

New Laws, Consumer Actions Will Help Us Say Goodbye to Junk Fees

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Picture this: You're going to the Super Bowl. You pull the trigger on what you believe are the best-value tickets, only to learn at checkout that added fees significantly alter the total. You arrive in Las Vegas for the game and take a taxi from the airport—you're again hit with an unexpected surcharge for paying by credit card. You check into your hotel and discover a surprise sizeable resort fee.

Surcharges—once annoyance fees that unnecessarily boosted the cost of purchases—have become material and can significantly impact consumer purchasing decisions.

In response to bait-and-switch pricing, politicians and regulators are rallying against undisclosed fees that significantly inflate the final cost of purchases, including hotels, tickets, car rentals, credit card fees, and loans. Proposed federal and state laws aim to compel marketers to present the full price and eliminate junk fees that materially increase a price.

Proposed Regulations

The Junk Fee Prevention Act, introduced last April, pushes sellers to conspicuously display the full price, including all fees, in every advertisement and initial consumer interaction. If passed, this legislation would also grant the Federal Trade Commission authority to promulgate corresponding regulations. While passage of any legislation in the current environment is unlikely, the FTC has not waited for the law to pursue regulatory action.

The FTC proposed a rule last fall to eliminate unfair or deceptive fees. This regulation would outlaw hidden fees, barring businesses from advertising prices that obscure or omit mandatory fees in a wide array of industries, including automobile dealers, hotel, ticket sales, and businesses that charge fees for accepting credit cards.

The FTC rule would mandate that sellers disclose fee amounts, the purpose of such fees, and availability of any refunds. The proposal, which isn't limited to resort fees or ticket fees, is accepting public comments until Feb. 7. We would expect that the FTC regulations will be in place before long.

The Department of Transportation proposed a rule to require airlines and online travel agencies to display the full price of a ticket, including baggage and other fees. The Consumer Financial Protection Bureau proposed its own rule that would cap most credit card late fees and reiterate that Dodd-Frank Act prohibits governed financial institutions from charging customers for answering customer questions.

The CFPB also proposed a rule last October large requiring banks to treat overdraft loans like credit cards, provide clear disclosures, and cap overdraft fees in line with their costs or established benchmarks. The Federal Communications Commission finalized a rule requiring cable and internet service providers to list fees and services up front.

California also passed Senate Bill 478 last year, prohibiting advertising prices that exclude mandatory fees (excluding government-imposed taxes or fees), effective July 1. The Massachusetts Attorney General proposed regulations requiring pricing advertisements to prominently feature the total cost of goods or services before gathering consumer information. A Pennsylvania bill requiring total pricing passed the House by 172-31 and is pending in the state senate.

Consumer Actions

Consumers are taking aim at junk fees. Greystar Real Estate Partners was sued this month based on an allegation that the global real estate firm charged its Colorado apartment tenants hidden fees for garbage removal that allegedly weren't disclosed until after the lease signing or renewal.

In New York, consumers have brought class actions against operators of cultural and entertainment venues such as Rockefeller Center and the Bronx Zoo. In these cases, the operators allegedly violated the New York Arts and Cultural Affairs Law requiring ticket sellers to “disclose the total cost of the ticket, inclusive of all ancillary fees that must be paid to purchase the ticket, and disclose in a clear and conspicuous manner the portion of the ticket price stated in dollars that represents a service charge, or any other fee or surcharge to the purchaser.”

Outlook

While legislation and rulemaking may clarify what is sufficient disclosure and permissible, the class actions filed against Greystar and New York entertainment venues based on existing laws highlight the risk of failing to disclose the full cost of a good or service.

The cost of hidden fees is rising. Businesses should carefully check their pricing to ensure fees are justified and sufficiently disclosed before a consumer makes a purchasing decision.

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