

CHAPTER 153

GOVERNMENT - STATE

SENATE BILL 23-143

BY SENATOR(S) Fenberg and Van Winkle, Bridges, Hinrichsen, Jaquez Lewis, Kolker, Liston, Pelton R., Priola, Rich, Roberts, Rodriguez, Simpson, Smallwood, Will, Zenzinger;
also REPRESENTATIVE(S) Kipp and Soper, Bird, Bockenfeld, Boesenecker, Jodeh, Lindstedt, Ricks, Snyder, Vigil.

AN ACT

CONCERNING THE ADMINISTRATION OF THE EXISTING RETAIL DELIVERY FEES COLLECTED BY THE DEPARTMENT OF REVENUE, AND, IN CONNECTION THEREWITH, MAKING AND REDUCING AN APPROPRIATION.

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

SECTION 1. In Colorado Revised Statutes, 24-38.5-301, **amend** (2)(c) introductory portion as follows:

24-38.5-301. Legislative declaration. (2) The general assembly further finds and declares that:

(c) The enterprise provides impact remediation services when, in exchange for the payment of community access retail delivery fees by OR ON BEHALF OF purchasers of tangible personal property for retail delivery, it acts to mitigate the impacts of residential and commercial deliveries on the state's transportation infrastructure, air quality, and emissions by:

SECTION 2. In Colorado Revised Statutes, 24-38.5-302, **amend** (17); and **repeal** (19) as follows:

24-38.5-302. Definitions. As used in this part 3, unless the context otherwise requires:

(17) "Retail delivery" ~~means a retail sale of tangible personal property by a retailer for delivery by a motor vehicle owned or operated by the retailer or any other person to the purchaser at a location in the state, which sale includes at least one item of tangible personal property that is subject to taxation under article 26 of~~

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

title 39. Each such retail sale is a single retail delivery regardless of the number of shipments necessary to deliver the items of tangible personal property purchased HAS THE SAME MEANING AS SET FORTH IN SECTION 43-4-218 (2)(e).

(19) ~~"Retail sale" has the same meaning as set forth in section 39-26-102 (9).~~

SECTION 3. In Colorado Revised Statutes, 24-38.5-303, **amend** (7)(a) as follows:

24-38.5-303. Community access enterprise - creation - board - powers and duties - fund - fee - transparency and reporting. (7) (a) In furtherance of its business purpose, beginning in state fiscal year 2022-23, the enterprise shall impose, and the department of revenue shall collect on behalf of the enterprise, a community access retail delivery fee on each retail delivery. Each retailer who makes a retail delivery shall ~~add to the price of the retail delivery, EITHER collect from the purchaser, and pay to the department of revenue at the time~~ and REMIT OR ELECT TO PAY THE COMMUNITY ACCESS RETAIL DELIVERY FEE in the manner prescribed by the department in accordance with section 43-4-218 (6). ~~the community access retail delivery fee.~~ For the purpose of minimizing compliance costs for retailers and administrative costs for the state, the department of revenue shall collect and administer the community access retail delivery fee on behalf of the enterprise in the same manner in which it collects and administers the retail delivery fee imposed by section 43-4-218 (3).

SECTION 4. In Colorado Revised Statutes, 25-7.5-102, **amend** (21); and **repeal** (23) as follows:

25-7.5-102. Definitions. As used in this article 7.5, unless the context otherwise requires:

(21) ~~"Retail delivery" means a retail sale of tangible personal property by a retailer for delivery by a motor vehicle owned or operated by the retailer or any other person to the purchaser at a location in the state, which sale includes at least one item of tangible personal property that is subject to taxation under article 26 of title 39. Each such retail sale is a single retail delivery regardless of the number of shipments necessary to deliver the items of tangible personal property purchased HAS THE SAME MEANING AS SET FORTH IN SECTION 43-4-218 (2)(e).~~

(23) ~~"Retail sale" has the same meaning as set forth in section 39-26-102 (9).~~

SECTION 5. In Colorado Revised Statutes, 25-7.5-103, **amend** (8)(a) as follows:

