 (3) (a) or the subsidies and reimbursements paid under s. 49.147
8 (3m) (c) for those jobs.

9 **SECTION 2165.** 76.636 (2) (d) of the statutes is amended to read:

10 76.636 (2) (d) The amount determined by multiplying the amount determined
11 under s. 560.785 (1) (bm) by the number of full-time jobs retained, as provided in the
12 rules under s. 560.785, excluding jobs for which a credit has been claimed under s.
13 71.47 (1dj), in an enterprise development zone under s. 560.797 and for which
14 significant capital investment was made and by then subtracting the subsidies paid
15 under s. 49.147 (3) (a) or the subsidies and reimbursements paid under s. 49.147 (3m)
16 (c) for those jobs.

17 **SECTION 2166.** 76.636 (2) (e) of the statutes is amended to read:

18 76.636 (2) (e) The amount determined by multiplying the amount determined
19 under s. 560.785 (1) (c) by the number of full-time jobs retained, as provided in the
20 rules under s. 560.785, excluding jobs for which a credit has been claimed under s.
21 71.47 (1dj), in a development zone and not filled by a member of a targeted group and
22 by then subtracting the subsidies paid under s. 49.147 (3) (a) or the subsidies and
23 reimbursements paid under s. 49.147 (3m) (c) for those jobs.

JK 24 **SECTION 2168d.** 77.21 (2m) of the statutes is created to read:

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1 77.21 (2m) "Sibling" means one of 2 or more individuals who have at least one
2 common parent and includes a half brother, a half sister, a stepbrother, and a
3 stepsister.

4 **SECTION 2169d.** 77.25 (8n) of the statutes is created to read:

5 77.25 (8n) Between siblings for nominal or no consideration.

6 **SECTION 2170.** 77.51 (1) of the statutes is renumbered 77.51 (1fd) and amended
7 to read:

8 77.51 (1fd) "Business" includes any activity engaged in by any person or caused
9 to be engaged in by any person with the object of gain, benefit or advantage, either
10 direct or indirect, and includes also the furnishing and distributing of tangible
11 personal property, items or property under s. 77.52 (1) (b) or (c), or taxable services
12 for a consideration by social clubs and fraternal organizations to their members or
13 others.

14 **SECTION 2172.** 77.51 (1b) of the statutes is created to read:

15 77.51 (1b) "Alcoholic beverage" means a beverage that is suitable for human
16 consumption and that contains 0.5 percent or more of alcohol by volume.

17 **SECTION 2173.** 77.51 (1ba) of the statutes is created to read:

18 77.51 (1ba) "Ancillary services" means services that are associated with or
19 incidental to providing telecommunications services, including detailed
20 telecommunications billing, directory assistance, vertical service, and voice mail
21 services.

22 **SECTION 2176.** 77.51 (1f) of the statutes is created to read:

23 77.51 (1f) "Bundled transaction" means the retail sale of 2 or more products,
24 not including real property and services to real property, if the products are distinct

1 and identifiable products and sold for one nonitemized price. "Bundled transaction"
2 does not include any of the following:

3 (a) The sale of any products for which the sales price varies or is negotiable
4 based on the purchaser's selection of the products included in the transaction.

5 (b) 1. The retail sale of tangible personal property and a service, if the tangible
6 personal property is essential to the use of the service, and provided exclusively in
7 connection with the service, and if the true object of the transaction is the service.

8 3. The retail sale of a service and items or property under s. 77.52 (1) (b) or (c),
9 if such property or items are essential to the use of the service, and provided
10 exclusively in connection with the service, and if the true object of the transaction
11 is the service.

12 (c) The retail sale of services, if one of the services is essential to the use or
13 receipt of another service, and provided exclusively in connection with the other
14 service, and if the true object of the transaction is the other service.

15 (d) A transaction that includes taxable and nontaxable products, if the seller's
16 purchase price or the sales price of the taxable products is no greater than 10 percent
17 of the seller's total purchase price or sales price of all the bundled products, as
18 determined by the seller using either the seller's purchase price or sales price, but
19 not a combination of both, or, in the case of a service contract, the full term of the
20 service contract.

21 (e) The retail sale of taxable tangible personal property or items or property
22 under s. 77.52 (1) (b) or (c) and tangible personal property or items or property under
23 s. 77.52 (1) (b) or (c) that is exempt from the taxes imposed under this subchapter,
24 if the transaction includes food and food ingredients, drugs, durable medical
25 equipment, mobility-enhancing equipment, prosthetic devices, or medical supplies

1 and if the seller's purchase price or the sales price of the taxable tangible personal
2 property or items or property under s. 77.52 (1) (b) or (c) is no greater than 50 percent
3 of the seller's total purchase price or sales price of all the tangible personal property
4 or items or property under s. 77.52 (1) (b) or (c) included in what would otherwise be
5 a bundled transaction, as determined by the seller using either the seller's purchase
6 price or the sales price, but not a combination of both.

7 **SECTION 2177.** 77.51 (1fm) of the statutes is created to read:

8 77.51 (1fm) "Candy" means a preparation of sugar, honey, or other natural or
9 artificial sweetener combined with chocolate, fruit, nuts, or other ingredients or
10 flavorings in the form of bars, drops, or pieces. "Candy" does not include a
11 preparation that contains flour or that requires refrigeration.

12 **SECTION 2178.** 77.51 (1j) of the statutes is created to read:

13 77.51 (1j) "Catalog" means a printed and bound, stitched, sewed, or stapled
14 book containing a list and description of property or services for sale, regardless of
15 whether a price is specified.

