

## Advertising + Marketing

# Taking Out the Trash: New Junk Fee Laws Impact Pricing Practices

### The Bottom Line

- The federal government and state lawmakers are heavily focused on junk fee practices. Businesses should stay apprised of the fluid legislative and regulatory landscape.
- Audit all pricing and checkout practices – “surcharges,” “service fees” and the like will need to start being included in the total advertised price of an item.
- Carefully consider whether shipping costs and taxes represent the reasonable and actually incurred postage or carrier costs, and government-mandated fees.

We are about to see an enormous uptick in federal and state regulation of “junk fees” – and the class action bar is undoubtedly preparing to act.

With federal rulemaking on unfair and deceptive fees set to go into effect later this year and new state legislation being passed almost every week (with California’s law taking effect July 1, 2024), companies will need to pay attention to these evolving and ever more stringent rules. While the web of laws on this topic is complex, the federal government and state lawmakers agree on one key principle: the advertised price consumers see should be the price they actually pay. That means goodbye to “drip pricing” practices: no more vague add-on fees at checkout such as handling fees, processing fees, convenience charges and service fees.

### Federal Regulation

“Junk Fees” are an enormous priority under the Biden administration. The Federal Trade Commission (FTC) announced a proposed Rule to regulate unfair and deceptive fees. The proposed Rule would obligate businesses to include all *mandatory* fees in the advertised price of a product or service and prohibit businesses from misrepresenting the nature and purpose of any fees.

The only fees that would be permissibly broken out at checkout (rather than being baked into the total advertised price of the product or service) would be:

- reasonable and actually incurred shipping costs,
- government-mandated taxes or
- optional fees (such as voluntary gratuities or invitations to tip).

A coalition of state attorneys general have showed their support for the FTC's proposal by filing a [comment letter](#) highlighting how the proposed Rule would provide needed protections for consumers. And of course, violators of the proposed Rule would be subject to significant civil penalties.

The comment period for the proposed Rule closed in January and it is anticipated that it will be adopted in one form or another before year's end.

## The States

On a state level, California led the charge by passing [Senate Bill 478](#), which will take effect July 1. Tracking the federal proposed Rule, the new California law will prohibit advertising, displaying or offering a price for a good or service that does not include all required fees or charges. That means consumers in California are about to see the advertised price of goods and services go up.

Similar to the FTC's proposed Rule, the California law stipulates that the *only* amounts that businesses will be allowed to exclude from advertised prices will be government taxes or fees and reasonably and actually incurred postage or carrier charges to ship a physical good. Optional fees, features, gratuities and fees that are contingent on later conduct (e.g., late fees) do not need to be included in the advertised price.

In the wake of significant backlash and confusion about whether the law applies to certain industries, such as restaurants and the hospitality industry, the California Attorney General recently issued an [FAQ](#) to clarify the law's scope and application.

- The FAQ makes clear that the law applies to "the sale or lease of most goods and services that are for a consumer's personal use" including "tickets, short-term rentals, restaurants, and food delivery."
- The FAQ also clarifies that, while actual shipping charges can be excluded from the advertised price, mandatory handling fees must be included in the advertised price.

- With respect to restaurants, *actual delivery costs* for delivery orders can also be excluded from the total advertised price (as well as taxes). However, any other surcharges or fees will now need to be included in the total advertised price of an item.
  - There are certain exceptions under the law for *food delivery* platforms that list the price of menu items set by an independent restaurant, but these are narrowly drafted.

States including Alaska, Arizona, Colorado, Hawaii, Illinois, North Carolina, Pennsylvania, Rhode Island and Virginia have introduced bills related to junk fees and some states have already seen these bills passed by their house, senate or both. Notably, Minnesota's bill was just signed into law on May 19, 2024 and will go into effect on January 1, 2025. Other states, including Massachusetts, have expressed an interest in advancing legislation in this area. Rulemaking shows no signs of slowing down, and the vast majority of states are following the guidance set by California.

## Industry-Specific Regulation

### Ticket Sales

The federal government is taking specific aim at industries such as airlines and ticket sellers. Just last week, the U.S. House of Representatives passed the TICKET Act, which would require sellers to list the full price of tickets and provide full refunds if an event is cancelled. This comes as the ticketing practices of large businesses such as Ticketmaster have come under scrutiny (while others, such as Live Nation, have commended the House bill's passage and pledged to track the new requirements). Some states, like [Connecticut](#) and [New York](#), have enacted additional specific laws that target industries where "junk fees" cause special harm to consumers. For example, both states now require that ticket sale facilitators provide "all-in" disclosures upfront.

### Hospitality and Tourism.

The hotels and resorts sector is likely to be the next industry-specific target. State Attorneys General in Colorado, Nebraska, Oregon, Pennsylvania, Texas and Washington, D.C. have reached significant settlements with various hotels regarding allegations of hidden resort or destination fees.

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## For More Information

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