25-7.5-103. Clean fleet enterprise - creation - board - powers and duties - fees - fund. (8) (a) In furtherance of its business purpose, beginning in state fiscal year 2022-23, the enterprise shall impose, and the department of revenue shall collect on behalf of the enterprise, a clean fleet retail delivery fee on each retail delivery. Each retailer who makes a retail delivery shall ~~add to the price of the retail delivery, EITHER collect from the purchaser, and pay to the department of revenue at the time~~ and REMIT OR ELECT TO PAY THE CLEAN FLEET RETAIL DELIVERY FEE in the manner prescribed by the department in accordance with section 43-4-218 (6).

~~the clean fleet retail delivery fee.~~ For the purpose of minimizing compliance costs for retailers and administrative costs for the state, the department of revenue shall collect and administer the clean fleet retail delivery fee on behalf of the enterprise in the same manner in which it collects and administers the retail delivery fee imposed by section 43-4-218 (3).

SECTION 6. In Colorado Revised Statutes, 43-4-218, **amend** (1)(e)(II), (1)(e)(III), (3)(a), (3)(b)(I), (6)(a), (6)(b), (6)(c), and (6)(d); and **add** (1)(d.3), (1)(d.7), (1)(e)(IV), (3)(d), and (6)(f) as follows:

43-4-218. Additional funding - retail delivery fee - fund created - simultaneous collection of enterprise fees - rules - legislative declaration - definitions. (1) The general assembly hereby finds and declares that:

(d.3) THERE ARE ADMINISTRATIVE COSTS FOR A RETAILER WHEN THE STATE IMPOSES A FEE ON RETAIL DELIVERIES, AND THE BENEFITS FROM THE FEE REVENUE NEED TO BE BALANCED WITH THE POTENTIAL ECONOMIC IMPACTS ON THE RETAILERS;

(d.7) FEES ON RETAIL DELIVERIES SHOULD ONLY BE IMPOSED ON RETAILERS THAT ARE LARGE ENOUGH TO ABSORB THESE ADMINISTRATIVE COSTS WITHOUT SIGNIFICANT ECONOMIC HARM;

(e) It is therefore necessary and appropriate:

(II) To authorize the community access enterprise created in section 24-38.5-303 (1) to impose a community access retail delivery fee as specified in section 24-38.5-303 (7), authorize the clean fleet enterprise created in section 25-7.5-103 (1)(a) to impose a clean fleet retail delivery fee as specified in section 25-7.5-103 (8), authorize the statewide bridge and tunnel enterprise created in section 43-4-805 (2)(a)(I) to impose a bridge and tunnel retail delivery fee as specified in section 43-4-805 (5)(g.7), authorize the clean transit enterprise created in section 43-4-1203 (1)(a) to impose a clean transit retail delivery fee as specified in section 43-4-1203 (7), and authorize the nonattainment area air pollution mitigation enterprise created in section 43-4-1303 (1)(a) to impose an air pollution mitigation retail delivery fee as specified in section 43-1-1303 (8) to help fund the enterprises' pursuit of their respective business purposes; ~~and~~

(III) For the purpose of minimizing compliance costs for fee payers and administrative costs for the state, to require the department of revenue to collect the retail delivery fees imposed by the enterprises on behalf of the enterprises when it collects the retail delivery fee imposed by subsection (3) of this section and to distribute the enterprise fee revenue to the enterprises; AND

(IV) TO CREATE AN EXEMPTION FROM THE RETAIL DELIVERY FEES FOR RETAILERS WITH RETAIL SALES OF FIVE HUNDRED THOUSAND DOLLARS OR LESS.

(3) (a) A RETAIL DELIVERY FEE IN AN AMOUNT SET FORTH IN THIS SUBSECTION (3)(a) AND SUBSECTION (3)(b) OF THIS SECTION IS IMPOSED ON EACH RETAIL DELIVERY. EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (6)(b)(II) OF THIS SECTION, for retail deliveries of tangible personal property purchased during state fiscal year 2022-23, each retailer who makes a retail delivery shall add to the price

of the retail delivery, collect from the purchaser, and pay to the department of revenue at the time and in the manner prescribed by the department in accordance with subsection (6) of this section a retail delivery fee in the amount of eight and four-tenths cents.

