

March 22, 2023

The Honorable Frank Hornstein, Chair,
Transportation Finance and Policy
563 State Office Building
St. Paul, MN 55155

The Honorable John Petersburg, House
Republican Lead, House Transportation
Finance and Policy
217 State Office Building
St. Paul, MN 55155

Dear Chair Hornstein, Republican Lead Petersburg and Members of the Committee:

Thank you for the opportunity to weigh in on HF 580, which would establish a retail delivery fee. **Collectively, we oppose HF 580 as it establishes a regressive fee that will negatively impact all Minnesotans and place an undue burden on businesses.** Upon reviewing the language and having discussed it with the author, the bill as drafted poses more questions than it provides answers. As we look to be thoughtful partners in solving transportation challenges, we believe this specific approach to transportation funding has major impacts and insurmountable challenges. Outlined below are some of the issues we have identified in HF 580.

Impact to Minnesotans: The proposed delivery fee will impact every Minnesotan, no matter the size of their budget or where they live. As we face economic uncertainty and families make decisions about their spending, under this bill, should they choose delivery Minnesotans will be penalized.

Unfortunately, what this bill does not take into account is the income of an individual or family. Nor does it contemplate the access they may or may not have to food or necessary goods; and that they are already paying sales tax on purchased goods. Furthermore, Minnesotans receiving public assistance are not accounted for in this bill. SNAP items are not taxable, but if a recipient receives an order for delivery with a blend of eligible and non-eligible items, how does that interact with the fee? The Department of Revenue estimates that the average person will have 48 deliveries annually. For some family budgets, this bill will require real decisions and consequences.

Impact to Business Operations: As it is the retailer's responsibility to collect and remit the fee, the bill does not account for the intricacies required for a retailer to build a system to track, collect and remit the fees. As drafted, HF 580 provides compensation to the Revenue Commissioner for costs to administer the retail delivery fee. Retailers will need to substantially invest in resources to comply with the fee, yet there is no support for that administration. Some businesses use delivery as a minor component to their business model; in which it would not be economical for them to operationally implement the fee. Furthermore, there is no opportunity to allow a retailer to elect to pay the delivery fee themselves.

Transaction Implications: As drafted, the language is not clear around how certain transactions will interact. This raises many unanswered questions, including sales that are business to business or wholesale. These definitions are not explicitly addressed in the bill, nor does the bill provide direction on curbside pick-up or in-store-pick up relative to those options being considered a delivery. In addition, are volunteer delivery services (i.e. meal delivery) required to collect and remit the fee when there is a paying party such as a government grant, and what happens if a customer cancels or returns an order?

Colorado's Challenging Experience: On July 1, 2022 Colorado was the first and only state to-date to impose a retail delivery fee. Colorado's modest (when compared to Minnesota) 27 cent fee implementation has proven to be problematic, resulting in several proposed changes to law. According to local news outlet Denver 7, just months after the fee began and politicians heard blowback from consumers while campaigning, a restructuring of the bill is being considered including an exemption of small businesses and removal of the specific reporting line on a consumer's receipt. In addition, a lawsuit challenging the fee is in the courts.

Today's Economy: The proposed fee would also come at a time when consumers and businesses can least afford it, as economists warn the U.S. is teetering on the edge of a recession. If signed into law, Minnesotans would pay the highest delivery tax in the country --far superseding Colorado--whose new delivery tax has as mentioned wreaked havoc and resulted in frustration amongst businesses and consumers alike.

Attached is a list of important questions we have shared with the author. As stated, in its current form the bill presents far more questions than answers.

We strongly urge you to oppose HF 580 and instead prioritize supporting the most vulnerable populations, encouraging economic growth and providing opportunity for all Minnesotans.

Sincerely,

Jill Sims
Hospitality Minnesota

Bruce Nustad
Minnesota Retailers Association

Jamie Pfuhl
Minnesota Grocers Association

Lance Klatt
Minnesota Service Station & Convenience Store Association

John Reynolds
National Federation of Independent Business

Tony Chesak
Minnesota Licensed Beverage Association

Paul Kaspszak
Minnesota Municipal Beverage Association

Bentley Graves
Minnesota Chamber of Commerce

Adam Kovacevich
Chamber of Progress

Chad Tokowicz
Marine Retailers Association of the Americas

Fred Nicely
Council on State Taxation

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HF 580 – RETAIL DELIVERY FEE QUESTIONS

1. HF 580 does not address who is ultimately liable for the retail delivery fee.
 - a. Is the retail delivery fee an imposition on the consumer or the retailer? If intended to be the liability of the end-consumer, why is Minnesota considering a law that, from a policy perspective, is not largely able to be collected from the intended party due to the fee's novel nature and complexity/uniqueness?
 - b. Who is defined as the "retailer" in the case of third party (delivery) sales? For example, you order from Johnny's Restaurant via delivery app - who is responsible for the fee?
 - c. Is the consumer liable for the fee if it is not collected by the retailer?
 - d. Can the consumer make a claim for refund from the Commissioner for overpayment of the fee to a retailer?
2. As drafted in HF 580, the retail delivery fee is imposed on deliveries to the "purchaser" at a "location" in Minnesota:
 - a. Does the fee apply to deliveries to persons other than the purchaser?
 - b. What is a "location" in Minnesota?
 - c. Does the fee apply if the "location" is a location of the retailer – e.g., buy online, pick-up in store transactions?
 - d. Does the fee apply if the "location" is a drop-off locker, pick-up locker, PO Box, or similar facility? Does the answer change if the "location" belongs to the retailer versus a third-party?
3. Is the retail deliver fee refundable to the customer if they return the item purchased? What if multiple items are purchased in a single transaction and only one is returned?
4. Is the retail delivery fee refundable to the customer if an order is canceled?
5. As drafted, HF 580 alludes to the entity paying sales tax – but often the retailer (ie restaurant or Johnny's Restaurant) will pay the delivery service to remit the sales tax fee to the government – who is responsible for the fee?

