

SUBSTITUTE FOR  
SENATE BILL NO. 658

A bill to amend 1933 PA 167, entitled  
"General sales tax act,"  
(MCL 205.51 to 205.78) by adding section 2b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1           SEC. 2B. (1) A SELLER WHO SELLS TANGIBLE PERSONAL PROPERTY TO  
2 A PURCHASER IN THIS STATE IS PRESUMED TO BE ENGAGED IN THE BUSINESS  
3 OF MAKING SALES AT RETAIL IN THIS STATE IF THE SELLER OR A PERSON,  
4 INCLUDING AN AFFILIATED PERSON, OTHER THAN A COMMON CARRIER ACTING  
5 AS A COMMON CARRIER, ENGAGES IN OR PERFORMS ANY OF THE FOLLOWING  
6 ACTIVITIES IN THIS STATE:

7           (A) SELLS A SIMILAR LINE OF PRODUCTS AS THE SELLER AND DOES SO  
8 UNDER THE SAME BUSINESS NAME AS THE SELLER OR A SIMILAR BUSINESS  
9 NAME AS THE SELLER.

10           (B) USES ITS EMPLOYEES, AGENTS, REPRESENTATIVES, OR

1 INDEPENDENT CONTRACTORS IN THIS STATE TO PROMOTE OR FACILITATE  
2 SALES BY THE SELLER TO PURCHASERS IN THIS STATE.

3 (C) MAINTAINS, OCCUPIES, OR USES AN OFFICE, DISTRIBUTION  
4 FACILITY, WAREHOUSE, STORAGE PLACE, OR SIMILAR PLACE OF BUSINESS IN  
5 THIS STATE TO FACILITATE THE DELIVERY OR SALE OF TANGIBLE PERSONAL  
6 PROPERTY SOLD BY THE SELLER TO THE SELLER'S PURCHASERS IN THIS  
7 STATE.

8 (D) USES, WITH THE SELLER'S CONSENT OR KNOWLEDGE, TRADEMARKS,  
9 SERVICE MARKS, OR TRADE NAMES IN THIS STATE THAT ARE THE SAME OR  
10 SUBSTANTIALLY SIMILAR TO THOSE USED BY THE SELLER.

11 (E) DELIVERS, INSTALLS, ASSEMBLES, OR PERFORMS MAINTENANCE OR  
12 REPAIR SERVICES FOR THE SELLER'S PURCHASERS IN THIS STATE.

13 (F) FACILITATES THE SALE OF TANGIBLE PERSONAL PROPERTY TO  
14 PURCHASERS IN THIS STATE BY ALLOWING THE SELLER'S PURCHASERS IN  
15 THIS STATE TO PICK UP OR RETURN TANGIBLE PERSONAL PROPERTY SOLD BY  
16 THE SELLER AT AN OFFICE, DISTRIBUTION FACILITY, WAREHOUSE, STORAGE  
17 PLACE, OR SIMILAR PLACE OF BUSINESS MAINTAINED BY THAT PERSON IN  
18 THIS STATE.

19 (G) SHARES MANAGEMENT, BUSINESS SYSTEMS, BUSINESS PRACTICES,  
20 OR EMPLOYEES WITH THE SELLER, OR IN THE CASE OF AN AFFILIATED  
21 PERSON, ENGAGES IN INTERCOMPANY TRANSACTIONS RELATED TO THE  
22 ACTIVITIES OCCURRING WITH THE SELLER TO ESTABLISH OR MAINTAIN THE  
23 SELLER'S MARKET IN THIS STATE.

24 (H) CONDUCTS ANY OTHER ACTIVITIES IN THIS STATE THAT ARE  
25 SIGNIFICANTLY ASSOCIATED WITH THE SELLER'S ABILITY TO ESTABLISH AND  
26 MAINTAIN A MARKET IN THIS STATE FOR THE SELLER'S SALES OF TANGIBLE  
27 PERSONAL PROPERTY TO PURCHASERS IN THIS STATE.

1           (2) THE PRESUMPTION UNDER SUBSECTION (1) MAY BE REBUTTED BY  
2 DEMONSTRATING THAT A PERSON'S ACTIVITIES IN THIS STATE ARE NOT  
3 SIGNIFICANTLY ASSOCIATED WITH THE SELLER'S ABILITY TO ESTABLISH OR  
4 MAINTAIN A MARKET IN THE STATE FOR THE SELLER'S SALES OF TANGIBLE  
5 PERSONAL PROPERTY TO PURCHASERS IN THIS STATE.