(b) (I) Except as otherwise provided in ~~subsection (3)(c)~~ SUBSECTION (6)(b)(II) of this section, for retail deliveries of tangible personal property purchased during state fiscal year 2023-24 or during any subsequent state fiscal year, each retailer who makes a retail delivery shall add to the price of the retail delivery, collect from the purchaser, and pay to the department of revenue at the time and in the manner prescribed by the department in accordance with subsection (6) of this section a retail delivery fee equal to the amount of the retail delivery fee for retail deliveries of tangible personal property purchased during the prior state fiscal year adjusted for inflation. The department of revenue shall annually calculate the inflation adjusted amount of the retail delivery fee to be imposed on retail deliveries of tangible personal property purchased during each state fiscal year and shall publish the amount no later than April 15 of the calendar year in which the state fiscal year begins.

(d) (I) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A RETAIL DELIVERY BY A QUALIFIED BUSINESS MADE ON OR AFTER JULY 1, 2022, IS EXEMPT FROM THE RETAIL DELIVERY FEE IMPOSED BY THIS SUBSECTION (3) AND THE ENTERPRISE RETAIL DELIVERY FEES.

(II) THERE ARE NO REFUNDS UNDER SECTION 39-26-703 OF ANY RETAIL DELIVERY FEES FOR A RETAIL DELIVERY MADE ON OR AFTER JULY 1, 2022, BUT BEFORE JULY 1, 2023, ON THE BASIS OF THE EXEMPTION SET FORTH IN SUBSECTION (3)(d)(I) OF THIS SECTION.

(III) AS USED IN THIS SUBSECTION (3)(d), "QUALIFIED BUSINESS" MEANS A RETAILER THAT IN THE PREVIOUS CALENDAR YEAR MADE RETAIL SALES OF TANGIBLE PERSONAL PROPERTY, COMMODITIES, OR SERVICES IN THE STATE TOTALING FIVE HUNDRED THOUSAND DOLLARS OR LESS. IF THE RETAILER HAD NO RETAIL SALES IN THE STATE IN THE PREVIOUS CALENDAR YEAR, THEN THE RETAILER IS DEEMED TO BE A "QUALIFIED BUSINESS" FOR THE CURRENT CALENDAR YEAR, UNTIL THE FIRST DAY OF THE MONTH AFTER THE NINETIETH DAY AFTER THE RETAILER HAS MADE RETAIL SALES OF TANGIBLE PERSONAL PROPERTY, COMMODITIES, OR SERVICES IN THE STATE THAT TOTAL MORE THAN FIVE HUNDRED THOUSAND DOLLARS.

(6) (a) ~~Except to the extent otherwise authorized or required by the department of revenue pursuant to subsection (6)(d) of this section with respect to the timing of the remittance of fees to the department~~ AS OTHERWISE PROVIDED IN THIS SUBSECTION (6), the collection, administration, and enforcement of the retail delivery fee imposed by subsection (3) of this section and the enterprise retail delivery fees shall be performed by the executive director of the department of revenue in the same manner as the collection, administration, and enforcement of state sales tax pursuant to article 26 of title 39.

(b) (I) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (6)(b)(II) OF THIS SECTION, every retailer who makes a retail delivery shall add the retail delivery fee imposed by subsection (3) of this section and the enterprise retail delivery fees to

the price or charge for the retail delivery showing the total of the fees as one item called "retail delivery fees" that is separate and distinct from the price and any other taxes or fees imposed on the retail delivery. ~~When~~ If added, the fees constitute a part of the retail delivery price or charge, are a debt from the purchaser to the retailer until paid, and are recoverable at law in the same manner as other debts.

