

First Regular Session
Seventy-fourth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 23-0752.01 Jason Gelender x4330

HOUSE BILL 23-1166

HOUSE SPONSORSHIP

Pugliese,

SENATE SPONSORSHIP

Will,

House Committees

Transportation, Housing & Local Government

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE ELIMINATION OF RETAIL DELIVERY FEES.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

A retail delivery is a retail sale of tangible personal property that is subject to state sales tax by a retailer for delivery by a motor vehicle to the purchaser at any location in the state. As authorized by current law, retail delivery fees are imposed on each retail delivery by:

- The state;
- The community access enterprise;
- The clean fleet enterprise;
- The statewide bridge and tunnel enterprise;

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing law.
Dashes through the words or numbers indicate deletions from existing law.

- The clean transit enterprise; and
- The nonattainment area air pollution mitigation enterprise.

Effective July 1, 2023, the bill eliminates the retail delivery fees by specifying that they may only be collected for the 2022-23 state fiscal year.

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

2 **SECTION 1.** In Colorado Revised Statutes, 24-38.5-302, **repeal**

3 (11) as follows:

4 **24-38.5-302. Definitions.** As used in this part 3, unless the
5 context otherwise requires:

6 (11) "~~Inflation~~" means the average annual percentage change in
7 the ~~United States department of labor, bureau of labor statistics, consumer~~
8 price index for ~~Denver-Aurora-Lakewood~~ for all items and all urban
9 consumers, or its applicable predecessor or successor index, for the five
10 years ending on the last December 31 before the state fiscal year for
11 which an inflation adjustment to be made to the community access retail
12 delivery fee imposed pursuant to section 24-38.5-303 (7) begins.

13 **SECTION 2.** In Colorado Revised Statutes, 24-38.5-303, **amend**
14 (7); and **repeal** (6)(g) as follows:

15 **24-38.5-303. Community access enterprise - creation - board**
16 **- powers and duties - fund - fee - transparency and reporting.** (6) In
17 addition to any other powers and duties specified in this section, the board
18 has the following general powers and duties:

19 (g) ~~To promulgate rules for the sole purpose of setting the amount~~
20 ~~of the community access retail delivery fee at or below the maximum~~
21 ~~amount authorized in this section;~~ and

22 (7) (a) In furtherance of its business purpose, ~~beginning in~~ FOR
23 state fiscal year 2022-23 ONLY, the enterprise shall impose, and the

1 department of revenue shall collect on behalf of the enterprise, a
2 community access retail delivery fee on each retail delivery. Each retailer
3 who makes a retail delivery shall add to the price of the retail delivery,
4 collect from the purchaser, and pay to the department of revenue at the
5 time and in the manner prescribed by the department in accordance with
6 section 43-4-218 (6) the community access retail delivery fee. For the
7 purpose of minimizing compliance costs for retailers and administrative
8 costs for the state, the department of revenue shall collect and administer
9 the community access retail delivery fee on behalf of the enterprise in the
10 same manner in which it collects and administers the retail delivery fee
11 imposed by section 43-4-218 (3).

12 (b) For ~~retail deliveries of tangible personal property purchased~~
13 ~~during state fiscal year 2022-23~~, The enterprise shall impose the
14 community access retail delivery fee in a maximum amount of six and
15 nine-tenths cents.

16 (c) (I) Except as otherwise provided in subsection (7)(c)(II) of this
17 section, ~~for retail deliveries of tangible personal property purchased~~
18 ~~during state fiscal year 2023-24 or during any subsequent state fiscal year~~,
19 ~~the enterprise shall impose the community access retail delivery fee in a~~
20 ~~maximum amount that is the maximum amount for the prior state fiscal~~
21 ~~year adjusted for inflation. The enterprise shall notify the department of~~
22 ~~revenue of the amount of the community access retail delivery fee to be~~
23 ~~collected for retail deliveries of tangible personal property purchased~~
24 ~~during each state fiscal year no later than March 15 of the calendar year~~
25 ~~in which the state fiscal year begins, and the department of revenue shall~~
26 ~~publish the amount no later than April 15 of the calendar year in which the~~
27 ~~state fiscal year begins~~.

