



May 3, 2024

House File 3438 (Port, Greenman)

Dear Members of the Conference Committee on HF 3438,

On behalf of tens of thousands of businesses across Minnesota – from one-person shops to internationally recognized brands – we urge support for the Senate version of HF 3438.

Our members take seriously their obligation to treat customers fairly and to provide transparency in pricing so customers can make informed decisions. Legally required or not, it’s the right thing to do.

When new rules are imposed on a marketplace, businesses of all sizes need them to be clear and simple to follow. The Senate version of HF 3438 increases pricing transparency requirements for consumers in a manner that allows Minnesota businesses to continue providing high quality information, goods, and services while minimizing confusion and avoiding conflicts with existing state and federal laws.

While we appreciate attempts to make the House version of HF 3438 more workable, we continue to have significant concerns. The House language does not clearly exempt the many industries already regulated by other federal or state pricing laws, which will create unnecessary conflicts, confusion and legal risk for businesses.

The Senate version better addresses these concerns and will allow everyone – from small landscapers to independent restaurants to service providers associated with the sale of real property to national retailers – to continue providing pricing and product information sought by consumers. Importantly, the Senate version includes a reasonable effective date that provides sufficient lead time for businesses to update their pricing models and to receive needed guidance on the new pricing requirements. This also allows opportunity for action next session if this law is in conflict with the new rule currently being promulgated by the Federal Trade Commission on this same subject matter (88 Fed. Reg. 77420).

We remain concerned over the litigation risks and confusion created by this new law. While the concept of mandatory disclosure of fees or surcharges sounds simple, the details of what that actually means in practice is more complicated. The reasonable person standard created by this bill does not provide clear terms and ultimately it will require litigation and the courts to determine what is “reasonable”.

We urge your support of the Senate version and recommend a technical change related to hotels serving food and beverage at individual establishments (as highlighted in bold) on lines 2.23-2.27 of the Senate version:

*(h) A food or **beverage** establishment, including hotels, shall be deemed compliant with this section if, in every offer or advertisement for the purchase or lease of a good or service that includes pricing information, the total prices of the good or service being offered or advertised includes a clear and conspicuous disclosure of the percentage of any automatic and mandatory gratuities to be charged.*