(II) A RETAILER MAY ELECT TO PAY THE RETAIL DELIVERY FEE IMPOSED BY SUBSECTION (3) OF THIS SECTION AND THE ENTERPRISE RETAIL DELIVERY FEES FOR A RETAIL DELIVERY ON BEHALF OF A PURCHASER. IF A RETAILER ELECTS TO PAY THESE FEES, THEN:

(A) THE RETAILER SHALL NOT ADD THE FEES TO THE PRICE OR CHARGE FOR THE RETAIL DELIVERY SHOWING THE TOTAL OF THE FEES AS ONE ITEM CALLED "RETAIL DELIVERY FEES" THAT IS SEPARATE AND DISTINCT FROM THE PRICE AND ANY OTHER TAXES OR FEES IMPOSED ON THE RETAIL DELIVERY;

(B) THE PURCHASER IS NEITHER LIABLE NOR RESPONSIBLE FOR THE PAYMENT OF THE FEES; AND

(C) THE PURCHASER IS NOT ENTITLED TO A REFUND FOR FEES THAT ARE PAID FOR A RETAIL DELIVERY THAT IS EXEMPT UNDER SUBSECTION (3)(c) OR (3)(d) OF THIS SECTION. A RETAILER MAY CLAIM A REFUND UNDER SECTION 39-26-703 FOR THE EXEMPT FEES PAID; EXCEPT THAT SECTION 39-26-703 (2.5)(b)(I)(B) SHALL NOT APPLY IN THIS CIRCUMSTANCE.

(c) Every retailer who makes a retail delivery is liable and responsible for the payment of an amount equivalent to the total amount of the retail delivery fee imposed by subsection (3) of this section and the enterprise retail delivery fees for each retail delivery made irrespective of the requirements of subsection (6)(b) of this section. The burden of proving that a retailer is exempt from collecting OR ELECTING TO PAY the fees on any retail delivery and paying the fees to the executive director of the department of revenue is on the retailer under such reasonable requirements of proof as the executive director may prescribe. The retailer is entitled, as collecting agent for the state, to apply and credit the amount of the retailer's collections, IF ANY, against the amount to be paid pursuant to this subsection (6)(c).

(d)(I) A retailer who collects the retail delivery fee imposed by subsection (3) of this section and the enterprise retail delivery fees shall remit the fees to the department of revenue at the same time and in the same manner as the retailer remits sales tax revenue collected to the department as required by article 26 of title 39 unless the department requires or authorizes the fees to be remitted at another time or in another manner.

(II) A RETAILER WHO ELECTS TO PAY THE RETAIL DELIVERY FEE IMPOSED BY SUBSECTION (3) OF THIS SECTION AND THE ENTERPRISE RETAIL DELIVERY FEES ON BEHALF OF A PURCHASER IN ACCORDANCE WITH SUBSECTION (6)(b)(II) OF THIS SECTION SHALL REMIT THE FEES TO THE DEPARTMENT OF REVENUE AS IF THE FEES HAD BEEN COLLECTED FROM THE PURCHASER ON THE DATE OF THE RETAIL DELIVERY, AS SPECIFIED IN SUBSECTION (6)(d)(I) OF THIS SECTION.

(f) THE DEPARTMENT OF REVENUE SHALL WAIVE ANY PROCESSING COSTS, AS

DEFINED IN SECTION 39-21-119.5 (7)(d)(II), FOR ELECTRONIC PAYMENT OF THE RETAIL DELIVERY FEE IMPOSED BY SUBSECTION (3) OF THIS SECTION AND THE ENTERPRISE RETAIL DELIVERY FEES IF:

(I) THE PROCESSING COSTS WOULD EXCEED THE AMOUNT OF THE RETAIL DELIVERY FEES THE RETAILER IS REMITTING; AND

(II) THE ELECTRONIC PAYMENT IS BY AUTOMATED CLEARING HOUSE (ACH) DEBIT.