16 **SECTION 2179.** 77.51 (1n) of the statutes is created to read:

17 77.51 (1n) "Computer" means an electronic device that accepts information in
18 digital or similar form and that manipulates such information to achieve a result
19 based on a sequence of instructions.

20 **SECTION 2180.** 77.51 (1p) of the statutes is created to read:

21 77.51 (1p) "Computer software" means a set of coded instructions designed to
22 cause a computer or automatic data processing equipment to perform a task.

23 **SECTION 2181.** 77.51 (1r) of the statutes is created to read:

24 77.51 (1r) "Conference bridging service" means an ancillary service that links
25 2 or more participants of an audio or video conference call and may include providing

1 a telephone number, but does not include the telecommunications services used to
2 reach the conference bridge.

3 **SECTION 2182.** 77.51 (2k) of the statutes is created to read:

4 77.51 (2k) "Delivered electronically" means delivered to a purchaser by means
5 other than by tangible storage media.

6 **SECTION 2183.** 77.51 (2m) of the statutes is created to read:

7 77.51 (2m) "Delivery charges" means charges by a seller to prepare and deliver
8 tangible personal property, items or property under s. 77.52 (1) (b) or (c), or services
9 to a location designated by the purchaser of the tangible personal property, items or
10 property under s. 77.52 (1) (b) or (c), or services, including charges for transportation,
11 shipping, postage, handling, crating, and packing.

12 **SECTION 2184.** 77.51 (3c) of the statutes is created to read:

13 77.51 (3c) "Detailed telecommunications billing service" means an ancillary
14 service that separately indicates information pertaining to individual calls on a
15 customer's billing statement.

16 **SECTION 2185.** 77.51 (3n) of the statutes is created to read:

17 77.51 (3n) "Dietary supplement" means a product, other than tobacco, that is
18 intended to supplement a person's diet, if all of the following apply:

19 (a) The product contains any of the following ingredients or any combination
20 of any of the following ingredients:

21 1. A vitamin.

22 2. A mineral.

23 3. An herb or other botanical.

24 4. An amino acid.

1 5. A dietary substance that is intended for human consumption to supplement
2 the diet by increasing total dietary intake.

3 6. A concentrate, metabolite, constituent, or extract.

4 (b) The product is intended for ingestion in tablet, capsule, powder, soft-gel,
5 gel-cap, or liquid form, or, if not intended for ingestion in such forms, is not
6 represented as conventional food and is not represented for use as the sole item of
7 a meal or diet.

8 (c) The product is required to be labeled as a dietary supplement as required
9 under 21 CFR 101.36.

10 **SECTION 2190.** 77.51 (3pd) of the statutes is created to read:

11 77.51 (3pd) "Direct mail" means printed material that is delivered by the U.S.
12 postal service or other delivery service to a mass audience or to addressees on a
13 mailing list provided by or at the direction of the purchaser of the printed material,
14 if the cost of the printed material or any tangible personal property or items or
15 property under s. 77.52 (1) (b) or (c) included with the printed material is not billed
16 directly to the recipients of the printed material. "Direct mail" includes any tangible
17 personal property or items or property under s. 77.52 (1) (b) or (c) provided directly
18 or indirectly by the purchaser of the printed material to the seller of the printed
19 material for inclusion in any package containing the printed material, including
20 billing invoices, return envelopes, and additional marketing materials. "Direct mail"
21 does not include multiple items of printed material delivered to a single address.

22 **SECTION 2191.** 77.51 (3pe) of the statutes is created to read:

23 77.51 (3pe) "Directory assistance" means an ancillary service that provides
24 telephone numbers or addresses.

25 **SECTION 2192.** 77.51 (3pf) of the statutes is created to read:

1 77.51 (3pf) "Distinct and identifiable product" does not include any of the
2 following:

3 (a) Packaging, including containers, boxes, sacks, bags, bottles, and envelopes;
4 and other materials, including wrapping, labels, tags, and instruction guides; that
5 accompany, and are incidental or immaterial to, the retail sale of any product.

6 (b) A product that is provided free of charge to the consumer in conjunction with
7 the purchase of another product, if the sales price of the other product does not vary
8 depending on whether the product provided free of charge is included in the
9 transaction.

10 (c) Any items specified under sub. (12m) (a) or (15b) (a).

11 **SECTION 2193.** 77.51 (3pj) of the statutes is created to read:

12 77.51 (3pj) "Drug" means a compound, substance, or preparation, or any
13 component of them, other than food and food ingredients, dietary supplements, or
14 alcoholic beverages, to which any of the following applies:

15 (a) It is listed in the United States Pharmacopoeia, Homeopathic
16 Pharmacopoeia of the United States, or National Formulary, or any supplement to
17 any of them.

18 (b) It is intended for use in diagnosing, curing, mitigating, treating, or
19 preventing a disease.

20 (c) It is intended to affect a function or structure of the body.

21 **SECTION 2194.** 77.51 (3pm) of the statutes is created to read:

22 77.51 (3pm) "Durable medical equipment" means equipment, including the
23 repair parts and replacement parts for the equipment that is primarily and
24 customarily used for a medical purpose related to a person; that can withstand
25 repeated use; that is not generally useful to a person who is not ill or injured; and that

1 is not placed in or worn on the body. "Durable medical equipment" does not include
2 mobility-enhancing equipment.

