

**Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 10-0738.01 Esther van Mourik

HOUSE BILL 10-1192

HOUSE SPONSORSHIP

Pommer,

SENATE SPONSORSHIP

Heath,

House Committees

Finance
Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE STATE SALES AND USE TAX OF STANDARDIZED**
102 **SOFTWARE, AND MAKING AN APPROPRIATION THEREFOR.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

The bill repeals a special regulation promulgated by the department of revenue related to the type of software subject to sales or use tax.

The bill specifies that standardized software is included in the definition of tangible personal property and defines standardized

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

software.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1. Repeal of special regulation of the department**
3 **of revenue.** (1) Special Regulation 7: Computer Software, which rule
4 was adopted March 28, 2006, concerning the type of software subject to
5 sales or use tax (1 CCR 201-5), is repealed, effective March 1, 2010.

6 (2) The office of legislative legal services shall forward a copy of
7 House Bill 10-____, enacted in 2010, to the secretary of state for purposes
8 of informing the secretary of state of the general assembly's action
9 repealing Special Regulation 7. The secretary of state shall delete Special
10 Regulation 7 from the code of Colorado regulations and include an
11 appropriate reference of such repeal in the code of Colorado regulations
12 consistent with the provisions of section 24-4-103 (11), Colorado Revised
13 Statutes.

14 **SECTION 2.** 39-26-102 (15), Colorado Revised Statutes, is
15 amended, and the said 39-26-102 is further amended BY THE
16 ADDITION OF A NEW SUBSECTION, to read:

17 **39-26-102. Definitions.** As used in this article, unless the context
18 otherwise requires:

19 (13.5) (a) (I) "STANDARDIZED SOFTWARE" MEANS:

20 (A) COMPUTER SOFTWARE, INCLUDING PREWRITTEN UPGRADES,
21 THAT IS NOT DESIGNED OR DEVELOPED TO THE SPECIFICATIONS OF A
22 SPECIFIC PURCHASER; OR

23 (B) COMPUTER SOFTWARE DESIGNED AND DEVELOPED TO THE
24 SPECIFICATIONS OF A SPECIFIC PURCHASER BUT THEN SOLD TO ANOTHER
25 PURCHASER.

1 (II) "STANDARDIZED SOFTWARE" INCLUDES STANDARDIZED
2 SOFTWARE THAT IS MODIFIED OR ENHANCED TO ANY DEGREE EVEN IF SUCH
3 MODIFICATION OR ENHANCEMENT IS DESIGNED AND DEVELOPED TO THE
4 SPECIFICATIONS OF A SPECIFIC PURCHASER. "STANDARDIZED SOFTWARE"
5 SHALL NOT INCLUDE SOFTWARE THAT MODIFIES OR ENHANCES
6 STANDARDIZED SOFTWARE IF THERE IS A REASONABLE, SEPARATELY
7 STATED CHARGE, INVOICE, OR OTHER STATEMENT OF PRICE GIVEN TO THE
8 PURCHASER FOR SUCH SOFTWARE THAT MODIFIES OR ENHANCES THE
9 STANDARDIZED SOFTWARE.

10 (III) "STANDARDIZED SOFTWARE" INCLUDES THE COMBINATION OF
11 TWO OR MORE STANDARDIZED SOFTWARE PROGRAMS OR PORTIONS
12 THEREOF.

13 (b) FOR PURPOSES OF THIS SUBSECTION (13.5), "COMPUTER
14 SOFTWARE" MEANS A SET OF CODED INSTRUCTIONS DESIGNED TO CAUSE
15 A COMPUTER OR AUTOMATIC DATA PROCESSING HARDWARE TO PERFORM
16 A TASK.

