



Untangling Junk Fees and Surcharges: Navigating the Patchwork of Pricing Transparency Laws

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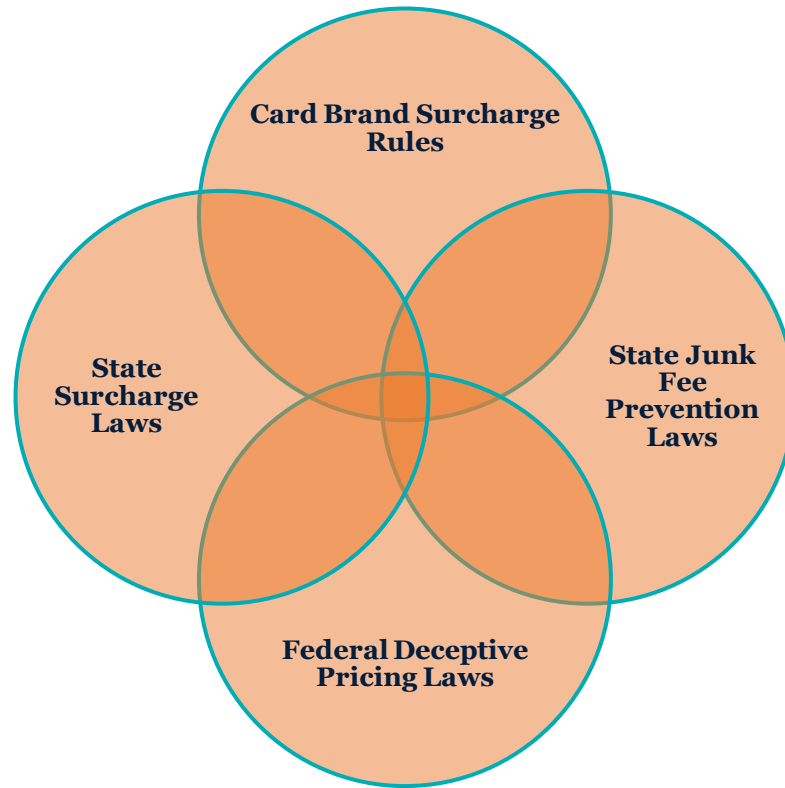
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Today's Topics



- **Cash Discount**: A discount on the stated price or cost of goods offered to induce customers to pay by cash, check, or similar means instead of by card.
- **Surcharge**: Any fixed or variable increase in the stated price of a good or service that is imposed on a customer paying with a card instead of by cash, check, or similar means.
- **Other Fees**: Any other fee by any other name added to the transaction amount that is additional to the advertised or stated price of the good or service.

Examples:

- Convenience Fee
- Processing Fee
- Service Fee
- Administration Fee
- Non-Cash Adjustment Fee
- Technology Fee

Surcharges

Card Brand Rules, State Law Requirements

Rules for Surcharging (Cards)

Visa, Mastercard

- May only apply surcharge to credit card purchases (not debit card purchases)
- Merchant must notify the card brands / acquiring bank / processor of an intent to surcharge at least 30 days prior to imposing any surcharging
- May only impose the surcharge if permitted to do so by all other payment networks whose cards the merchant accepts
- Surcharge can be fixed or variable (e.g., percentage-based)
- Merchants must include disclosures at points of entry and sale (first web page that references card brands accepted and checkout page):
 - Exact amount or percentage of surcharge
 - A statement that the surcharge is being imposed by the merchant and is applicable only to credit card payments
 - A statement that the surcharge is not greater than the amount paid by the merchant to process the transaction
- Max surcharge: 3% (Visa) or 4% (Mastercard)
- The surcharge must be included in the transaction amount and identified within the transaction data

Federal and State Law

- Federal law does not prohibit surcharging
- Surcharging by sellers not permitted in Connecticut, Maine, Massachusetts, or Puerto Rico
- Surcharging is allowed in most states because either:
 - State law does not prohibit surcharging or
 - The state's surcharge prohibitions were found to be an unconstitutional restriction on speech
- **Even where allowed, surcharging is often subject to state law restrictions**