3 **SECTION 2195.** 77.51 (3pn) of the statutes is created to read:

4 77.51 (3pn) "Eight hundred service" means a telecommunications service that
5 allows a caller to dial a toll-free number without incurring a charge for the call and
6 is marketed under "800," "855," "866," "877," or "888" toll-free calling, or any other
7 number designated as toll-free by the federal communications commission.

8 **SECTION 2196.** 77.51 (3po) of the statutes is created to read:

9 77.51 (3po) "Electronic" means relating to technology having electrical, digital,
10 magnetic, wireless, optical, electromagnetic, or similar capabilities.

11 **SECTION 2198.** 77.51 (3rm) of the statutes is created to read:

12 77.51 (3rm) "Fixed wireless service" means a telecommunications service that
13 provides radio communication between fixed points.

14 **SECTION 2199.** 77.51 (3t) of the statutes is created to read:

15 77.51 (3t) "Food and food ingredient" means a substance in liquid,
16 concentrated, solid, frozen, dried, or dehydrated form, that is sold for ingestion, or
17 for chewing, by humans and that is ingested or chewed for its taste or nutritional
18 value. "Food and food ingredient" does not include alcoholic beverages or tobacco.

19 **SECTION 2199m.** 77.51 (4) (c) 1. of the statutes is amended to read:

20 77.51 (4) (c) 1. All receipts, cash, credits, and property except as provided in par.
21 (b) 3., including credits for which a person's books and records show that the
22 transaction created, with regard to the transferee, an obligation to pay a certain
23 amount of money or an increase in accounts payable or, with regard to the transferor,
24 a right to receive a certain amount of money or an increase in accounts receivable.

1 **SECTION 2200.** 77.51 (4) of the statutes, as affected by 2007 Wisconsin Act
2 (this act), is repealed.

3 **SECTION 2201.** 77.51 (5) of the statutes is amended to read:

4 77.51 (5) For purposes of subs. (13) (e) and (f) and ~~(14)-(L)~~ (15a) and s. 77.52
5 (2m), "incidental" means depending upon or appertaining to something else as
6 primary; something necessary, appertaining to, or depending upon another which is
7 termed the principal; something incidental to the main purpose of the service.
8 Tangible personal property, items or property under s. 77.52 (1) (b) or (c), transferred
9 by a service provider is incidental to the service if the purchaser's main purpose or
10 objective is to obtain the service rather than the property or items, even though the
11 property or items may be necessary or essential to providing the service.

12 **SECTION 2202.** 77.51 (5d) of the statutes is created to read:

13 77.51 (5d) "International telecommunications services" means
14 telecommunications services that originate or terminate in the United States,
15 including the District of Columbia and any U.S. territory or possession and originate
16 or terminate outside of the United States, including the District of Columbia and any
17 U.S. territory or possession.

18 **SECTION 2203.** 77.51 (5n) of the statutes is created to read:

19 77.51 (5n) "Interstate telecommunications services" means
20 telecommunications services that originate in one state or U.S. territory or
21 possession and terminate in a different state or U.S. territory or possession.

22 **SECTION 2204.** 77.51 (5r) of the statutes is created to read:

23 77.51 (5r) "Intrastate telecommunications services" means
24 telecommunications services that originate in one state or U.S. territory or
25 possession and terminate in the same state or U.S. territory or possession.

1 **SECTION 2205.** 77.51 (6m) of the statutes is renumbered 77.51 (5m).

2 **SECTION 2206.** 77.51 (7) of the statutes is repealed and recreated to read:

3 77.51 (7) (a) "Lease or rental" means any transfer of possession or control of
4 tangible personal property for a fixed or indeterminate term and for consideration
5 and includes:

6 1. A transfer that includes future options to purchase or extend.

7 2. Agreements related to the transfer of possession or control of motor vehicles
8 or trailers, if the amount of any consideration may be increased or decreased by
9 reference to the amount realized on the sale or other disposition of such motor
10 vehicles or trailers, consistent with section 7701 (h) (1) of the Internal Revenue Code.

11 (b) "Lease or rental" does not include any of the following:

12 1. A transfer of possession or control of tangible personal property under a
13 security agreement or deferred payment plan, if such agreement or plan requires
14 transferring title to the tangible personal property after making all required
15 payments.

16 2. A transfer of possession or control of tangible personal property under any
17 agreement that requires transferring title to the tangible personal property after
18 making all required payments and after paying an option price that does not exceed
19 the greater of \$100 or 1 percent of the total amount of the required payments.

20 3. Providing tangible personal property along with an operator, if the operator
21 is necessary for the tangible personal property to perform in the manner for which
22 it is designed and if the operator does more than maintain, inspect, or set up the
23 tangible personal property.

24 (c) 1. Transfers described under par. (a) are considered a lease or rental,
25 regardless of whether such transfer is considered a lease or rental under generally

1 accepted accounting principles, or any provision of federal or local law, or any other
2 provision of state law.

3 2. Transfers described under par. (b) are not considered a lease or rental,
4 regardless of whether such transfer is considered a lease or rental under generally
5 accepted accounting principles, or any provision of federal or local law, or any other
6 provision of state law.

7 **SECTION 2207.** 77.51 (7g) of the statutes is created to read:

8 77.51 (7g) "Load-and-leave" means delivery to a purchaser by using a tangible
9 storage media that is not physically transferred to the purchaser.