17 (15) (a) "Tangible personal property" means corporeal personal
18 property. The term shall not be construed to include newspapers, as
19 legally defined by section 24-70-102, C.R.S., preprinted newspaper
20 supplements ~~which~~ THAT become attached to or inserted in and
21 distributed with such newspapers, or direct mail advertising materials
22 ~~which~~ THAT are distributed in Colorado by any person engaged solely and
23 exclusively in the business of providing cooperative direct mail
24 advertising.

25 (b) "TANGIBLE PERSONAL PROPERTY" INCLUDES STANDARDIZED
26 SOFTWARE, INCLUDING BUT NOT LIMITED TO ELECTRONIC, TELEPHONIC, OR
27 SIMILAR TRANSFERS OF SUCH SOFTWARE OR SUCH SOFTWARE

1 DOWNLOADED FROM THE INTERNET OR DELIVERED TO THE PURCHASER BY
2 USE OF TANGIBLE STORAGE MEDIA WHERE THE TANGIBLE STORAGE MEDIA
3 IS NOT PHYSICALLY TRANSFERRED TO THE PURCHASER. THE DEPARTMENT
4 OF REVENUE MAY PROMULGATE RULES FOR APPORTIONING TAX IN THOSE
5 INSTANCES IN WHICH STANDARDIZED SOFTWARE IS TRANSFERRED FOR USE
6 IN MORE THAN ONE STATE.

7 **SECTION 3.** Part 1 of article 21 of title 39, Colorado Revised
8 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
9 read:

10 **39-21-122. Revenue impact of 2010 tax legislation - tracking**
11 **by department.** THE DEPARTMENT OF REVENUE SHALL ACCOUNT FOR ALL
12 REVENUE ATTRIBUTABLE TO THE ENACTMENT OF HOUSE BILL 10-1192,
13 ENACTED IN 2010, AND SHALL, TO THE EXTENT SUCH INFORMATION IS
14 AVAILABLE, MAKE QUARTERLY REPORTS TO THE GENERAL ASSEMBLY
15 REGARDING THE QUARTERLY AND CUMULATIVE NET REVENUE GAIN TO THE
16 STATE RESULTING FROM THE ENACTMENT OF SAID BILL.

17 **SECTION 4.** Part 1 of article 26 of title 39, Colorado Revised
18 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
19 read:

20 **39-26-102.3. Inclusion of standardized software in state sales**
21 **tax base - use revenues generated for education.** NOTWITHSTANDING
22 ANY OTHER PROVISION OF LAW, THE GENERAL ASSEMBLY SHALL
23 APPROPRIATE AT LEAST FORTY PERCENT OF THE AMOUNT OF ANY
24 INCREASE IN NET STATE SALES TAX REVENUES RESULTING FROM THE
25 AMENDMENT OF THE DEFINITION OF TANGIBLE PERSONAL PROPERTY SET
26 FORTH IN SECTION 39-26-102 (15) BY HOUSE BILL 10-1192, ENACTED IN
27 2010, TO INCLUDE STANDARDIZED SOFTWARE FOR THE PURPOSE OF

1 FUNDING PRESCHOOL THROUGH TWELFTH GRADE PUBLIC EDUCATION.
2 SUCH FUNDING SHALL SUPPLEMENT AND NOT SUPPLANT ANY OTHER
3 MONEYS USED FOR SAID PURPOSE.

4 **SECTION 5. Appropriation.** In addition to any other
5 appropriation, there is hereby appropriated, out of any moneys in the
6 general fund not otherwise appropriated, to the department of revenue, for
7 allocation to the taxation business group, taxation and compliance
8 division, for the fiscal year beginning July 1, 2009, the sum of ninety-four
9 thousand three hundred twenty-two dollars (\$94,322) and 0.9 FTE, or so
10 much thereof as may be necessary, for the implementation of this act.

11 **SECTION 6. Specified effective date.** This act shall take effect
12 March 1, 2010.

13 **SECTION 7. Safety clause.** The general assembly hereby finds,
14 determines, and declares that this act is necessary for the immediate
15 preservation of the public peace, health, and safety.