6. Has consideration been given to allowing retailers to elect to pay the retail delivery fee as prescribed in HF580 themselves and not pass it on to customers? Perhaps allowing retailers an election for an interim period until the technology to allow the collection from customers catches up?
7. Almost 20 months have passed since Colorado enacted a similar fee, and 8 months have passed since the fee went into effect; still today, many retailers (large and small) are paying the fee themselves and not passing the Colorado retail delivery fee on to customers. Extensive and costly modification and system workarounds are necessary to implement the Colorado fee (and also any similar fee Minnesota might enact) and many retailers are finding that costs to implement the fee exceed the amount of fees that would be collected. Colorado's experiment with its retail delivery fee has proved that the technology does not exist yet to allow the accurate collection of a fee on retail deliveries. Why is Minnesota considering a law that many Minnesota businesses are not able to comply with absent the expenditure of significant money and resources and other potential impacts on their business?
8. Is there opportunity for a quantitative exemption to HF 580? Some businesses, delivery is a very small part of their business model and programming to collect the fee will be a significant challenge. Would there be considerations for a delivery number threshold per quarter?
9. Is there an opportunity to exempt full-service restaurants? At full-service restaurants, the core of the business model is the full dine-in experience. There are a limited amount of deliveries made but certain circumstances lead to a delivery – but this is not the normal model of business.
10. Does curbside deliver count in HF 580?
11. How are business to business transactions handled in HF 580? For example, if a florist delivers a bouquet to a business for display (say in a lobby), is this subject to the retail delivery fee?
12. In HF 580, is there a specific call out to indicate wholesale is exempt?
13. How are event deliveries handled? For example, at a large scale event (ie wedding), there are delivery of rental equipment (tables, chairs, etc), potentially prepared food (catering), flowers, décor, etc?
14. Existing point of sale systems used by most retailers (large and small) are not capable of handling the retail delivery fee contemplated by HF 580 without retailers investing significant money and resources in reconfiguration.

- a. Has the financial burden that will be borne by the retail industry been factored into whether HF 580 makes sense for Minnesota?
 - b. Will there be support to help businesses, in particular small businesses, transition their point of sale systems?
15. Most retailers rely heavily on third-party service providers for tax content/platforms that enable the collection of taxes and fees from customers. This is especially true of small and mid-size retailers that do not have in-house resources. The tax systems/platforms offered by these third-party providers do not currently have a solution that allows all sellers on these systems/platforms to accurately collect retail delivery fees like that contemplated in HF 580.
- a. Has consideration been given to working with the tax content providers to ensure the necessary capabilities exist before burdening Minnesota retailers with this new collection obligation?
 - b. Has consideration been given to extending the effective date of HF 580 (maybe several years) to allow the technology to catch up before burdening Minnesota retailers with the additional costs to implement this fee?
16. A critical distinction between the proposed retail delivery fee and other taxes/fees is the imposition structure. What other Minnesota (or other state) fees/taxes are transaction level (as opposed to item level) that can be used to inform the application of HF 580, implement rules, and administer the fee?
17. Concerns have been raised regarding the legality and feasibility of Colorado's retail delivery fee and there is movement to repeal it this year. Do similar concerns exist in Minnesota and does it make sense to base a new tax on a novel fee that is subject to ongoing legal and feasibility challenge?
18. HF 580 provides for compensation to the Commissioner for its costs to administer the retail delivery fee. Retailers will need to invest substantial resources to comply with this novel fee and should also be compensated. Why is the retail industry being burdened with significant administrative and compliance costs but not also receiving vendor compensation for collecting this novel fee for the state?
19. The retail delivery fee envisioned by HF 580 does not take into account the reality of the many unique and complex ways companies do business - making compliance extremely difficult. Deliveries associated with a "retail sale" can be complex and the facts may change during the life of an order. These nuances and changes during the life of an order may change whether the fee applies or not.

- a. Has consideration been given to granting retailers protections from consumer class actions that will arise from mistaken over-collections – especially since the technology is not fully developed and the struggles retailers are experiencing with collection in other states?
 - b. Has consideration been given to granting retailers protections against administrative penalties and interest for failure to pass the fee on to customers or mistaken under or over collection of the fee?
20. Does the retail delivery fee apply to deliveries made by third-parties and not the retailer (e.g., drop-ship or supplier-direct fulfillment transaction)?
21. As drafted in HF 580, each “retail sale” is considered a “single retail delivery.” How does the retail delivery fee apply in complex transactions? For example, how does the fee apply to a construction contract (is the answer different for lumpsum and time and materials contracts); contracts with multiple purchase orders or with change orders; service contracts that include parts; monthly subscriptions paid upfront; monthly subscriptions paid periodically; leases; installment payment contracts; etc.?
22. Is the retail delivery fee intended to supplement or replace some other tax/fee that exists in Minnesota? Is this the best way to balance narrowly impactful budget concerns when the public is dealing with significant inflationary pressure and visibility to a large state budget surplus?
23. Minnesota is a full member of the Streamlined Sales Tax organization with Senator Ann Rest on the Governing Board. What are the implications of HF 580 on compliance with and adherence to Minnesota’s participation in the Streamlined Sales and Use Tax Agreement?
24. How will HF 580 account for individuals receiving public assistance – for example SNAP or MFIP. As SNAP items are not taxable items, and recipients could receive an order with a blend of SNAP and not eligible SNAP items – how does that interact with the fee?