10 **SECTION 2208.** 77.51 (7k) of the statutes is created to read:

11 77.51 (7k) "Mobile wireless service" means a telecommunications service for
12 which the origination or termination points of the service's transmission,
13 conveyance, or routing are not fixed, regardless of the technology used to transmit,
14 convey, or route the service. "Mobile wireless service" includes a telecommunications
15 service provided by a commercial mobile radio service provider.

16 **SECTION 2209.** 77.51 (7m) of the statutes is created to read:

17 77.51 (7m) "Mobility-enhancing equipment" means equipment, including the
18 repair parts and replacement parts for the equipment, that is primarily and
19 customarily used to provide or increase the ability of a person to move from one place
20 to another; that may be used in a home or motor vehicle; and that is generally not
21 used by a person who has normal mobility. "Mobility-enhancing equipment" does
22 not include a motor vehicle or any equipment on a motor vehicle that is generally
23 provided by a motor vehicle manufacturer. "Mobility-enhancing equipment" does
24 not include durable medical equipment.

25 **SECTION 2210.** 77.51 (8m) of the statutes is created to read:

1 77.51 (8m) "Nine hundred service" means an inbound toll telecommunications
2 service purchased by a subscriber that allows the subscriber's customers to call the
3 subscriber's prerecorded announcement or live service. "Nine hundred service" does
4 not include any charge for collection services provided by the seller of the
5 telecommunications services to the subscriber or for any product or service the
6 subscriber sells to the subscriber's customers. A "nine hundred service" is
7 designated with the "900" number or any other number designated by the federal
8 communications commission.

9 **SECTION 2211.** 77.51 (9) (a) of the statutes is amended to read:

10 77.51 (9) (a) Isolated and sporadic sales of tangible personal property, items or
11 property under s. 77.52 (1) (b) or (c), or taxable services where the infrequency, in
12 relation to the other circumstances, including the sales price and the gross profit,
13 support the inference that the seller is not pursuing a vocation, occupation or
14 business or a partial vocation or occupation or part-time business as a vendor of
15 personal property, items or property under s. 77.52 (1) (b) or (c), or taxable services.
16 No sale of any tangible personal property, items or property under s. 77.52 (1) (b) or
17 (c), specified digital goods, additional digital goods, or taxable service may be deemed
18 an occasional sale if at the time of such sale the seller holds or is required to hold a
19 seller's permit, except that this provision does not apply to an organization required
20 to hold a seller's permit solely for the purpose of conducting bingo games and except
21 as provided in par. (am).

22 **SECTION 2212.** 77.51 (9) (am) of the statutes is amended to read:

23 77.51 (9) (am) The sale of personal property, other than inventory held for sale,
24 previously used by a seller to conduct its trade or business at a location after that
25 person has ceased actively operating in the regular course of business as a seller of

1 tangible personal property, items or property under s. 77.52 (1) (b) or (c), or taxable
2 services at that location, even though the seller holds a seller's permit for one or more
3 other locations.

4 **SECTION 2213.** 77.51 (9p) of the statutes is created to read:

5 77.51 (9p) "One nonitemized price" does not include a price that is separately
6 identified by product on a binding sales document, or other sales-related document,
7 that is made available to the customer in paper or electronic form, including an
8 invoice, a bill of sale, a receipt, a contract, a service agreement, a lease agreement,
9 a periodic notice of rates and services, a rate card, or a price list.

10 **SECTION 2214.** 77.51 (9s) of the statutes is created to read:

11 77.51 (9s) "Paging service" means a telecommunications service that transmits
12 coded radio signals to activate specific pagers and may include messages or sounds.

13 **SECTION 2215.** 77.51 (10) of the statutes is amended to read:

14 77.51 (10) "Person" includes any natural person, firm, partnership, limited
15 liability company, joint venture, joint stock company, association, public or private
16 corporation, the United States, the state, including any unit or division of the state,
17 any county, city, village, town, municipal utility, municipal power district or other
18 governmental unit, cooperative, unincorporated cooperative association, estate,
19 trust, receiver, personal representative, any other fiduciary, any other legal entity,
20 and any representative appointed by order of any court or otherwise acting on behalf
21 of others. "Person" also includes the owner of a single-owner entity that is
22 disregarded as a separate entity under ch. 71.

23 **SECTION 2216.** 77.51 (10d) of the statutes is created to read:

24 77.51 (10d) "Prepaid calling service" means the right to exclusively access
25 telecommunications services, if that right is paid for in advance of providing such

1 services, requires using an access number or authorization code to originate calls,
2 and is sold in predetermined units or dollars that decrease with use in a known
3 amount.

4 **SECTION 2217.** 77.51 (10f) of the statutes is created to read:

5 77.51 (10f) "Prepaid wireless calling service" means a telecommunications
6 service that provides the right to utilize mobile wireless service as well as other
7 nontelecommunications services, including the download of digital products
8 delivered electronically, content, and ancillary services, and that is paid for prior to
9 use and sold in predetermined dollar units whereby the number of units declines
10 with use in a known amount.

11 **SECTION 2218.** 77.51 (10m) of the statutes is created to read:

12 77.51 (10m) (a) "Prepared food" means:

- 13 1. Food and food ingredients sold in a heated state.
14 2. Food and food ingredients heated by the retailer, except as provided in par.

15 (b).

16 3. Food and food ingredients sold with eating utensils that are provided by the
17 retailer of the food and food ingredients, including plates, knives, forks, spoons,
18 glasses, cups, napkins, or straws. In this subdivision, "plate" does not include a
19 container or packaging used to transport food and food ingredients. For purposes of
20 this subdivision, a retailer provides utensils if any of the following applies:

- 21 a. The utensils are available to purchasers and the retailer's sales of prepared
22 food under subds. 1. and 2., soft drinks, and alcoholic beverages at an establishment
23 are more than 75 percent of the retailer's total sales at that establishment, as
24 determined under par. (c).