Other State Law Restrictions (Examples)

State	Summary
California, Texas, Oklahoma (via AG opinion)	Surcharging permitted with single-sticker pricing disclosure (e.g., “\$10 + 3% for credit card” or “10 + \$.30 for credit card”)
Colorado	Allows surcharges of either 2% of transaction value or the actual amount the merchant pays to the payment processor; must post notice with specific language
New Jersey	Surcharges capped at actual cost to seller to process the credit card payment; imposes disclosure requirements (e.g., for website, must be disclosed on checkout page)
Massachusetts	Surcharging by merchants is prohibited, but third-party payment processors may impose a surcharge, subject to requirements
Minnesota	Surcharges capped at 5%, and disclosure requirements apply

New York General Business Law (GBL) Section 518

- Prohibits any seller in any sales transaction from imposing a surcharge on a customer who elects to use a credit card in lieu of payment by cash, check, or similar means unless:
 - The seller clearly and conspicuously posts the total price for using a credit card in such transaction, inclusive of surcharge.
 - Any surcharge may not exceed the amount charged to the business by the credit card company for such credit card use.
 - The final sales price of such sales transaction, inclusive of surcharges, shall not amount to a price greater than the posted price for the sales transaction.
- Does not prohibit merchants from offering a two-tier pricing system, meaning:
 - The tagging or posting of two different prices in which the credit card price, inclusive of surcharge, is posted alongside the cash price.
- Remedies include civil penalties of up to \$500 per violation; enforceable by the state attorney general and local municipal government

NY GBL 518 – Guidance from the Governor

NYS General Business Law § 518

Practical Guidance

Just because a business has posted signs to make consumers aware of an additional fee, it does not make it compliant. These practices and the following examples DO NOT COMPLY with the law:

- ⊗ The business posts a sign on the door and at the register stating an additional 3.9% surcharge will apply for credit card purchases.
- ⊗ The business has a 4% cash discount incentive built into all pricing and posts a notice stating that any purchases made with a credit or debit card will not receive the cash discount and an adjustment in price will be displayed on the receipt.
- ⊗ A convenience fee, service fee, administration fee, non-cash adjustment, technology fee, processing fee, etc., is charged to credit card users and added as a separate line item on a customer receipt.
- ⊗ The price tag of an item shows “\$10.00, + 4% if paying with a credit card.”

However, businesses still have several options to recoup the credit card transaction costs while complying with the law. The following practices and examples DO COMPLY with the credit surcharge law:

- ✓ The business clearly lists both the credit card price and cash price.
- ✓ The business lists the higher credit card price for items and services and offers customers a discount for paying with cash.
- ✓ The business charges the same price for cash and credit transactions.

LEGAL
A business can:



Clearly display **BOTH** the Credit Card and the Cash Price.

ILLEGAL
A business cannot:



Put a **SIGN ON THE WALL OR AT THE REGISTER** that notifies a fee is applied to all credit card sales.

New York

- *State of New York v. River Valley Estates, LLC* and its owners (filed October 10, 2024, in NY Supreme Court, Sullivan County)
 - New York sued the owners of a manufactured home park for various health and safety violations and New York surcharge law prohibitions

I. Respondents' Imposition of Credit Card Surcharges without Proper Notice in Violation of GBL § 518

General Business Law (GBL) § 518 requires the clear and conspicuous posting of the total price charged for use of a credit card in a transaction, inclusive of any surcharge.. Thus, in order to collect a credit card surcharge, a landlord must post the total cost of the rent including the surcharge. For example, if the monthly rent is \$500, the landlord would have to set the rent at \$515 (\$500 rent plus \$15 or 3%) and set a discounted rent of \$500 if paid in cash.. Collection of credit card surcharges is further complicated in a manufactured home park, as the park owner needs to ensure that the lot rent (inclusive of any credit card surcharge) does not exceed the restrictions on lot rent increases under RPL §233-b.