7 **SECTION 3.** In Colorado Revised Statutes, 25-7.5-102, amend
8 (13) as follows:

9 **25-7.5-102. Definitions.** As used in this article 7.5, unless the
10 context otherwise requires:

19 **SECTION 4.** In Colorado Revised Statutes, 25-7.5-103, amend
20 (6)(h) and (8) as follows:

21 **25-7.5-103. Clean fleet enterprise - creation - board - powers**
22 **and duties - fees - fund.** (6) In addition to any other powers and duties
23 specified in this section, the board has the following general powers and
24 duties:

18 (c) (I) Except as otherwise provided in subsection (8)(c)(II) of this
19 section, for retail deliveries of tangible personal property purchased
20 during state fiscal year 2023-24 or during any subsequent state fiscal year,
21 the enterprise shall impose the clean fleet retail delivery fee in a
22 maximum amount that is the maximum amount for the prior state fiscal
23 year adjusted for inflation. The enterprise shall notify the department of
24 revenue of the amount of the clean fleet retail delivery fee to be collected
25 for retail deliveries of tangible personal property purchased during each
26 state fiscal year no later than March 15 of the calendar year in which the
27 state fiscal year begins, and the department of revenue shall publish the

1 amount no later than April 15 of the calendar year in which the state fiscal
2 year begins.

3 (II) The enterprise is authorized to adjust the amount of the clean
4 fleet retail delivery fee for retail deliveries of tangible personal property
5 purchased during a state fiscal year only if the department of revenue
6 adjusts the amount of the retail delivery fee imposed by section 43-4-218
7 (3) for retail deliveries of tangible personal property purchased during the
8 state fiscal year.

9 **SECTION 5.** In Colorado Revised Statutes, 43-4-218, amend
10 (3)(a); and **repeal** (2)(b) and (3)(b) as follows:

11 **43-4-218. Additional funding - retail delivery fee - fund
12 created - simultaneous collection of enterprise fees - rules - legislative
13 declaration - definitions.** (2) As used in this section, unless the context
14 otherwise requires:

15 (b) "Inflation" means the average annual percentage change in the
16 United States department of labor, bureau of labor statistics, consumer
17 price index for Denver-Aurora-Lakewood for all items and all urban
18 consumers, or its applicable predecessor or successor index, for the five
19 years ending on the last December 31 before the calendar year in which
20 a state fiscal year for which an inflation adjustment to the retail delivery
21 fee imposed by subsection (3) of this section is to be made begins.

22 (3) (a) For retail deliveries of tangible personal property
23 purchased during state fiscal year 2022-23 ONLY, each retailer who makes
24 a retail delivery shall add to the price of the retail delivery, collect from
25 the purchaser, and pay to the department of revenue at the time and in the
26 manner prescribed by the department in accordance with subsection (6)
27 of this section a retail delivery fee in the amount of eight and four-tenths

1 cents.

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

16 (II) The department of revenue shall adjust the amount of the
17 retail delivery fee for retail deliveries of tangible personal property
18 purchased during a state fiscal year only if inflation is positive and
19 cumulative inflation from the time of the last adjustment in the amount of
20 the retail delivery fee, when applied to the sum of the current retail
21 delivery fee and all current enterprise retail delivery fees and rounded to
22 the nearest whole cent, will result in an increase of at least one whole cent
23 in the total amount of the retail delivery fee and all enterprise retail
24 delivery fees imposed on each retail delivery. The amount of cumulative
25 inflation to be applied to the sum of the current retail delivery fee and all
26 current enterprise retail delivery fees and rounded to the nearest whole
27 cent is the lesser of actual cumulative inflation or five percent.

1 **SECTION 6.** In Colorado Revised Statutes, 43-4-805, **amend**
2 (5)(g.7)(I) and (5)(g.7)(II); and **repeal** (5)(g.7)(III) and (5)(g.7)(IV)(A)
3 as follows:

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

8 (g.7) (I) In furtherance of its business purpose, ~~beginning in~~ FOR
9 state fiscal year 2022-23 ONLY, the bridge enterprise shall impose, and the
10 department of revenue shall collect on behalf of the bridge enterprise, a
11 bridge and tunnel retail delivery fee on each retail delivery. Each retailer
12 who makes a retail delivery shall add to the price of the retail delivery,
13 collect from the purchaser, and pay to the department of revenue at the
14 time and in the manner prescribed by the department in accordance with
15 section 43-4-218 (6) the bridge and tunnel retail delivery fee. For the
16 purpose of minimizing compliance costs for retailers and administrative
17 costs for the state, the department of revenue shall collect and administer
18 the bridge and tunnel retail delivery fee on behalf of the bridge enterprise
19 in the same manner in which it collects and administers the retail delivery
20 fee imposed by section 43-4-218 (3).

