

By: Representative Massengill

To: Ways and Means

## HOUSE BILL NO. 530

1 AN ACT TO IMPOSE A DELIVERY FEE OF THIRTY CENTS ON EACH  
2 COMMERCIAL TRANSACTION WHICH INVOLVES RETAIL DELIVERY IN  
3 MISSISSIPPI; TO PROVIDE RETAILERS WITH THE DISCRETION TO COLLECT  
4 THE FEE FROM THE PURCHASER; TO PROVIDE THAT THE DELIVERY FEE, IF  
5 STATED SEPARATELY ON THE RECEIPT, INVOICE OR BILL OF SALE, SHALL  
6 BE EXCLUDED FROM THE SALES PRICES FOR TAX PURPOSES; TO PROVIDE  
7 THAT THE RETAIL DELIVERY FEE SHALL BE CHARGED IN ADDITION TO ANY  
8 OTHER DELIVERY FEE WHICH, THE TOTAL OF BOTH MUST BE INDICATED AS  
9 SEPARATE ITEMS; TO PROVIDE THAT THE DELIVERY FEE IS IMPOSED ONCE  
10 PER TRANSACTION AND IS NONREFUNDABLE IF ANY OR ALL OF THE ITEMS  
11 PURCHASED ARE RETURNED TO THE RETAILER; TO PROVIDE THAT THE  
12 DELIVERY FEE SHALL BE REFUNDED IF FOR ANY REASON THE RETAIL  
13 DELIVERY IS CANCELLED; TO EXEMPT CERTAIN ITEMS FROM IMPOSITION OF  
14 THE DELIVERY FEE; TO REQUIRE A RETAILER OR MARKET PLACE PROVIDER  
15 TO BEGIN COLLECTING AND REMITTING THE DELIVERY FEE TO THE  
16 COMMISSIONER OF REVENUE ON THE FIRST DAY OF EACH MONTH; TO REQUIRE  
17 THE RETAILER TO REPORT AND REMIT THE FEE ON THE RETAILER'S INCOME  
18 TAX RETURN; TO PRESCRIBE THE MANNER BY WHICH THE FEE MUST BE  
19 COLLECTED BY THE RETAILER OR A THIRD-PARTY ENTITY AND REMITTED TO  
20 THE COMMISSIONER OF REVENUE; TO REQUIRE THE COMMISSIONER OF  
21 REVENUE TO PAY INTEREST ON ANY OVERPAYMENT REFUNDED OR CREDITED TO  
22 THE RETAILER FROM THE DATE OF PAYMENT OF THE FEE UNTIL THE DATE  
23 THE REFUND IS PAID OR CREDITED; TO REQUIRE THE COMMISSIONER TO  
24 RETAIN ONE PERCENT OF THE TOTAL DELIVERY FEES COLLECTED FOR THE  
25 PURPOSES OF ADMINISTERING ITS ENFORCEMENT OF THE RETAIL DELIVERY  
26 FEE COLLECTION; TO REQUIRE THE COMMISSIONER TO DEPOSIT 60% OF THE  
27 BALANCE OF THE PROCEEDS OF THE COLLECTED DELIVERY FEES INTO THE  
28 "STATE HIGHWAY MAINTENANCE FUND" AND THE REMAINING 40% OF THE  
29 BALANCE OF THE PROCEEDS OF THE COLLECTED DELIVERY FEES INTO THE  
30 "2022 Capacity Project Fund"; AND FOR RELATED PURPOSES.

31 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:



**SECTION 1.**

As used in this act, the following terms shall have the meanings ascribed herein, unless context of use clearly requires otherwise.

(a) "Accessories and supplies" means items required for the effective use of durable medical equipment for home use only or purchased in a transaction covered by Medicare or Medicaid, and those items necessary for the effective use of a prosthetic device.

(b) "Baby products" means breast pumps, baby bottles and nipples, pacifiers, teething rings, infant syringes, baby wipes, cribs and bassinets, crib and bassinet mattresses, crib and bassinet sheets, changing tables, changing pads, strollers, car seats and car seat bases, baby swings, bottle sterilizers and infant eating utensils.