Paragraph 4 of Respondents' lease, without listing the total rent inclusive of the surcharge, states: "There will be a 3% charge on all Credit card and Debit Card Charges." A sign declaring the same is posted in the window of the park office. Haines Aff. ¶ 94. In transaction reports reviewed by the OAG, this surcharge is labeled as a "convenience fee." Respondents impermissibly charged this fee to park residents 450 times. Haines Aff. ¶96.

Pending NY Law Prohibiting Card Networks from Fining Small Businesses

NY Senate Bill S6125 Proposed March 2025

- Would prohibit any payment card network doing business in the State of New York from assessing penalties against any small business or any financial intermediary for failing to comply with the credit card surcharge notice requirements under NY GLB 518.
 - “Small business”: a business resident in New York, independently owned and operated, not dominant in its field, and employing less than 100 persons.

Rationale for new bill:

Payment card networks have begun a parallel system of enforcement for this section of law. They send "secret shoppers" to target small businesses like bodegas and delis in urban areas to purchase low-cost items and search for minor discrepancies in pricing displays. By taking photos of single items among thousands that lack proper dual pricing, secret shoppers build cases that result in disproportionate fines. Payment card networks have charged more than \$100,000 to small business owners across New York as a fine for failing to adhere to the state's credit card surcharge labeling requirements. Small businesses like bodegas, delis, pizzerias, and salons should operate in accordance with the law and should also be protected from duplicative enforcement.

Pending State Legislation

Illinois (introduced February 2025)

- Would prohibit a credit card or charge card surcharge on any transaction unless the seller also accepts cash as a form of payment for all transactions under \$1,000; however, seller would be able to offer a discount on a transaction to induce payment by cash, check, debit card, or similar means other than by charge card or credit card

Georgia (introduced March 2025)

- Would prohibit a merchant from imposing a credit card surcharge in any amount that exceeds the actual costs to process the transaction

New Jersey (introduced September 2024)

- Would prohibit surcharges (except for payments to state agencies)
- Would allow discounting for cash and debit cards, but need to post clear notice of the discount at point of sale, on the menu (for restaurant), or checkout page of website

Oklahoma (introduced February 2025)

- Surcharging for credit and debit cards would be allowed but must be separately listed as a line item on the receipt and cannot exceed the total of cost of processing the transaction
- A discount for cash, check, or similar means rather than open-ended card account or debit card shall not be deemed a credit service charge

Pending State Legislation (cont.)

Massachusetts (various bills introduced January-February 2025)

HB 454, SB 278

- Would prohibit a surcharge on any payment method (cash, check, credit card, etc.)
- Would allow sellers to offer discounts for paying by cash, check, or debit card rather than by credit or charge card, provided there is clear notice of the discount (on premises or before completing an online transaction)

HB 375, SB 204

- Would allow surcharging on credit cards with clear notice at point of sale and identification of the amount of the surcharge in every receipt, as well its relationship to the seller's cost of accepting cards

SB 194

- Surcharge on a credit card cannot exceed actual cost to process card payment; would require clear notice at point of sale, on the menu (for restaurant), and on checkout page of website

HB 5159

- Would allow a seller to impose a surcharge of one half of the processing fee on a cardholder who elects to use a credit card or debit card in lieu of payment by cash, check, or similar means; the charging of the surcharge fee would need to be clearly stated on the bill or invoice prior to payment

Price Transparency Laws

Existing and Emerging Laws to Protect Against Hidden Fees

FTC Rule on Unfair or Deceptive Fees

Applies to Live-Event Tickets and Short-Term Lodging Only

- Requires upfront disclosure of total price more prominently than any other pricing information except for:
 - Government charges imposed on the transaction
 - Shipping charges, including private mail and shipping services such as UPS, or freight
 - Optional fees or charges
- Certain fees that cannot be ascertained need not be included in upfront price (*e.g.*, late fees)
- Dynamic pricing not excluded from rule; all adjusted prices must include all known mandatory fees; the advertised good or service must be actually available to consumers at the quoted price
- **Surcharges:** Must be included in the “Total Price” if payment by credit card is mandatory; if the business offers a payment option that is viable for the offered transaction, such that paying without a credit card is truly a reasonable option, the card fees need not be included in the “Total Price.”
- While scope of rule is limited, FTC has cautioned that consumers are complaining about hidden fees in other industries (*e.g.*, motor vehicles, delivery applications, financial services, restaurant industry, tax preparation services, healthcare industry), which may be generally viewed as unfair or deceptive.