21 (II) ~~For retail deliveries of tangible personal property purchased~~
22 ~~during state fiscal year 2022-23,~~ The bridge enterprise shall impose the
23 bridge and tunnel retail delivery fee in a maximum amount of two and
24 seven-tenths cents.

25 (III) ~~(A) Except as otherwise provided in subsection~~
26 ~~(5)(g.7)(III)(B) of this section, for retail deliveries of tangible personal~~
27 ~~property purchased during state fiscal year 2023-24 or during any~~

1 subsequent state fiscal year, the bridge enterprise shall impose the bridge
2 and tunnel retail delivery fee in a maximum amount that is the maximum
3 amount for the prior state fiscal year adjusted for inflation. The bridge
4 enterprise shall notify the department of revenue of the amount of the
5 bridge and tunnel retail delivery fee to be collected for retail deliveries of
6 tangible personal property purchased during each state fiscal year no later
7 than March 15 of the calendar year in which the state fiscal year begins,
8 and the department of revenue shall publish the amount no later than
9 April 15 of the calendar year in which the state fiscal year begins.

10 (B) The bridge enterprise is authorized to adjust the amount of the
11 bridge and tunnel retail delivery fee for retail deliveries of tangible
12 personal property purchased during a state fiscal year only if the
13 department of revenue adjusts the amount of the retail delivery fee
14 imposed by section 43-4-218 (3) for retail deliveries of tangible personal
15 property purchased during the state fiscal year.

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

17 (A) "Inflation" means the average annual percentage change in the
18 United States department of labor, bureau of labor statistics, consumer
19 price index for Denver-Aurora-Lakewood for all items and all urban
20 consumers, or its applicable predecessor or successor index, for the five
21 years ending on the last December 31 before a state fiscal year for which
22 an inflation adjustment to be made to the bridge and tunnel retail delivery
23 fee imposed pursuant to this subsection (5)(g.7) begins.

24 **SECTION 7.** In Colorado Revised Statutes, 43-4-1202, **repeal**
25 (11) as follows:

26 **43-4-1202. Definitions.** As used in this part 12, unless the context
27 otherwise requires:

8 **SECTION 8.** In Colorado Revised Statutes, 43-4-1203, amend
9 (6)(g) and (7) as follows:

10 **43-4-1203. Clean transit enterprise - creation - board - powers**
11 **and duties - rules - fees - fund.** (6) In addition to any other powers and
12 duties specified in this section, the board has the following general
13 powers and duties:

14 (g) To promulgate rules to set the amount of the clean transit retail
15 delivery fee at or below the maximum amount authorized in this section
16 and to govern the process by which the enterprise accepts applications
17 for, awards, and oversees grants, loans, and rebates pursuant to subsection
18 (8) of this section; and

1 department of revenue shall collect and administer the clean transit retail
2 delivery fee on behalf of the enterprise in the same manner in which it
3 collects and administers the retail delivery fee imposed by section
4 43-4-218 (3).

5 (b) For retail deliveries of tangible personal property purchased
6 during state fiscal year 2022-23, The enterprise shall impose the clean
7 transit retail delivery fee in a maximum amount of three cents.

8 (c) (I) Except as otherwise provided in subsection (7)(c)(II) of this
9 section, for retail deliveries of tangible personal property purchased
10 during state fiscal year 2023-24 or during any subsequent state fiscal year,
11 the enterprise shall impose the clean transit retail delivery fee in a
12 maximum amount that is the maximum amount for the prior state fiscal
13 year adjusted for inflation. The enterprise shall notify the department of
14 revenue of the amount of the clean transit retail delivery fee to be
15 collected for retail deliveries of tangible personal property purchased
16 during each state fiscal year no later than March 15 of the calendar year
17 in which the state fiscal year begins, and the department of revenue shall
18 publish the amount no later than April 15 of the calendar year in which the
19 state fiscal year begins.

20 (II) The enterprise is authorized to adjust the amount of the clean
21 transit retail delivery fee for retail deliveries of tangible personal property
22 purchased during a state fiscal year only if the department of revenue
23 adjusts the amount of the retail delivery fee imposed by section 43-4-218
24 (3) for retail deliveries of tangible personal property purchased during the
25 state fiscal year.