(c) "Clothing" means:

(i) All human wearing apparel suitable for general use, including, but is not limited to:

1. Household and shop aprons;
2. Athletic supporters;
3. Baby receiving blankets;
4. Bathing suits and caps;
5. Belts and suspenders;
6. Boots;
7. Coats and jackets;
8. Costumes;



57 9. Children and adult diapers, including  
58 disposable;  
59  
60 10. Ear muffs;  
61 11. Footlets;  
62 12. Formal wear;  
63 13. Garters and garter belts;  
64 14. Girdles;  
65 15. Gloves and mittens for general use;  
66 16. Hats and caps;  
67 17. Hosiery;  
68 18. Insoles for shoes;  
69 19. Lab coats;  
70 20. Neckties;  
71 21. Overshoes;  
72 22. Pantyhose;  
73 23. Rainwear;  
74 24. Rubber pants;  
75 25. Sandals;  
76 26. Scarves;  
77 27. Shoes and shoe laces;  
78 28. Slippers;  
79 29. Sneakers;  
80 30. Socks and stockings;  
81 31. Steel-toed boots;  
32. Underwear;



82 33. Uniforms, athletic and nonathletic; and  
83 34. Wedding apparel.

84 (ii) The term "clothing" does not include the  
85 following:

86 1. Belt buckles sold separately;  
87 2. Costume masks sold separately;  
88 3. Patches and emblems sold separately;  
89 4. Sewing equipment and supplies, including,  
90 but not limited to, knitting needles, patterns, pins, scissors,  
91 sewing machines, sewing needles, tape measures and thimbles;  
92 5. Sewing materials that become part of  
93 clothing, including, but not limited to, buttons, fabric, lace,  
94 thread, yarn and zippers;  
95 6. Clothing accessories or equipment;  
96 7. Sports or recreational equipment;  
97 8. Protective equipment; and  
98 9. Fur clothing that is required by the  
99 Federal Fur Products Labeling Act, 15 USCS Section 69, to be  
100 labeled as a fur product, and the value of the fur components in  
101 the product is more than three times the value of the next most  
102 valuable tangible component. For purposes of this item, "fur"  
103 means any animal skin or part of an animal skin with hair, fleece  
104 or fur fibers attached to it, either in its raw or processed  
105 state, but does not include animal skins that have been converted



106 into leather or suede, or from which the hair, fleece or fur fiber  
107 has been completely removed in processing the skins.

108 (d) "Clothing accessories or equipment" means  
109 incidental items worn on the person or in conjunction with  
110 clothing including, but are not limited to:

- 111 (i) Briefcases;
- 112 (ii) Cosmetics;
- 113 (iii) Hair notions, including barrettes, hair  
114 bows, and hairnets;
- 115 (iv) Handbags;
- 116 (v) Handkerchiefs;
- 117 (vi) Jewelry;
- 118 (vii) Nonprescription sunglasses;
- 119 (viii) Umbrellas;
- 120 (ix) Wallets;
- 121 (x) Watches; and
- 122 (xi) Wigs and hairpieces.

123 (e) "Commissioner" means the Commissioner of Revenue.

124 (f) "Drug" means a compound, substance or preparation,  
125 and any component of a compound, substance, or preparation, other  
126 than food and food ingredients, dietary supplements, taxable  
127 cannabis products as defined under Section 27-72-1, or alcoholic  
128 beverages that is:

- 129 (i) Recognized in the official United States  
130 Pharmacopoeia, official Homeopathic Pharmacopoeia of the United



States or official National Formulary, and supplement to any of them;

(ii) Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or

(iii) Intended to affect the structure or any function of the body.

(g) "Drugs and medical devices" mean:

(i) Drugs, including over-the-counter drugs;

(ii) Single-use finger-pricking devices for the extraction of blood and other single-use devices and single-use diagnostic agents used in diagnosing, monitoring, or treating diabetes;

(iii) Insulin and medical oxygen for human use, regardless of whether prescribed or sold over the counter;

(iv) Prosthetic devices;

(v) Durable medical equipment for home use only;

(vi) Mobility enhancing equipment;

(vii) Prescription corrective eyeglasses; and

(viii) Kidney dialysis equipment, including repair and replacement parts; and

(ix) Items purchased in transactions covered by:

1. Medicare as defined under Title XVIII of the Social Security Act, 42 USCS Section 1395, et seq.; or

2. Medicaid as defined under Title XIX of the Social Security Act, 42 USCS Section 1396, et seq.



156 (h) "Durable medical equipment" means equipment,  
157 including repair and replacement parts, including single-patient  
158 use items, but not including mobility enhancing equipment, that:

159 (i) Can withstand repeated use;

160 (ii) Is primarily and customarily used to serve a  
161 medical purpose;

162 (iii) Generally is not useful to a person in the  
163 absence of illness or injury; and

164 (iv) Is not worn in or on the body.