Overview – State Price Transparency Laws

- New and emerging laws in several states to protect against deceptive pricing practices and improve price transparency for consumers
- Typically require:
 1. Clear and conspicuous disclosure of “Total Price” of goods or services as a single number, without excluding or separating mandatory fees or charges
 2. Disclosure of “Total Price” more prominently than any other pricing information
- Existing laws in California (2024), Minnesota (2025), Colorado (2025), Virginia (2025)
- Similar legislation pending in other states (e.g., Arizona, Connecticut, Hawaii)

California – Total Price Disclosure Law

- California Civil Code Section 1770(a)(29) (effective July 1, 2024)
- Also called the “Honest Pricing Law” or “Hidden Fees Statute”
- Makes it illegal for most businesses to advertise, display, or offer a price for a good or service that does not include all **mandatory** fees or charges other than the following:
 - Taxes or fees imposed by a government on the transaction
 - Postage or carriage charges that will be reasonably and actually incurred to ship the physical good to the consumer
- The law is a transparency law, not a price control law
- Allows for class actions; violators subject to greater of actual damages or \$1,000

Exemptions:

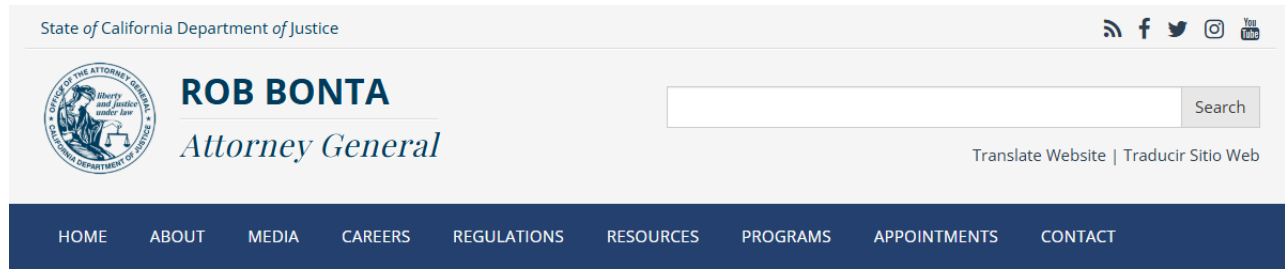
- Certain internet access providers regulated by the Federal Communications Commission
- Financial entities required to provide disclosures under certain federal and state laws (e.g., Truth in Savings Act, Electronic Fund Transfer Act, Truth in Lending Act, etc.)
- Mandatory fees or charges for individual food or beverage items sold directly to a consumer by a restaurant, bar, food concession, grocery delivery service, or some catering services (as long as mandatory fees are displayed)
- Third-party food delivery platforms (separately regulated under CA law)

Compliance Guidance from the CA Attorney General

Examples

- Business cannot wait to disclose the total price later in the transaction; the *advertised* or listed price must include the full price.
- While reasonably and actually incurred shipping charges can be excluded, “handling” charges must be included in the advertised price.
- You can offer a discount or coupon, or charge consumers less than the advertised listed price.
- Fees for optional services or features do not need to be included in advertised price.
- Fees contingent on certain later conduct by a consumer (such as late fees for failing to return rented equipment on time) are not mandatory and do not need to be included in advertised price.
- Can advertise a total price and separately note that the total price includes certain fees and charges.
- Cannot list or advertise one price and separately state that an additional percentage will apply.
- Cannot advertise one price and add a variable service fee later in the transaction.
 - If you don’t know how much you will charge a customer at the beginning of a transaction, then you should wait to display a price until you know how much you will charge.