1 b. For retailers not described under subd. 3. a., the retailer's customary practice
2 is to physically give or hand the utensils to the purchaser, not including plates,
3 glasses, or cups that are necessary for the purchaser to receive the food and food
4 ingredients and that the retailer makes available to the purchaser.

5 4. Except as provided in par. (b), 2 or more food ingredients mixed or combined
6 by a retailer for sale as a single item.

7 (b) "Prepared food" does not include:

8 1. For purposes of par. (a) 2. and 4., 2 or more food ingredients mixed or
9 combined by a retailer for sale as a single item, if the retailer's primary classification
10 in the 2002 North American Industry Classification System, published by the federal
11 office of management and budget, is manufacturing under subsector 311, not
12 including bakeries and tortilla manufacturing under industry group number 3118.

13 2. For purposes of par. (a) 2. and 4., 2 or more food ingredients mixed or
14 combined by a retailer for sale as a single item, sold unheated, and sold by volume
15 or weight.

16 3. For purposes of par. (a) 2. and 4., bakery items made by a retailer, including
17 breads, rolls, pastries, buns, biscuits, bagels, croissants, donuts, danish, cakes,
18 tortes, pies, tarts, muffins, bars, cookies, and tortillas.

19 4. For purposes of par. (a) 4., food and food ingredients that are only sliced,
20 repackaged, or pasteurized by a retailer.

21 5. For purposes of par. (a) 4., eggs, fish, meat, and poultry, and foods containing
22 any of them in raw form, that require cooking by the consumer, as recommended by
23 the food and drug administration in chapter 3, part 401.11 of its food code to prevent
24 food-borne illnesses.

1 (c) 1. The percentage specified under par. (a) 3. a. shall be determined using the
2 following:

3 a. A numerator that includes sales of prepared food, as defined in par. (a) 1. and
4 2. and food for which plates, bowls, glasses, or cups are necessary to receive the food,
5 but not including alcoholic beverages.

6 b. A denominator that includes all food and food ingredients, including
7 prepared food, candy, dietary supplements, and soft drinks, but not including
8 alcoholic beverages.

9 2. a. If the percentage determined under subd. 1. is 75 percent or less, utensils
10 are considered to be provided by the retailer if the retailer's customary practice is to
11 physically give or hand the utensils to the purchaser or, in the case of plates, bowls,
12 glasses, or cups that are necessary to receive the food, to make such items available
13 to the purchaser.

14 b. If the percentage determined under subd. 1. is greater than 75 percent,
15 utensils are considered to be provided by the retailer if the utensils are made
16 available to the purchaser.

17 3. For a retailer whose percentage determined under subd. 1. is greater than
18 75 percent, an item sold by the retailer that contains 4 or more servings packaged
19 as 1 item and sold for a single price does not become prepared food simply because
20 the retailer makes utensils available to the purchaser of the item, but does become
21 prepared food if the retailer physically gives or hands utensils to the purchaser of the
22 item. For purposes of this subdivision 3. a., serving sizes are based on the
23 information contained on the label of each item sold, except that, if the item has no
24 label, the serving size is based on the retailer's reasonable determination.

1 4. a. Except as provided in subd. 4. b., if a retailer sells food items that have a
2 utensil placed in a package by a person other than the retailer, the utensils are
3 considered to be provided by the retailer.

4 b. Except as provided in subds. 2. and 3., if a retailer sells food items that have
5 a utensil placed in a package by a person other than the retailer and the person's
6 primary classification in the 2002 North American Industry Classification System,
7 published by the federal office of management and budget, is manufacturing under
8 subsector 311, the utensils are not considered to be provided by the retailer.

9 5. For purposes of par. (a) 3., a retailer shall determine the percentage for the
10 retailer's tax year or business fiscal year, based on the retailer's data from the
11 retailer's prior tax year or business fiscal year, as soon as practical after the retailer's
12 accounting records are available, but not later than 90 days after the day on which
13 the retailer's tax year or business fiscal year begins. For retailer's with more than
14 one establishment in this state, a single determination under subd. 1. that combines
15 the information for all of the retailer's establishments in this state shall be made
16 annually, as provided in this subdivision, and apply to each of the retailer's
17 establishments in this state. A retailer that has no prior tax year or business fiscal
18 year shall make a good faith estimate of its percentage for purposes of par. (a) 3. for
19 the retailer's first tax year or business fiscal year and shall adjust the estimate
20 prospectively after the first 3 months of the retailer's operations if the actual
21 percentage is materially different from the estimated percentage.

22 **SECTION 2219.** 77.51 (10n) of the statutes is created to read:

23 77.51 (10n) "Prescription" means an order, formula, or recipe that is issued by
24 any oral, written, electronic, or other means of transmission and by a person who is
25 authorized by the laws of this state to issue such an order, formula, or recipe.

1 **SECTION 2220.** 77.51 (10r) of the statutes is created to read:

2 77.51 (10r) "Prewritten computer software" means any of the following:

3 (a) Computer software that is not designed and developed by the author or
4 creator of the software according to a specific purchaser's specifications.

5 (b) Computer software upgrades that are not designed and developed by the
6 author or creator of the software according to a specific purchaser's specifications.