6           (3) IN ADDITION TO THE PRESUMPTION UNDER SUBSECTION (1), A  
7 SELLER OF TANGIBLE PERSONAL PROPERTY IS PRESUMED TO BE ENGAGED IN  
8 THE BUSINESS OF MAKING SALES AT RETAIL OF TANGIBLE PERSONAL  
9 PROPERTY IN THIS STATE IF THE SELLER ENTERS INTO AN AGREEMENT,  
10 DIRECTLY OR INDIRECTLY, WITH 1 OR MORE RESIDENTS OF THIS STATE  
11 UNDER WHICH THE RESIDENT, FOR A COMMISSION OR OTHER CONSIDERATION,  
12 DIRECTLY OR INDIRECTLY, REFERS POTENTIAL PURCHASERS, WHETHER BY A  
13 LINK ON AN INTERNET WEBSITE, IN-PERSON ORAL PRESENTATION, OR  
14 OTHERWISE, TO THE SELLER, IF ALL OF THE FOLLOWING CONDITIONS ARE  
15 SATISFIED:

16           (A) THE CUMULATIVE GROSS RECEIPTS FROM SALES BY THE SELLER TO  
17 PURCHASERS IN THIS STATE WHO ARE REFERRED TO THE SELLER BY ALL  
18 RESIDENTS OF THIS STATE WITH AN AGREEMENT WITH THE SELLER ARE  
19 GREATER THAN \$10,000.00 DURING THE IMMEDIATELY PRECEDING 12 MONTHS.

20           (B) THE SELLER'S TOTAL CUMULATIVE GROSS RECEIPTS FROM SALES TO  
21 PURCHASERS IN THIS STATE EXCEED \$50,000.00 DURING THE IMMEDIATELY  
22 PRECEDING 12 MONTHS.

23           (4) THE PRESUMPTION UNDER SUBSECTION (3) MAY BE REBUTTED BY  
24 DEMONSTRATING THAT THE RESIDENTS OF THIS STATE WITH WHOM THE SELLER  
25 HAS AN AGREEMENT DID NOT ENGAGE IN ANY SOLICITATION OR ANY OTHER  
26 ACTIVITY WITHIN THIS STATE THAT WAS SIGNIFICANTLY ASSOCIATED WITH  
27 THE SELLER'S ABILITY TO ESTABLISH OR MAINTAIN A MARKET IN THIS

1 STATE FOR THE SELLER'S SALES OF TANGIBLE PERSONAL PROPERTY TO  
2 PURCHASERS IN THIS STATE. THE PRESUMPTION UNDER SUBSECTION (3)  
3 SHALL BE CONSIDERED REBUTTED BY EVIDENCE OF ALL OF THE FOLLOWING:

4 (A) WRITTEN AGREEMENTS PROHIBITING ALL OF THE RESIDENTS WITH  
5 AN AGREEMENT WITH THE SELLER FROM ENGAGING IN ANY SOLICITATION  
6 ACTIVITIES IN THIS STATE ON BEHALF OF THE SELLER.

7 (B) WRITTEN STATEMENTS FROM ALL OF THE RESIDENTS WITH AN  
8 AGREEMENT WITH THE SELLER STATING THAT THE RESIDENT REPRESENTATIVES  
9 DID NOT ENGAGE IN ANY SOLICITATION OR OTHER ACTIVITIES IN THIS  
10 STATE ON BEHALF OF THE SELLER DURING THE IMMEDIATELY PRECEDING 12  
11 MONTHS, IF THE STATEMENTS ARE PROVIDED AND OBTAINED IN GOOD FAITH.

12 (5) AN AGREEMENT UNDER WHICH A SELLER PURCHASES ADVERTISEMENTS  
13 FROM A PERSON OR PERSONS IN THIS STATE TO BE DELIVERED THROUGH  
14 TELEVISION, RADIO, PRINT, THE INTERNET, OR ANY OTHER MEDIUM IS NOT  
15 AN AGREEMENT DESCRIBED IN SUBSECTION (3) UNLESS THE ADVERTISEMENT  
16 REVENUE PAID TO THE PERSON OR PERSONS IN THIS STATE CONSISTS OF  
17 COMMISSIONS OR OTHER CONSIDERATION THAT IS BASED UPON COMPLETED  
18 SALES OF TANGIBLE PERSONAL PROPERTY.

19 (6) THIS SECTION APPLIES TO TRANSACTIONS OCCURRING ON OR AFTER  
20 THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION  
21 AND WITHOUT REGARD TO THE DATE THE SELLER AND THE RESIDENT ENTERED  
22 INTO AN AGREEMENT DESCRIBED IN SUBSECTION (3). THE 12 MONTHS BEFORE  
23 THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION  
24 ARE INCLUDED AS PART OF THE IMMEDIATELY PRECEDING 12 MONTHS FOR  
25 PURPOSES OF SUBSECTION (3).

26 (7) AS USED IN THIS SECTION:

27 (A) "AFFILIATED PERSON" MEANS EITHER OF THE FOLLOWING:

1           (i) ANY PERSON THAT IS A PART OF THE SAME CONTROLLED GROUP OF  
2 CORPORATIONS AS THE SELLER.

3           (ii) ANY OTHER PERSON THAT, NOTWITHSTANDING ITS FORM OF  
4 ORGANIZATION, BEARS THE SAME OWNERSHIP RELATIONSHIP TO THE SELLER  
5 AS A CORPORATION THAT IS A MEMBER OF THE SAME CONTROLLED GROUP OF  
6 CORPORATIONS.

7           (B) "CONTROLLED GROUP OF CORPORATIONS" MEANS THAT TERM AS  
8 DEFINED IN SECTION 1563(A) OF THE INTERNAL REVENUE CODE, 26 USC  
9 1563.

10           Enacting section 1. This amendatory act takes effect October  
11 1, 2014.