26 **SECTION 9.** In Colorado Revised Statutes, 43-4-1302, amend
27 (15) as follows:

1 **43-4-1302. Definitions.** As used in this part 13, unless the context
2 otherwise requires:

3 (15) "Inflation" means the average annual percentage change in
4 the United States department of labor, bureau of labor statistics, consumer
5 price index for Denver-Aurora-Lakewood for all items and all urban
6 consumers, or its applicable predecessor or successor index, for the five
7 years ending on the last December 31 before a state fiscal year for which
8 an inflation adjustment to be made to the air pollution mitigation per ride
9 fee imposed by section 43-4-1303 (7) ~~or the air pollution mitigation retail~~
10 ~~delivery fee imposed by section 43-4-1303 (8)~~ begins.

11 **SECTION 10.** In Colorado Revised Statutes, 43-4-1303, amend
12 (6)(h) and (8) as follows:

13 **43-4-1303. Nonattainment area air pollution mitigation**
14 ~~enterprise - creation - board - powers and duties - rules - fees - fund.~~
15 (6) In addition to any other powers and duties specified in this section,
16 the board has the following general powers and duties:

17 (h) To promulgate rules for the sole purpose of setting the
18 amounts of the air pollution mitigation per ride fee ~~and the air pollution~~
19 ~~mitigation retail delivery fee~~ at or below the maximum amounts
20 authorized in this section; and

21 (8) (a) In furtherance of its business purpose, ~~beginning in~~ FOR
22 state fiscal year 2022-23 ONLY, the enterprise shall impose, and the
23 department of revenue shall collect on behalf of the enterprise, an air
24 pollution mitigation retail delivery fee on each retail delivery. Each
25 retailer who makes a retail delivery shall add to the price of the retail
26 delivery, collect from the purchaser, and pay to the department of revenue
27 at the time and in the manner prescribed by the department in accordance

1 with section 43-4-218 (6) the air pollution mitigation retail delivery fee.
2 For the purpose of minimizing compliance costs for retailers and
3 administrative costs for the state, the department of revenue shall collect
4 and administer the air pollution mitigation retail delivery fee on behalf of
5 the enterprise in the same manner in which it collects and administers the
6 retail delivery fee imposed by section 43-4-218 (3).

7 (b) For retail deliveries of tangible personal property purchased
8 during state fiscal year 2022-23, The enterprise shall impose the air
9 pollution mitigation retail delivery fee in a maximum amount of
10 seven-tenths of one cent.

11 (c) (I) Except as otherwise provided in subsection (8)(c)(II) of this
12 section, for retail deliveries of tangible personal property purchased
13 during state fiscal year 2023-24 or during any subsequent state fiscal year,
14 the enterprise shall impose the air pollution mitigation retail delivery fee
15 in a maximum amount that is the maximum amount for the prior state
16 fiscal year adjusted for inflation. The enterprise shall notify the
17 department of revenue of the amount of the air pollution mitigation retail
18 delivery fee to be collected for retail deliveries of tangible personal
19 property purchased during each state fiscal year no later than March 15
20 of the calendar year in which the state fiscal year begins, and the
21 department of revenue shall publish the amount no later than April 15 of
22 the calendar year in which the state fiscal year begins.

23 (II) The enterprise is authorized to adjust the amount of the air
24 pollution mitigation retail delivery fee for retail deliveries of tangible
25 personal property purchased during a state fiscal year only if the
26 department of revenue adjusts the amount of the retail delivery fee
27 imposed by section 43-4-218 (3) for retail deliveries of tangible personal

1 ~~property purchased during the state fiscal year.~~

2 **SECTION 11. Effective date.** This act takes effect upon passage;
3 except that the repeal of section 24-38.5-303 (6)(g), Colorado Revised
4 Statutes, in section 2 of this act; section 25-7.5-103 (6)(h), amended in
5 section 4 of this act; section 43-4-1203 (6)(g), amended in section 8 of
6 this act; and section 43-4-1303 (6)(h), amended in section 10 of this act,
7 take effect July 1, 2023.

8 **SECTION 12. Safety clause.** The general assembly hereby finds,
9 determines, and declares that this act is necessary for the immediate
10 preservation of the public peace, health, or safety.