Must Surcharges or Card Processing Fees Be Included in the Total Price?



SB 478 - Hidden Fees

Beginning July 1, 2024, the "Honest Pricing Law" or "Hidden Fees Statute," SB 478, which was recently amended by SB 1524, makes it illegal for most businesses to advertise or list a price for a good or service that does not include all required fees or charges other than certain government taxes and shipping costs. SB 478 is a price transparency bill. The statute does not change what price a business can charge or what may be included in that price. The law simply requires that the price listed include all mandatory charges.

Does a business need to include credit card processing fees in the advertised price?

Generally, no, because a credit card processing fee is not a mandatory fee if the customer can avoid the fee by paying a different way (e.g. cash.) However, if a business only accepts credit cards as a form of payment, then the credit card fee is mandatory and would have to be included in the advertised price.

California Cases – Example Complaints

- Defendants add "surcharges" to plaintiffs' restaurant bills without explanation or notice
- Defendants sell tickets without including a service fee in the advertised price
- Hotel room "hidden fees"
- Receipts showing multiple undisclosed fees – "to go" fee, employee service fee, credit card surcharges
- "Convenience Fees" or "Transaction Processing Fees" added by payment platform for school lunch account deposits made with card
- "Living wage surcharges" added to bills under California Proposition 22

Shopping Cart (1 Items) [Modify Cart](#)

Admission + MARVEL® Universe 4D Individual
Date: 06/14/2024

Qty 1	\$34.99
Subtotal	\$34.99
Processing Fee	\$2.99
Sales Tax	\$0.00
Total	\$37.98

☐ By making this purchase, I agree to the Terms and Conditions and note that tickets are non-refundable and non-transferable once purchased.

☒ Yes, please keep me updated with exclusive offers and information from Madame Tussauds and the Merlin Entertainment Group.

[Continue Shopping](#) [Checkout](#)

Captured June 14, 2024

Minnesota Price Transparency Law

Frequently Asked Questions About Minnesota's New Price Transparency Law

Effective January 1, 2025, Minnesota's Deceptive Trade Practices Act (Minn. Stat. 325D.44, *et seq.*) will contain new provisions that make it illegal for someone to advertise, display, or offer a price for goods or services that does not include all mandatory fees or surcharges. The law is not a pricing regulation and does not dictate how much someone can charge for goods or services. Instead, the law requires that the price advertised, displayed, or offered include all mandatory fees and surcharges.

To help businesses comply with this new law, and to offer consumers guidance about what they can expect, the Attorney General's Office is releasing this set of Frequently Asked Questions. The law, 2024 Minn. Laws chapter 111, will be located at Minnesota Statutes section 325D.44, subdivision 1a-b.

What is the purpose of this law?

This law intends to help businesses compete fairly on price and allow consumers to make accurate price comparisons by requiring disclosure of the total price for goods or services, inclusive of all mandatory fees or surcharges. The law seeks to prohibit drip pricing—which involves advertising a price that is less than the actual price that has to be paid for a good or service—as well as other tactics used to hide or obscure the true, total price that must be paid for a good or service.

What does the law require?

The law requires honest and transparent pricing. It prohibits someone from advertising, displaying, or offering “a price for goods or services that does not include all mandatory fees or surcharges.” In other words, it requires that if persons advertise, display, or offer a price, this must be the total price for a good or service, that includes all mandatory fees and surcharges.

Mandatory fees and surcharges that must be included in the total price advertised, displayed, or offered include any fee or surcharge that: (1) must be paid in order to purchase the good or service; (2) is not reasonably avoidable by the consumer; and (3) a reasonable person would expect to be included in the purchase of the goods or services being

advertised. Taxes imposed by a government entity on the sale, use, purchase, receipt, or delivery of the goods or services are not “mandatory fees” under the new law, and thus, do not need to be included in the total price.

Below is an example of two compliant advertised prices and one non-compliant advertised price under this new pricing transparency law:

✓ Compliant

Advertised Price: \$20.00

✓ Compliant

Advertised Price: \$20.00

*Price includes \$2.00 service fee and \$3.00 surcharge.