SECTION 7. In Colorado Revised Statutes, 43-4-805, **amend** (5)(g.7)(I) and (5)(g.7)(IV)(B); and **add** (5)(g.7)(IV)(C) as follows:

43-4-805. Statewide bridge enterprise - creation - board - funds - powers and duties - legislative declaration - definitions. (5) In addition to any other powers and duties specified in this section, the bridge enterprise board has the following powers and duties:

(g.7) (I) In furtherance of its business purpose, beginning in state fiscal year 2022-23, the bridge enterprise shall impose, and the department of revenue shall collect on behalf of the bridge enterprise, a bridge and tunnel retail delivery fee on each retail delivery. Each retailer who makes a retail delivery shall ~~add to the price of the retail delivery; EITHER collect from the purchaser, and pay to the department of revenue at the time~~ and REMIT OR ELECT TO PAY THE BRIDGE AND TUNNEL RETAIL DELIVERY FEE in the manner prescribed by the department in accordance with section 43-4-218 (6). ~~the bridge and tunnel retail delivery fee.~~ For the purpose of minimizing compliance costs for retailers and administrative costs for the state, the department of revenue shall collect and administer the bridge and tunnel retail delivery fee on behalf of the bridge enterprise in the same manner in which it collects and administers the retail delivery fee imposed by section 43-4-218 (3).

(IV) As used in this subsection (5)(g.7):

(B) "Retail delivery" ~~means a retail sale of tangible personal property by a retailer for delivery by a motor vehicle owned or operated by the retailer or any other person to the purchaser at a location in the state, which sale includes at least one item of tangible personal property that is subject to taxation under article 26 of title 39. Each such retail sale is a single retail delivery regardless of the number of shipments necessary to deliver the items of tangible personal property purchased~~ HAS THE SAME MEANING AS SET FORTH IN SECTION 43-4-218 (2)(e).

(C) "RETAILER" HAS THE SAME MEANING AS SET FORTH IN SECTION 39-26-102 (8).

SECTION 8. In Colorado Revised Statutes, 43-4-1201, **amend** (2)(c) introductory portion as follows:

43-4-1201. Legislative declaration. (2) The general assembly further finds and declares that:

(c) The enterprise provides impact remediation services when, in exchange for the payment of clean transit retail delivery fees by OR ON BEHALF OF purchasers of

tangible personal property for retail delivery, it acts to mitigate the impacts of residential and commercial deliveries on the state's transportation infrastructure, air quality, and emissions by:

SECTION 9. In Colorado Revised Statutes, 43-4-1202, **amend** (15); and **repeal** (17) as follows:

43-4-1202. Definitions. As used in this part 12, unless the context otherwise requires:

(15) ~~"Retail delivery" means a retail sale of tangible personal property by a retailer for delivery by a motor vehicle owned or operated by the retailer or any other person to the purchaser at a location in the state, which sale includes at least one item of tangible personal property that is subject to taxation under article 26 of title 39. Each such retail sale is a single retail delivery regardless of the number of shipments necessary to deliver the items of tangible personal property purchased~~ HAS THE SAME MEANING AS SET FORTH IN SECTION 43-4-218 (2)(e).

(17) ~~"Retail sale" has the same meaning as set forth in section 39-26-102 (9).~~

SECTION 10. In Colorado Revised Statutes, 43-4-1203, **amend** (7)(a) as follows:

43-4-1203. Clean transit enterprise - creation - board - powers and duties - rules - fees - fund. (7) (a) In furtherance of its business purpose, beginning in state fiscal year 2022-23, the enterprise shall impose, and the department of revenue shall collect on behalf of the enterprise, a clean transit retail delivery fee on each retail delivery. Each retailer who makes a retail delivery shall ~~add to the price of the retail delivery, EITHER collect from the purchaser, and pay to the department of revenue at the time~~ and REMIT OR ELECT TO PAY THE CLEAN TRANSIT RETAIL DELIVERY FEE in the manner prescribed by the department in accordance with section 43-4-218 (6). ~~the clean transit retail delivery fee.~~ For the purpose of minimizing compliance costs for retailers and administrative costs for the state, the department of revenue shall collect and administer the clean transit retail delivery fee on behalf of the enterprise in the same manner in which it collects and administers the retail delivery fee imposed by section 43-4-218 (3).