165 (i) "Food and beverage service establishment" means in  
166 a building, structure, enclosure or any part of a building,  
167 structure or enclosure used as, maintained as, advertised as or  
168 held out to be an operation that prepares, serves, or otherwise  
169 provides food or beverages, or both, for human consumption.

170 (j) "Food and food ingredients" means substances,  
171 whether in liquid, concentrated, solid, frozen, dried, or  
172 dehydrated form, that are sold for ingestion or chewing by humans  
173 and are consumed for their taste or nutritional value. Food and  
174 food ingredients do not include alcoholic beverages, tobacco,  
175 taxable cannabis products, medical cannabis flower and medical  
176 cannabinoid products.

177 (k) "Marketplace provider" means any person who  
178 facilitates a retail sale by a retailer by:



(i) Listing or advertising for sale by the retailer in any forum, tangible personal property, services, or digital goods that are subject to tax under this act; and

(ii) Either directly or indirectly through agreements or arrangements with third parties collecting payment from the customer and transmitting that payment to the retailer regardless of whether the marketplace provider receives compensation or other consideration in exchange for its services.

(l) "Over-the-counter drug" means a drug that contains a label that identifies the product as a drug as required by 21 CFR Section 201.66. The label must include a "drug facts" panel or a statement of the active ingredients with a list of those ingredients contained in the compound, substance or preparation. Over-the-counter drugs do not include grooming and hygiene products, regardless of whether they otherwise meet the definition.

(m) "Person" means any individual or group and any combination of individuals, groups or individuals and groups acting as a unit. The term includes a firm, partnership, joint venture, limited liability company, association, cooperative, social club, fraternal organization, municipal or private corporation whether or not organized for profit, estate, trust, business trust, receiver, trustee, syndicate, the United States and a state and its political subdivisions, and any agent or





consignee of any individual or organization listed in this paragraph.

(n) "Prepared food" means food that meets either of the following conditions:

(i) The food is sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins or straws; or

(ii) The food is sold in a heated state or heated by the seller or two (2) or more food ingredients are mixed or combined by the seller for sale as a single item, except for:

1. Bakery items, including, but not limited to, bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, danish, cakes, tortes, pies, tarts, muffins, bars, cookies, tortillas;

2. Ready-to-eat meat and seafood in an unheated state sold by weight;

3. Eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended in Chapter 3, Part 401.11 of the Food and Drug Administration-Food Code, so as to prevent food borne illnesses; or

4. Food that is only sliced, repackaged or pasteurized by the seller.



226                   (o) "Prosthetic device" means a replacement, corrective  
227 or supportive device, including repair and replacement parts, worn  
228 on or in the body to:

229                   (i) Artificially replace a missing portion of the  
230 body;

231                   (ii) Prevent or correct physical deformity or  
232 malfunction; or

233                   (iii) Support a weak or deformed portion of the  
234 body.

235           Prosthetic device does not include corrective eyeglasses.

236                   (p) "Protective equipment" means items for human wear  
237 and designed as protection of the wearer against injury or disease  
238 or as protection against damage or injury of other persons or  
239 property but not suitable for general use. Protective equipment  
240 includes, but is not limited to:

241                   (i) Breathing masks;

242                   (ii) Clean room apparel and equipment;

243                   (iii) Ear and hearing protectors;

244                   (iv) Face shields;

245                   (v) Finger guards;

246                   (vi) Hard hats;

247                   (vii) Helmets;

248                   (viii) Paint or dust respirators;

249                   (ix) Protective gloves;

250                   (x) Safety glasses and goggles;



251 (xi) Safety belts;

252 (xii) Tool belts; and

253 (xiii) Welders gloves and masks.

