TESTIMONY OF
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DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES

Before the Joint Standing Committee on Taxation
Hearing Date: *May 14, 2025, Wednesday at 1:30 P.M.*

LD 1734 – "*An Act to Exempt Over-the-counter Medicines from the Sales and Use Tax*"

Senator Grohoski, Representative Cloutier, and members of the Taxation Committee – good afternoon, my name is Michael Allen, Associate Commissioner for Tax Policy in the Department of Administrative and Financial Services. I am testifying at the request of the Administration Against LD 1734, "*An Act to Exempt Over-the-counter Medicines from the Sales and Use Tax.*"

The bill would expand the current sales and use tax exemption for medicines sold on a doctor's prescription to include medicine sold "over-the-counter" where the medicine is "subject to the format and content requirements of the U.S. FDA under 21 C.F.R. § 201.66." The bill defines the term "over-the-counter medicine or drug" to mean anesthetics, antacids, anthelmintics, antibacterial, antifungal and antiviral medicine, antiseptics, astringents, contraceptive supplies (including drugs), devices and products approved by the FDA to prevent pregnancy, emetics and antiemetics, medication prepared for use in the eyes, ears or nose, opioid antagonists, products intended to be taken for coughs, colds, asthma or allergies, and steroidal medicines.

The revenue loss associated with this proposal would be substantial. A more cost-effective approach would be to increase the Sales Tax Fairness Credit to provide sales tax relief to taxpayers truly overburdened by sales tax.

Should the Committee move forward with the bill as drafted, it should be amended to include an effective date in the exemption text by adding "on or after January 1, 2026," within proposed paragraph B. Additionally, the Committee should consider whether it intends the reference to 21 C.F.R. § 201.66 to cause static or rolling conformity to federal law – either incorporating the C.F.R. provision as of a certain date, or automatically incorporating all future amendments to that section of the C.F.R.

I will further note that tying the exemption to 21 C.F.R. § 201.66 ("Format and content requirements for over-the-counter (OTC) drug product labeling") would exclude items such as vitamins and other supplements, which are instead subject to the FDA food labeling requirements under 21 C.F.R., Part 101 ("Food Labeling"). This may be intended.

The Administration looks forward to working with the Committee on the bill; representatives from MRS will be here for the Work Session to provide additional information and respond in detail to the Committee's questions.