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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. 1341

03/07/2013 Authored by Schoen, Lesch, Liebling, Quam and Yarusso
The bill was read for the first time and referred to the Committee on Taxes

A bill for an act

relating to taxation; sales and use; medical devices; amending Minnesota Statutes
2012, section 297A.67, subdivision 7.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2012, section 297A.67, subdivision 7, is amended to read:

Subd. 7. **Drugs; medical devices.** (a) Sales of the following drugs and medical
devices for human use are exempt:

(1) drugs, including over-the-counter drugs;

(2) single-use finger-pricking devices for the extraction of blood and other single-use
devices and single-use diagnostic agents used in diagnosing, monitoring, or treating
diabetes;

(3) insulin and medical oxygen for human use, regardless of whether prescribed
or sold over the counter;

(4) prosthetic devices;

(5) durable medical equipment for home use only;

(6) mobility enhancing equipment;

(7) prescription corrective eyeglasses; and

(8) kidney dialysis equipment, including repair and replacement parts.

(b) Items purchased in transactions covered by:

(1) Medicare as defined under title XVIII of the Social Security Act, United States
Code, title 42, sections 1395, et seq.;

(2) Medicaid as defined under title XIX of the Social Security Act, United States
Code, title 42, sections 1396, et seq.; or

(3) a health plan as defined in paragraph (c), clause (9),

2.1 are exempt.

2.2 ~~(b)~~ (c) For purposes of this subdivision:

2.3 (1) "Drug" means a compound, substance, or preparation, and any component of
2.4 a compound, substance, or preparation, other than food and food ingredients, dietary
2.5 supplements, or alcoholic beverages that is:

2.6 (i) recognized in the official United States Pharmacopoeia, official Homeopathic
2.7 Pharmacopoeia of the United States, or official National Formulary, and supplement
2.8 to any of them;

2.9 (ii) intended for use in the diagnosis, cure, mitigation, treatment, or prevention
2.10 of disease; or

2.11 (iii) intended to affect the structure or any function of the body.

2.12 (2) "Durable medical equipment" means equipment, including repair and
2.13 replacement parts and all accessories and supplies, including single patient use items
2.14 required for the effective use of the durable medical equipment device, but not including
2.15 mobility enhancing equipment, that:

2.16 (i) can withstand repeated use;

2.17 (ii) is primarily and customarily used to serve a medical purpose;

2.18 (iii) generally is not useful to a person in the absence of illness or injury; and

2.19 (iv) is not worn in or on the body.

2.20 For purposes of this clause, "repair and replacement parts" includes all components
2.21 or attachments used in conjunction with the durable medical equipment, ~~but does not~~
2.22 ~~include~~ including repair and replacement parts which are for single patient use only.

2.23 (3) "Mobility enhancing equipment" means equipment, including repair and
2.24 replacement parts, but not including durable medical equipment, that:

2.25 (i) is primarily and customarily used to provide or increase the ability to move from
2.26 one place to another and that is appropriate for use either in a home or a motor vehicle;

2.27 (ii) is not generally used by persons with normal mobility; and

2.28 (iii) does not include any motor vehicle or equipment on a motor vehicle normally
2.29 provided by a motor vehicle manufacturer.

2.30 (4) "Over-the-counter drug" means a drug that contains a label that identifies the
2.31 product as a drug as required by Code of Federal Regulations, title 21, section 201.66. The
2.32 label must include a "drug facts" panel or a statement of the active ingredients with a list of
2.33 those ingredients contained in the compound, substance, or preparation. Over-the-counter
2.34 drugs do not include grooming and hygiene products, regardless of whether they otherwise
2.35 meet the definition. "Grooming and hygiene products" are soaps, cleaning solutions,
2.36 shampoo, toothpaste, mouthwash, antiperspirants, and suntan lotions and sunscreens.

(5) "Prescribed" and "prescription" means a direction in the form of an order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission by a duly licensed health care professional.

(6) "Prosthetic device" means a replacement, corrective, or supportive device, including repair and replacement parts, and all necessary accessories, supplies, and items required for the effective use of the prosthetic device, worn on or in the body to:

- (i) artificially replace a missing portion of the body;
- (ii) prevent or correct physical deformity or malfunction; or
- (iii) support a weak or deformed portion of the body.

Prosthetic device does not include corrective eyeglasses.

(7) "Kidney dialysis equipment" means equipment that:

(i) is used to remove waste products that build up in the blood when the kidneys are not able to do so on their own; and

(ii) can withstand repeated use, including multiple use by a single patient, notwithstanding the provisions of clause (2).

(8) A transaction is covered by Medicare or Medicaid if any portion of the cost of the item purchased in the transaction is paid for or reimbursed by the federal government or the state of Minnesota pursuant to the Medicare or Medicaid program, by a private insurance company administering the Medicare or Medicaid program on behalf of the federal government or the state of Minnesota, or by a managed care organization for the benefit of a patient enrolled in a prepaid program that furnishes medical services in lieu of conventional Medicare or Medicaid coverage pursuant to agreement with the federal government or the state of Minnesota.

(9) "Health plan" means a policy or certificate of accident and sickness insurance as defined in section 62A.01 offered by an insurance company licensed under chapter 60A; a subscriber contract or certificate offered by a nonprofit health service plan corporation operating under chapter 62C; a health maintenance contract or certificate offered by a health maintenance organization operating under chapter 62D; a health benefit certificate offered by a fraternal benefit society operating under chapter 64B; or health coverage offered by a joint self-insurance employee health plan operating under chapter 62H. Health plan means individual and group coverage, unless otherwise specified. Health plan also includes coverage that is:

- (1) limited to disability protection coverage;
- (2) automobile medical payment coverage;
- (3) credit accident and health insurance as defined in section 62B.02;
- (4) designed solely to provide hearing, dental, or vision care;

4.1 (5) blanket accident and sickness insurance as defined in section 62A.11;
4.2 (6) accident-only coverage;
4.3 (7) a long-term care policy as defined in section 62A.46 or 62S.01;
4.4 (8) issued as a supplement to Medicare, as defined in sections 62A.3099 to
4.5 62A.44, or policies, contracts, or certificates that supplement Medicare issued by health
4.6 maintenance organizations or those policies, contracts, or certificates governed by section
4.7 1833 or 1876 of the federal Social Security Act, United States Code, title 42, section
4.8 1395, et seq., as amended;
4.9 (9) workers' compensation insurance;
4.10 (10) a self insurance policy; and
4.11 (11) issued solely as a companion to a health maintenance contract as described in
4.12 section 62D.12, subdivision 1a.

4.13 **EFFECTIVE DATE.** This section is effective retroactively for sales and purchases
4.14 made after April 1, 2009. Purchasers may apply for a refund of tax paid for qualifying
4.15 purchases under this subdivision made after April 1, 2009, and before July 1, 2013, in the
4.16 manner provided in Minnesota Statutes, section 297A.75. Notwithstanding limitations
4.17 on claims for refunds under Minnesota Statutes, section 289A.40, claims may be filed
4.18 with the commissioner until June 30, 2014.