✗ Not Compliant

Advertised Price: \$15.00

Surcharge: \$3.00

Service Fee: \$2.00

Minnesota Price Transparency Law

Restaurants

✓ Compliant

Sandwich \$10.50
Salad \$7.88
Soup \$7.10

All parties of 8 or more people will incur a 20% automatic gratuity.

✓ Compliant

Sandwich \$10.50
Salad \$7.88
Soup \$7.10

All parties of 8 or more people will incur a 20% automatic gratuity.

**All prices include a 5% health and wellness fee, which helps pay for health insurance for our employees.*

✗ Not Compliant

Sandwich \$10.00
Salad \$7.50
Soup \$6.75

All parties of 8 or more people will incur a 20% automatic gratuity.

**All orders will incur a 5% health and wellness fee, which helps pay for health insurance for our employees.*

Delivery Platforms

Delivery Platforms

What about delivery platforms? How do they comply with this new law?

Third-party delivery platforms must clearly and conspicuously display any flat fee or percentage charged for delivery at the time that the customer selects a vendor or item for purchase, and again prior to checkout.

Who is defined as a “delivery platform” for purposes of this new law?

The price transparency law provides that a “delivery platform” is compliant with the law if it satisfies the following requirements:

- (1) At the point when a consumer views and selects either a vendor or items for purchase, a delivery platform must display in a clear and conspicuous manner than an additional flat fee or percentage is charged. The disclosure must include the additional fee or percentage amount; and
- (2) After a consumer selects items for purchase, but prior to checkout, a delivery platform must display a subtotal page that itemizes the price of the menu items and the additional fee that is included in the total cost.

Minn. Stat. § 325D.44, subd. 1a(c).

https://www.ag.state.mn.us/Price-Transparency/PriceTransparencyLaw_FAQ.pdf

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Exemptions for Price-Variable Suppliers

Varies from State-to-State

- **Colorado Honest Pricing Law ([HB25-1090](#))**
- **Minnesota Honest Pricing Law ([Minn. Stat. 325D.44](#))**
- **Virginia Honest Pricing Law Exemptions ([SB 1212](#))**
 - Exemptions for price-variable suppliers, including suppliers that offers services the total price of which is determined by consumer selections or preferences or dependent on distance or time.
 - Price variable suppliers must clearly and conspicuously disclose (i) the factors determining the final price, (ii) any mandatory fees or surcharges associated with the transaction, and (iii) that the total cost of services may vary.
- **(Proposed) New York Junk Fee Prevention Act Exception ([SB363](#))**
 - Under the proposed amendments to N.Y. Gen. Bus. Law § 396-yy.2(a)(i), merchants would need to:

Clearly and conspicuously disclose to the consumer in every offer or advertisement for the purchase or lease of a good or service that includes pricing information, the total price of the good or service being offered or advertised, except where the total price of the good or service is to be derived from a variable rate and is indeterminable at the time of the offer or advertisement, disclose such variable rate along with any and all mandatory fees associated with the transaction[.]

New York Junk Fee Prevention Act

Proposed March 2025

- Any person who “solicits or facilitates” a purchase directly from a consumer, or lease of any good or service directly to a consumer, in New York, shall **clearly and conspicuously disclose**:
 1. In every offer or advertisement that includes pricing information, the **total price** of the good or service being offered or advertised,
 - except where the total price is to be derived from a variable rate and is indeterminable at the time of the offer or advertisement, then disclose such variable rate along with any and all **mandatory fees** associated with the transaction; and
 2. Any tax, duty, customer, or fee amounts levied by any local, state, federal, or other governmental or quasi-governmental entity, prior to accepting payment
- Disclosures of total price must not be false or misleading and must prominently stand out
- May be enforced by New York attorney general or “any person adversely affected” up to \$500-\$1,000 per violation

New York Junk Fee Prevention Act - Definitions

Proposed March 2025

Total Price

The full price of a good or service that a consumer must pay, including any and all mandatory fees associated with the transaction, but not including any exceptions to mandatory fees

Mandatory Fee

Any fee or surcharge in addition to the price of a good or service, that:

- A consumer is required to pay to purchase or lease any good or service being advertised
- Is not reasonably avoidable to complete the purchase or lease of any good or service being advertised;
- A reasonable consumer would expect to be included with the purchase or lease of the good or service being advertised; or
- Is added by default for the consumer, by the seller or automatically, and requires action by the consumer to remove it.