SECTION 11. In Colorado Revised Statutes, 43-4-1301, **amend** (2)(a) as follows:

43-4-1301. Legislative declaration. (2) The general assembly further finds and declares that:

(a) The enterprise provides impact remediation services when, in exchange for the payment of air pollution mitigation per ride fees by transportation network companies and air pollution mitigation retail delivery fees by OR ON BEHALF OF purchasers of tangible personal property for retail delivery, it acts as authorized by this section to mitigate the impacts of prearranged rides arranged through transportation network companies and residential and commercial deliveries on the state's transportation infrastructure, air quality, and emissions;

SECTION 12. In Colorado Revised Statutes, 43-4-1302, **amend** (19); and **repeal** (21) as follows:

43-4-1302. Definitions. As used in this part 13, unless the context otherwise requires:

(19) "~~Retail delivery~~" ~~means a retail sale of tangible personal property by a retailer for delivery by a motor vehicle owned or operated by the retailer or any other person to the purchaser at a location in the state, which sale includes at least one item of tangible personal property that is subject to taxation under article 26 of title 39. Each such retail sale is a single retail delivery regardless of the number of shipments necessary to deliver the items of tangible personal property purchased~~ HAS THE SAME MEANING AS SET FORTH IN SECTION 43-4-218 (2)(e).

(21) "~~Retail sale~~" ~~has the same meaning as set forth in section 39-26-102 (9).~~

SECTION 13. In Colorado Revised Statutes, 43-4-1303, **amend** (8)(a) as follows:

43-4-1303. Nonattainment area air pollution mitigation enterprise - creation - board - powers and duties - rules - fees - fund. (8) (a) In furtherance of its business purpose, beginning in state fiscal year 2022-23, the enterprise shall impose, and the department of revenue shall collect on behalf of the enterprise, an air pollution mitigation retail delivery fee on each retail delivery. Each retailer who makes a retail delivery shall ~~add to the price of the retail delivery,~~ EITHER collect from the purchaser, and pay to the department of revenue at the time and REMIT OR ELECT TO PAY THE AIR POLLUTION MITIGATION RETAIL DELIVERY FEE in the manner prescribed by the department in accordance with section 43-4-218 (6). ~~the air pollution mitigation retail delivery fee.~~ For the purpose of minimizing compliance costs for retailers and administrative costs for the state, the department of revenue shall collect and administer the air pollution mitigation retail delivery fee on behalf of the enterprise in the same manner in which it collects and administers the retail delivery fee imposed by section 43-4-218 (3).

SECTION 14. Appropriation - adjustments to 2022 long bill. (1) To implement this act, appropriations made in the annual general appropriation act for the 2022-23 state fiscal year to the department of transportation are adjusted as follows:

(a) The cash funds appropriation from the multimodal transportation and mitigation options fund created in section 43-4-1103 (1)(a), C.R.S., for multimodal transportation projects is decreased by \$9,494; and

(b) The cash funds appropriation from the clean transit enterprise fund created in section 43-4-1203 (5)(a), C.R.S., for use by the clean transit enterprise is decreased by \$11,340.

SECTION 15. Appropriation - adjustments to 2023 long bill. (1) To implement this act, appropriations made in the annual general appropriation act for the 2023-24 state fiscal year to the department of transportation are adjusted as follows:

(a) The cash funds appropriation from the multimodal transportation and mitigation options fund created in section 43-4-1103 (1)(a), C.R.S., for multimodal transportation projects is decreased by \$125,933; and

(b) The cash funds appropriation from the clean transit enterprise fund created in section 43-4-1203 (5)(a), C.R.S., for use by the clean transit enterprise is decreased by \$150,422.

SECTION 16. Appropriation. For the 2023-24 state fiscal year, \$17,086 is appropriated to the department of revenue. This appropriation is from the Colorado DRIVES vehicle services account in the highway users tax fund created in section 42-1-211(2)(b)(I), C.R.S. To implement this act, the department may use this appropriation for DRIVES maintenance and support.

SECTION 17. Effective date. This act takes effect on July 1, 2023; except that section 43-4-218 (3)(d), Colorado Revised Statutes, enacted in section 6 of this act takes effect upon passage.

SECTION 18. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.

Approved: May 4, 2023