254 (q) "Repair and replacement parts" includes all  
255 components or attachments used in conjunction with the durable  
256 medical equipment, including repair and replacement parts which  
257 are for single patient use only.

258 (r) "Retail delivery" means a delivery to a person  
259 located in the State of Mississippi of the following items as part  
260 of a retail sale:

261 (i) Tangible personal property that is subject to  
262 taxation under Chapters 65 and 67, Title 27, Mississippi Code of  
263 1972; and

264 (ii) Clothing, as defined under paragraph (c) of  
265 this section, excluding cloth and disposable child and adult  
266 diapers.

267 Retail delivery does not include pickup at the retailer's  
268 place of business, including curbside delivery.

269 (s) "Retail delivery fee" means the fee imposed under  
270 Section 2 of this act on retail deliveries.

271 (t) "Retail sale" shall have the same meaning ascribed  
272 to the term in Section 27-65-7.

273 (u) "Retailer" means any person making retail sales  
274 through vending machines, by maintaining a store, or operating as  
275 a transient vendor, or renting or leasing tangible personal



property. Retailer also includes persons who facilitate the sale of services or tangible personal property that belongs to a third party within the State of Mississippi. Retailer includes a:

(i) Retailer maintaining a place of business in this state;

(ii) Marketplace provider maintaining a place of business in this state:

1. Directly or by a subsidiary or an affiliate, an office, place of distribution, sales, storage, or sample room or place, warehouse or other place of business, including the employment of a resident of this state who works from a home office in this state; or

2. Having a representative, including, but not limited to, an affiliate, agent, salesperson, canvasser, solicitor, or other third party operating in this state under the authority of the retailer or marketplace provider, or its subsidiary, for any purpose, including the repairing, selling, delivering, installing, facilitating sales, processing sales, or soliciting of orders for the retailer's or a retailer's goods or services, or the leasing of tangible personal property located in this state, whether the place of business or agent, representative, affiliate, salesperson, canvasser or solicitor is located in the state permanently or temporarily, or whether or not the retailer or marketplace provider, subsidiary or affiliate is authorized to do business in this state;



(iii) Retailer not maintaining a place of business in this state; and

(iv) Marketplace provider not maintaining a place of business in this state, while making or facilitating retail sales from outside this state to a destination within this state and not maintaining a place of business in this state as provided in subparagraph (ii) that engages in the regular or systematic soliciting of sales from potential customers in this state by:

1. Distribution, by mail or otherwise, of catalogs, periodicals, advertising flyers or other written solicitations of business to customers in this state;

2. Advertisements on billboards or other outdoor advertising in this state;

3. Advertisements in newspapers published in this state;

4. Advertisements in trade journals or other periodicals the circulation of which is primarily within this state;

5. Advertisements in a Mississippi edition of a national or regional publication or a limited regional edition in which this state is included as part of a broader regional or national publication that are not placed in other geographically defined editions of the same issue of the same publication;

6. Advertisements in regional or national publications in an edition that is not by its contents



geographically targeted to Mississippi but is sold over the counter in Mississippi or by subscription to Mississippi residents;

7. Advertisements broadcast on a radio or television station located in Mississippi; or

8. Any other solicitation by telephone, computer database, cable, optic, microwave or any other communication system, including, but not limited to a website accessible from within Mississippi.

(v) "Sports or recreational equipment" means items designed for human use and worn in conjunction with an athletic or recreational activity that are not suitable for general use. Sports and recreational equipment includes, but is not limited to, ballet and tap shoes; cleated or spiked athletic shoes; gloves, including, but not limited to, baseball, bowling, boxing, hockey, and golf gloves; goggles; hand and elbow guards; life preservers and vests; mouth guards; roller and ice skates; shin guards; shoulder pads; ski boots; waders; and wetsuits and fins.

(w) "Tangible personal property" shall have the means ascribed to the term in Sections 27-65-3 and 27-67-3.

(x) "Threshold amount" means One Hundred Dollars (\$100.00), before application of the sales tax imposed under the Mississippi Sales Tax Law, Section 27-65-1 et seq., and any applicable local sales and use taxes, and excluding exempt items under Section 3 of this act.