Does not include:

- Government-imposed taxes, fees, assessments
- Any fee covering the cost of delivering goods, the amount of which is based upon the delivery method selected by the consumer, provided that such amount is disclosed to the consumer prior to collecting payment information
- Any nominal fee for the purpose of pre-authorizing a transaction that is immediately refunded or removed upon the full charge
- Any option add-ons or add-on products or services under FTC auto retail trade regulation rule

Also On the Horizon

Examples of Other Proposed State Price Transparency Laws

Arizona (introduced February 2025)

- Would require “Total Price” disclosure with all mandatory fees, defined to include a fee or surcharge that must be paid to purchase the good or service and is not reasonable avoidable (excluding government taxes and fees)

Connecticut (introduced January 2025)

- Would prohibit advertising any prices for a consumer good or service unless the price includes any and all fees that must be paid in order to purchase

Hawaii (introduced January 2025)

- Would prohibit advertising or offering a price for a good or service that does not include all mandatory fees or charges (other than government taxes and fees or postage/carriage charges reasonably and actually incurred to ship a physical product)

Cases Filed Under State Law

State General Consumer Protection Laws

State Law Cases – Illinois

- Illinois Consumer Fraud and Deceptive Business Practices Act (“ICFA”), 815 ILCS 505/2 prohibits unfair or deceptive acts or practices in the conduct of any trade or commerce, including the use of any deception, fraud, false pretense, false promise, or misrepresentation, or the concealment, suppression, or omission of any material fact.
- *Moore v. Hogsalt Management, Inc.*, Case No. 2023CHO8831 (class action filed October 17, 2023, Circuit Court of Cook County, Illinois)
 - Alleged that instead of factoring increased operation costs into its pricing model and simply adjusting the visible advertised price of its menu items, defendant adds deceptive “surcharges” to its customers’ bills without authorization or notification.
 - “Surcharges” imposed on customers of its restaurants without sufficient or any notice violated the ICFA and constituted unjust enrichment.
 - Charge appears on receipt as “Restaurant Surcharge (3.25%)” within the list of food and drink items rather than as a separate line item, making it difficult to notice.

Ineffective Disclosure of Surcharge / Upcharge

- *Chaffin v. International Coffee & Tea, LLC dba The Coffee Bean & Tea Leaf* (filed April 17, 2024, in USDC, Central District of California, Los Angeles)
 - Class action for violations of the Americans With Disabilities Act, discrimination, unjust enrichment on behalf of all consumers who have purchased beverages that contained non-dairy milk alternatives and paid a surcharge
- *Garland v. Dunkin Donuts LLC* (filed Dec. 26, 2023, USDC, Northern District of California, San Francisco)
 - Class action for unfair business practices
 - Defendant allegedly charged consumers an unfair surcharge for drinks made with non-dairy milk alternatives
- *Meyers v. McDonald's USA, LLC* (filed December 19, 2023, USDC, Central District of California, Los Angeles)
 - Class action for violations of state consumer protection laws, unjust enrichment
 - Defendant allegedly misleads consumers by advertising breakfast combination meals to include an orange juice on its menu boards, at a cost that differs from the advertised price, adding a surcharge to customers who order an orange juice as part of the breakfast meal

Key Takeaways

- Clearly disclose all fees upfront.
- Understand when price transparency laws encompass add-on fees: is there a reasonable way for the purchaser to avoid the fee?
- Understand the interplay of federal, state, and payment network rules.
 - Compliance with card brand rules is only part of the concern. Federal and state laws on UDAP (unfair and deceptive practices), pricing transparency, and surcharging are factors.

Questions?



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