

# WEST VIRGINIA LEGISLATURE

## 2019 REGULAR SESSION

Introduced

### House Bill 2515

FISCAL  
NOTE

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SHOTT, HOWELL, HARDY, KUMP, PACK, STORCH AND

FAST

[Introduced January 18, 2019; Referred  
to the Committee on Health and Human Resources  
then Finance.]

1 A BILL to amend and reenact §11-15-9i of the Code of West Virginia, 1931, as amended relating  
2 to exempting from state sales and use tax the sale and installation of mobility enhancing  
3 equipment installed in a new or used motor vehicle for the use of a person with physical  
4 disabilities and the sale and installation for the repair or replacement parts of mobility  
5 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.**

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

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

16 (1) *Effective Dates.* — The provisions of this subsection shall apply to purchases made on  
17 and after July 1, 2016.

18           (2) *Per se exemption.* — The exemption set forth by this subsection shall be given without  
19 the necessity of an exemption certificate, direct pay permit or refund or credit request.

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

28           ~~(e)~~(d) *Definitions.* — The following definitions shall apply:

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

41           (2) When the equipment is sold to a facility such as a hospital, nursing home, medical  
42 clinic, dental office, chiropractor, or optician office, then this shall not constitute a use of the  
43 equipment by the recipient individual in his or her home environment. The fact that a nursing

44 home may use the equipment only for its residents does not make the equipment exempt for  
45 home use: *Provided*, That nothing in this section shall be interpreted to void or abrogate lawful  
46 assertion and application of the purchases for resale exemption as it may apply to any purchaser  
47 of durable medical equipment.

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

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

58 (5) For purposes of this section, the term "nursing home or facility" means any institution,  
59 residence or place, or any part or unit thereof, however named, in this state which is advertised,  
60 offered, maintained, or operated by the ownership or management, whether for a consideration  
61 or not, for the express or implied purpose of providing accommodations and care, for a period of  
62 more than 24 hours, for four or more persons who are ill or otherwise incapacitated and in need  
63 of extensive, ongoing nursing care due to physical or mental impairment, or which provides  
64 services for the rehabilitation of persons who are convalescing from illness or incapacitation:  
65 *Provided*, That the care or treatment in a household, whether for compensation or not, of any  
66 person related by blood or marriage, within the degree of consanguinity of second cousin to the  
67 head of the household, or his or her spouse, may not be deemed to constitute a nursing home  
68 within the meaning of this article.

69 (6) For purposes of this section, the term "assisted care center" means any living facility,

70 residence or place of accommodation, however named, available for four or more residents, in  
71 this state which is advertised, offered, maintained or operated by the ownership or management,  
72 whether for a consideration or not, for the express or implied purpose of having personal  
73 assistance or supervision, or both, provided to any residents therein who are dependent upon the  
74 services of others by reason of physical or mental impairment, and who may also require nursing  
75 care at a level that is not greater than limited and intermittent nursing care: *Provided*, That the  
76 care or treatment in a household, whether for compensation or not, of any person related by blood  
77 or marriage, within the degree of consanguinity of second cousin to the head of the household,  
78 or his or her spouse, may not be deemed to constitute an assisted living residence within the  
79 meaning of this article.

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

84 (8) For purposes of this section, the term "mobility enhancing equipment" means "mobility  
85 enhancing equipment" as defined in §11-15B-2 of this code.

NOTE: The purpose of this bill is to exempt the sale and installation of mobility enhancing equipment and the sale and installation of repair or replacement parts of mobility enhancing equipment from the sales and use tax and to establish the definition of mobility enhancing equipment in this section.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.