7 (c) Computer software that is designed and developed by the author or creator
8 of the software according to a specific purchaser's specifications and that is sold to
9 another purchaser.

10 (d) Any combination of computer software under pars. (a) to (c), including any
11 combination with any portion of such software.

12 (e) Computer software as described under pars. (a) to (d), and any portion of
13 such software, that is modified or enhanced by any degree to a specific purchaser's
14 specifications, except such modification or enhancement that is reasonably and
15 separately indicated on an invoice, or other statement of the price, provided to the
16 purchaser.

17 **SECTION 2221.** 77.51 (10s) of the statutes is created to read:

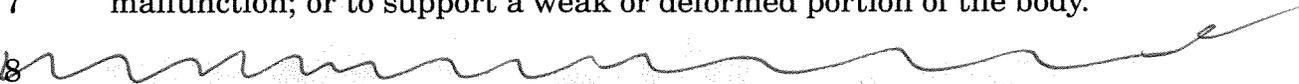
18 77.51 (10s) "Private communication service" means a telecommunications
19 service that entitles the customer to exclusive or priority use of a communications
20 channel or group of communications channels, regardless of the manner in which the
21 communications channel or group of communications channels is connected, and
22 includes switching capacity, extension lines, stations, and other associated services
23 that are provided in connection with the use of such channel or channels.

24 **SECTION 2222.** 77.51 (11d) of the statutes is created to read:

1 77.51 (11d) "Product" includes tangible personal property, items and property
2 under s. 77.52 (1) (b) and (c), and services.

3 **SECTION 2223.** 77.51 (11m) of the statutes is created to read:

4 77.51 (11m) "Prosthetic device" means a device, including the repair parts and
5 replacement parts for the device, that is placed in or worn on the body to artificially
6 replace a missing portion of the body; to prevent or correct a physical deformity or
7 malfunction; or to support a weak or deformed portion of the body.

8 
9 **SECTION 2224ac.** 77.51 (12) (a) of the statutes is amended to read:

10 77.51 (12) (a) Any transfer of title, possession, ownership, enjoyment, or use
11 by: cash or credit transaction, exchange, barter, lease or rental, conditional or
12 otherwise, in any manner or by any means whatever of tangible personal property
13 for a consideration, including any transaction for which a person's books and records
14 show the transaction created, with regard to the transferee, an obligation to pay a
15 certain amount of money or an increase in accounts payable or, with regard to the
16 transferor, a right to receive a certain amount of money or an increase in accounts
17 receivable;

18 **SECTION 2224ae.** 77.51 (12) (a) of the statutes, as affected by 2007 Wisconsin
19 Act ... (this act), is repealed and recreated to read:

20 77.51 (12) (a) Any transfer of title, possession, ownership, enjoyment, or use
21 by: cash or credit transaction, exchange, barter, lease or rental, conditional or
22 otherwise, in any manner or by any means whatever of tangible personal property
23 or items or property under s. 77.52 (1) (b) or (c) for a consideration, including any
24 transaction for which a person's books and records show the transaction created,
25 with regard to the transferee, an obligation to pay a certain amount of money or an

1 increase in accounts payable or, with regard to the transferor, a right to receive a
2 certain amount of money or an increase in accounts receivable;

3 **SECTION 2225.** 77.51 (12) (b) of the statutes is amended to read:

4 77.51 (12) (b) A transaction whereby the possession of property or items or
5 property under s. 77.52 (1) (b) or (c) is transferred but the seller retains the title as
6 security for the payment of the price.

7 **SECTION 2226.** 77.51 (12m) of the statutes is created to read:

8 77.51 (12m) (a) "Purchase price" means the total amount of consideration,
9 including cash, credit, property, and services, for which tangible personal property,
10 items or property under s. 77.52 (1) (b) or (c), or services are sold, leased, or rented,
11 valued in money, whether paid in money or otherwise, without any deduction for the
12 following:

13 1. The seller's cost of the property or items or property under s. 77.52 (1) (b) or
14 (c).

15 2. The cost of materials used, labor or service cost, interest, losses, all costs of
16 transportation to the seller, all taxes imposed on the seller, and any other expense
17 of the seller.

18 3. Charges by the seller for any services necessary to complete a sale, not
19 including delivery and installation charges.

20 4. a. Delivery charges, except as provided in par. (b) 4.

21 b. If a shipment includes property or items or property under s. 77.52 (2) (b) or
22 (c) that are subject to tax under this subchapter and property or items that are not
23 subject to tax under this subchapter, the amount of the delivery charge that the seller
24 allocates to the property or items that are subject to tax under this subchapter is
25 based on the total purchase price of the property or items that are subject to tax under

1 this subchapter as compared to the total purchase price of all the property or items
2 or on the total weight of the property or items that are subject to tax under this
3 subchapter as compared to the total weight of all the property or items, except that
4 if the seller does not make the allocation under this subd. 4. b., the purchaser shall
5 allocate the delivery charge amount, consistent with this subd. 4. b.

6 5. Installation charges.

7 (b) "Purchase price" does not include:

8 1. Discounts, including cash, terms, or coupons, that are not reimbursed by a
9 3rd party, except as provided in par. (c); that are allowed by a seller; and that are
10 taken by a purchaser on a sale.

11 2. Interest, financing, and carrying charges from credit that is extended on a
12 sale of tangible personal property, items or property under s. 77.52 (1) (b) or (c), ^{or}
13 services, if the amount of the interest, financing, or carrying charges is separately
14 stated on the invoice, bill of sale, or similar document that the seller gives to the
15 purchaser.