**SECTION 2.**

(1) (a) A fee is imposed on each retailer equal to thirty cents (\$.30) on each transaction involving retail delivery in Mississippi. The retailer may, but is not required to, collect the fee from the purchaser. If separately stated on the invoice, bill of sale or similar document given to the purchaser, the fee is excluded from the sales price for purposes of the tax imposed under Chapter 65, Title 27, Mississippi Code of 1972.

(b) If the retailer collects the fee from the purchaser:

(i) The retail delivery fee must be charged in addition to any other delivery fee; and

(ii) The retailer must show the total of the retail delivery fee and other delivery fees as separate items and distinct from the sales price and any other taxes or fees imposed on the retail delivery on the purchaser's receipt, invoice or other bill of sale. The receipt, invoice or other bill of sale must state the retail delivery fee as "road improvement and food delivery fee."

(2) The fee imposed under subsection (1) is imposed once per transaction regardless of the number of shipments necessary to deliver the items of tangible personal property purchased or of the number of items of tangible personal property purchased.

(3) The fee imposed under subsection (1) is nonrefundable if any or all items purchased are returned to a retailer, or if the



retailer provides a refund or credit in the amount equal to or less than the purchase price. The fee must be refunded to the purchaser if the retail delivery is canceled by the purchaser, retailer or delivery provider.

**SECTION 3.** (1) The following retail deliveries are exempt from the fee imposed by this act:

(a) A retail delivery to a purchaser who is exempt from tax under Chapter 65, Title 27, Mississippi Code of 1972; and

(b) A retail delivery on a motor vehicle for which a permit issued by the Department of Public Safety, Department of Revenue or Department of Transportation is required under Titles 27 and 63, Mississippi Code of 1972, and the retailer has maintained books and records through reasonable and verifiable standards that the retail delivery was on a qualifying vehicle;

(2) A retailer or marketplace provider must begin collecting and remitting the delivery fee to the commissioner on the first day of a calendar month.

**SECTION 4.** (1) A retailer must report the fee on its income tax return prescribed by the commissioner and must remit the fee with the return. The return and fee must be filed and paid using the filing cycle and due dates provided for taxes imposed under Chapter 65, Title 27, Mississippi Code of 1972.

(2) A retailer that collects the fee from the purchaser must collect the fee in the same manner as the tax collected under Chapter 65, Title 27, Mississippi Code of 1972. A retailer using





401 a third-party entity to collect and remit the tax imposed under  
402 Chapter 65, Title 27, Mississippi Code of 1972, may elect to have  
403 that third-party entity collect and remit the fee imposed under  
404 this act.

405 (3) Unless specifically provided otherwise by this act, the  
406 audit, assessment, refund, penalty, interest, enforcement,  
407 collection remedies, appeal, and administrative provisions of  
408 Chapters 3, 7, 73 and 75, Title 27, Mississippi Code of 1972, that  
409 are applicable to taxes imposed under Chapter 65, Title 27,  
410 Mississippi Code of 1972, apply to the fee imposed under this act.

411 (4) The commissioner must pay interest on an overpayment  
412 refunded or credited to the retailer from the date of payment of  
413 the fee until the date the refund is paid or credited. For  
414 purposes of this subsection, the date of payment is the due date  
415 of the return or the date of actual payment of the fee, whichever  
416 is later.

417 **SECTION 5.** (1) The commissioner shall retain one percent  
418 (1%) of the total fees collected and remitted to the department by  
419 retailers or third party entities selected by retailers to collect  
420 such fees, for the purpose of administering and enforcing the  
421 retail delivery fee, and shall deposit the amount in the  
422 Department of Revenue's operating fund.

423 (2) After deposits under subsection (1), the commissioner  
424 must deposit the balance of proceeds from the retail delivery fee  
425 as follows:



426                   (a) Sixty percent (60%) of the proceeds shall be  
427 deposited into the State Highway Maintenance Fund, established  
428 under Section 65-1-179; and

429                   (b) Forty percent (40%) of the proceeds shall be  
430 deposited into the "2022 Capacity Project Fund" established under  
431 Section 63-1-141.2

432           **SECTION 6.** This act shall take effect and be in force from  
433 and after July 1, 2025.