16 3. Any taxes legally imposed directly on the purchaser that are separately
17 stated on the invoice, bill of sale, or similar document that the seller gives to the
18 purchaser.

19 4. Delivery charges for direct mail.

20 5. In all transactions in which an article of tangible personal property or items
21 under s. 77.52 (2) (b) or (c) are traded toward the purchase of an article of greater
22 value, the amount of the purchase price that represents the amount allowed for the
23 article traded, except that this subdivision does not apply to any transaction to which
24 subd. 7. or 8. applies.

1 6. If a person who purchases a motor vehicle presents a statement issued under
2 s. 218.0171 (2) (cq) to the seller at the time of purchase, and the person presents the
3 statement to the seller within 60 days from the date of receiving a refund under s.
4 218.0171 (2) (b) 2. b., the trade-in amount specified in the statement issued under
5 s. 218.0171 (2) (cq), but not to exceed the purchase price from the sale of the motor
6 vehicle. This subdivision applies only to the first motor vehicle purchased by a
7 person after receiving a refund under s. 218.0171 (2) (b) 2. b.

8 7. Thirty-five percent of the purchase price, excluding trade-ins, of a new
9 mobile home, as defined in s. 340.01 (29), that is a primary housing unit or of a new
10 mobile home, as defined in s. 340.01 (29), that is transported in 2 unattached sections
11 if the total size of the combined sections, not including additions and attachments,
12 is at least 984 square feet measured when the sections are ready for transport. This
13 subdivision does not apply to a lease or rental.

14 8. At the retailer's option; except that after the retailer chooses an option the
15 retailer may not use the other option for other sales without the department's written
16 approval; either 35 percent of the purchase price of a manufactured building, as
17 defined in s. 101.71 (6), or an amount equal to the purchase price of the manufactured
18 building minus the cost of materials that become an ingredient or component part
19 of the building.

20 (c) "Purchase price" includes consideration received by the seller from a 3rd
21 party, if:

22 1. The seller actually receives consideration from a 3rd party, other than the
23 purchaser, and the consideration is directly related to a price reduction or discount
24 on a sale.

25 2. The seller is obliged to pass the price reduction or discount to the purchaser.

1 3. The amount of the consideration that is attributable to the sale is a fixed
2 amount and the seller is able to determine that amount at the time of the sale to the
3 purchaser.

4 4. Any of the following also applies:

5 a. The purchaser presents a coupon, certificate, or other documentation to the
6 seller to claim the price reduction or discount, if the coupon, certificate, or other
7 documentation is authorized, distributed, or granted by the 3rd party with the
8 understanding that the 3rd party will reimburse the seller for the amount of the price
9 reduction or discount.

10 b. The purchaser identifies himself or herself to the seller as a member of a
11 group or organization that may claim the price reduction or discount.

12 c. The seller provides an invoice to the purchaser, or the purchaser presents a
13 coupon, certificate, or other documentation to the seller, that identifies the price
14 reduction or discount as a 3rd-party price reduction or discount.

15 **SECTION 2227.** 77.51 (12p) of the statutes is created to read:

16 77.51 (12p) "Purchaser" means a person to whom a sale of tangible personal
17 property or items or property under s. 77.52 (1) (b) or (c) are made or to whom a
18 service is furnished.

19 **SECTION 2228.** 77.51 (13) (a) of the statutes is amended to read:

20 77.51 (13) (a) Every seller who makes any sale, regardless of whether the sale
21 is mercantile in nature, of tangible personal property, items or property under s.
22 77.52 (1) (b) or (c), or a service specified under s. 77.52 (2) (a).

23 **SECTION 2229.** 77.51 (13) (b) of the statutes is amended to read:

24 77.51 (13) (b) Every person engaged in the business of making sales of tangible
25 personal property or items or property under s. 77.52 (1) (b) or (c), **2229;**

1 SA-SSA1-SB40; Page: 1077, Line: 16; Could not find pattern match.]goods, or
2 additional digital goods for storage, use or consumption or in the business of making
3 sales at auction of tangible personal property or items or property under s. 77.52 (1)
4 (b) or (c) owned by the person or others for storage, use or other consumption.

5 **SECTION 2230.** 77.51 (13) (c) of the statutes is amended to read:

6 77.51 (13) (c) When the department determines that it is necessary for the
7 efficient administration of this subchapter to regard any salespersons,
8 representatives, peddlers or canvassers as the agents of the dealers, distributors,
9 supervisors or employers under whom they operate or from whom they obtain the
10 tangible personal property or items or property under s. 77.52 (1) (b) or (c) sold by
11 them, irrespective of whether they are making the sales on their own behalf or on
12 behalf of such dealers, distributors, supervisors or employers, the department may
13 so regard them and may regard the dealers, distributors, supervisors or employers
14 as retailers for purposes of this subchapter.

15 **SECTION 2231.** 77.51 (13) (d) of the statutes is amended to read:

16 77.51 (13) (d) Every wholesaler to the extent that the wholesaler sells tangible
17 personal property or items or property under s. 77.52 (1) (b) or (c) to a person other
18 than a seller as defined in sub. (17) provided such wholesaler is not expressly exempt
19 from the sales tax on such sale or from collecting the use tax on such sale.

20 **SECTION 2232.** 77.51 (13) (e) of the statutes is amended to read:

21 77.51 (13) (e) A person selling tangible personal property or items or property
22 under s. 77.52 (1) (b) or (c) to a service provider who transfers the property or items
23 in conjunction with the selling, performing, or furnishing of any service and the
24 property is or items are incidental to the service, unless the service provider is

1 selling, performing, or furnishing services under s. 77.52 (2) (a) 7., 10., 11., and 20.

2 This subsection does not apply to sub. (2).

3 **SECTION 2233.** 77.51 (13) (f) of the statutes is amended to read:

4 77.51 (13) (f) A service provider who transfers tangible personal property or
5 items or property under s. 77.52 (1) (b) or (c) in conjunction with but not incidental
6 to the selling, performing or furnishing of any service and a service provider selling,
7 performing or furnishing services under s. 77.52 (2) (a) 7., 10., 11. and 20. This
8 subsection does not apply to sub. (2).

9 **SECTION 2234.** 77.51 (13) (k) of the statutes is amended to read:

10 77.51 (13) (k) ~~As respects~~ With regards to a lease, any person deriving rentals
11 from a lease of tangible personal property or items or property under s. 77.52 (1) (b)
12 or (c) situated in this state.

13 **SECTION 2235.** 77.51 (13) (m) of the statutes is amended to read:

14 77.51 (13) (m) A person selling tangible personal property or items or property
15 under s. 77.52 (1) (b) or (c) to a veterinarian to be used or furnished by the
16 veterinarian in the performance of services in some manner related to domestic
17 animals, including pets or poultry.

18 **SECTION 2236.** 77.51 (13) (n) of the statutes is amended to read:

19 77.51 (13) (n) A person selling household furniture, furnishings, equipment,
20 appliances or other items of tangible personal property or items or property under
21 s. 77.52 (1) (b) or (c) to a landlord for use by tenants in leased or rented living
22 quarters.

23 **SECTION 2237.** 77.51 (13) (o) of the statutes is amended to read:

24 77.51 (13) (o) A person selling medicine drugs for animals to a veterinarian.

25 As used in this paragraph, "animal" includes livestock, pets and poultry.

1 **SECTION 2237d.** 77.51 (13) (p) of the statutes is created to read:

2 77.51 (13) (p) All persons described in this subsection regardless of all of the
3 following:

4 1. Whether the transaction is mercantile in nature.

5 2. Whether the seller sells smaller quantities from inventory.

6 3. Whether the seller makes or intends to make a profit on the sale.

7 4. Whether the seller or the buyer receives a benefit the seller or buyer
8 bargained for.

9 5. The percentage of the seller's total sales that the sale represents.

10 6. Any activities other than those described in pars. (a) to (o) in which the seller
11 is engaged.

12 **SECTION 2238.** 77.51 (13g) (intro.) of the statutes is amended to read:

13 77.51 (13g) (intro.) Except as provided in sub. (13h), "retailer engaged in
14 business in this state", unless otherwise limited by federal statute, for purposes of
15 the use tax, means any of the following:

16 **SECTION 2238b.** 77.51 (13g) (a) of the statutes is amended to read:

17 77.51 (13g) (a) Any retailer owning any real property in this state or leasing
18 or renting out any tangible personal property or items or property under s. 77.52 (1)
19 (b) or (c) located in this state or maintaining, occupying or using, permanently or
20 temporarily, directly or indirectly, or through a subsidiary, or agent, by whatever
21 name called, an office, place of distribution, sales or sample room or place, warehouse
22 or storage place or other place of business in this state.

23 **SECTION 2238d.** 77.51 (13g) (b) of the statutes is amended to read:

24 77.51 (13g) (b) Any retailer having any representative, agent, salesperson,
25 canvasser or solicitor operating in this state under the authority of the retailer or its

1 subsidiary for the purpose of selling, delivering or the taking of orders for any
2 tangible personal property ^{skt} items or property under s. 77.52 (1) (b) or (c) ^g or taxable
3 services.

4 SECTION 2239. 77.51 (13g) (c) of the statutes is created to read: ^{skt}

5 77.51 (13g) (c) Any retailer selling tangible personal property items or
6 property under s. 77.52 (1) (b) or (c), specified digital goods, additional digital goods,
7 or taxable services for storage, use, or other consumption in this state, unless
8 otherwise limited by federal law.

9 SECTION 2240. 77.51 (13r) of the statutes is amended to read:

10 77.51 (13r) Any person purchasing from a retailer as defined in sub. (13) shall
11 be deemed the consumer of the tangible personal property ^{skt} items or property under
12 [2240; SA-SSA1-SB40; Page: 1080, Line: 3; Could not find pattern match.]s.
13 77.52 (1) (b) or (c), specified digital goods, additional digital goods, or services
14 purchased.

15 SECTION 2241. 77.51 (13rm) of the statutes is created to read:

16 77.51 (13rm) "Retail sale" or "sale at retail" means any sale, lease, or rental
17 for any purpose other than resale, sublease, or subrent.

18 SECTION 2243. 77.51 (14) (intro.) of the statutes is amended to read:

19 77.51 (14) (intro.) "Sale", "sale, lease or rental", "retail sale", "sale at retail", or
20 equivalent terms ~~include~~ includes any one or all of the following: the transfer of the
21 ownership of, title to, possession of, or enjoyment of tangible personal property, items
22 or property under s. 77.52 (1) (b) or (c), or services for use or consumption but not
23 for resale as tangible personal property, items or property under s. 77.52 (1) (b) or (c),
24 or services and includes:

25 SECTION 2244. 77.51 (14) (a) of the statutes is amended to read: