



WILMER CUTLER PICKERING HALE AND DORR LLP ®

Hot Topics in Junk Fees: Trends, Risks, and Key Issues to Consider

Featuring:

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Speakers



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*The Legal Landscape:
Overview*



What are “junk fees”?

- Unfair or surprise fees or fees for unexpected or unwanted services that provide little to no benefit to the consumer
 - White House: “Junk fees” are “fees that are mandatory, but not transparently disclosed to consumers.”



MARCH 05, 2024

The Price Isn't Right: How Junk Fees Cost Consumers and Undermine Competition

CEA WRITTEN MATERIALS ISSUE BRIEFS

THE BIDEN-HARRIS ADMINISTRATION

CRACKING DOWN ON JUNK FEES

Junk fees cost American families tens of billions of dollars each year and inhibit competition

| | | |
|--|--|-------------------------------|
| Banning hidden fees in airline tickets, health care, apartment rentals, and more | Cracking down on bank overdraft and bounced check fees | Cutting credit card late fees |
|--|--|-------------------------------|

President Biden’s State of the Union Address



My administration is also taking on junk fees, those hidden surcharges too many companies use to make you pay more.

The Biden-Harris Administration Takes Action to Address Rental Housing Fees

- ✓ Addressing Rental Application Fees That Exceed the Actual Cost of Running the Background or Credit Check
- ✓ Confronting “Convenience Fees” and Other Unfair Fees and Add-Ons
- ✓ Securing Commitments from Companies – Like Zillow, Apartments.com, and AffordableHousing.com – To Show Renters Fees Upfront
- ✓ Working with the Department of Housing and Urban Development on a Blueprint for New Policies to Address Rental Housing Junk Fees

BIDENOMICS

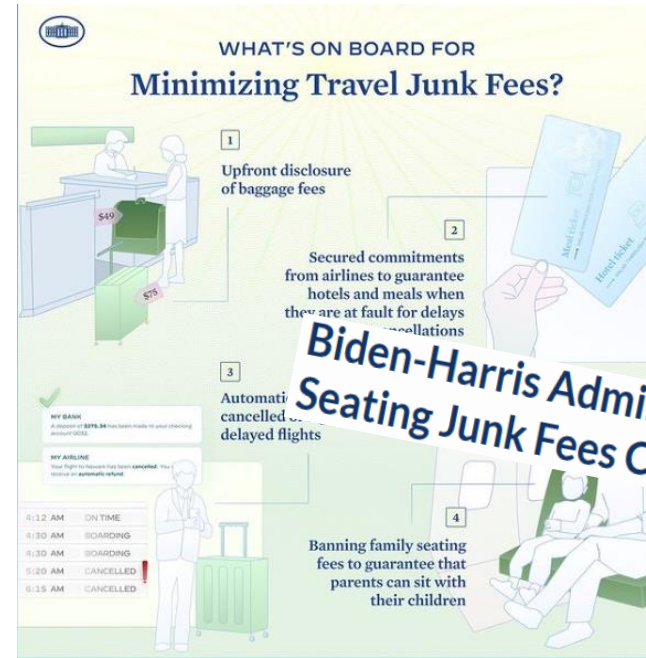
WH Common Additional Fees

- Concert & Event Ticket Fees (facility, service, convenience, order processing)
- Food Delivery Fees (delivery, service fees, mandatory tip)
- Bank Fees (overdraft; min balance; wires, max monthly deposit, NSF, ATM, in-person teller fees)
- Hotel Resort Fees (amenities, cleaning, valet, bags carry)
- Rental Application Fees
- Airline Fees (baggage; seat selection)

Table 1: Vance Joy Concert Tickets in Washington, DC on March 25, 2023

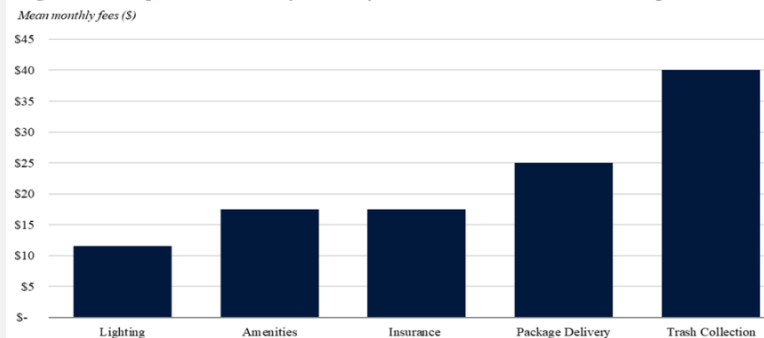
| Vendor | Vivid Seats | SeatGeek |
|-------------------------|---------------|---------------|
| Type of Ticket | Resale | Resale |
| Base Ticket | 87 | 87 |
| Service Fee | 27.6 | 34 |
| Sales Tax + Delivery | 9.38 | |
| Tax | | 7.26 |
| Advertised Price | 87 | 87 |
| True Total | 123.98 | 128.26 |

Source: CEA analysis.
Notes: Prices compared for the purchase of one general admissions ticket. Ticket prices checked on December 6, 2022 at 6:00 p.m.



Biden-Harris Administration Proposes Ban on Family Seating Junk Fees Charged by Airlines

Figure 3. Examples of Mandatory Monthly Fees That Renters in Arizona Reported Facing



Source: Let Joe Know, Arizona ABC 15, October 2022.
Notes: Fees taken from self-reported accounts. For Amenities and Insurance, two individuals reported fees, so we show the mean value. The two values for Amenities were \$9.95 and \$25, and the two values for Insurance were \$15 and \$20 (with the 20 being a lower-bound guess). The remaining three categories had one estimate each.





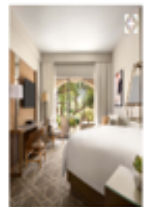
Hotel Fees

Select Your Room

Available **Select** Unavailable

Guests per room

1



REQUEST - King bed - Non..

Max Guests: 3

Details

rooms are spacious and meticulously detailed lodging that
[Show more](#)

Nov

| Sat 9 | Sun 10 | Mon 11 | Tue 12 |
|------------|------------|------------|------------|
| USD 359 | USD 359 | USD 359 | USD 359 |

USD 359.00

Average nightly rate

+Taxes & Fees

1 rooms

1 guests

Select

[View policies](#)

| | | |
|----------------|-------|-----------|
| City | 1.75% | per night |
| City Occupancy | 5% | per night |
| State Tax | 7.27% | per night |

Policies

Tax Policy

Rates do not include Room Tax 14.02% (subject to Change)

\$12.00 per person One-Time Roundtrip Luggage handling Charge + \$2.00 per person Daily House Keeping Service charge in addition to the rate.

Please Note: Upon Check-In we will authorize the full room rate plus taxes and nightly incidental authorization of \$120.00.

Cancellation Policy

Cancellation Policy is 7 days prior to arrival. Non refundable deposit of one night room and tax will be taken 7 days prior to arrival.

Please note Room Types and Bedding Types are not guaranteed as group has contracted Run of House Rooms Credit card Authorizations must be submitted 14 days prior to arrival to be approved, please contact the hotel directly at 800-344-4758 to receive a secure pay link by email.

Mandatory - \$12.00 per person One-Time Roundtrip Luggage handling Charge & \$2.00 per person Daily House Keeping Service charge in addition to the rate.

Early Departure Fee - Guests wishing to avoid a charge of one night Room and Tax Early Check-out Fee, should advise the Front Desk at least 24 hours in advance

Child Policy

Children 17 years and under stay free when sharing parents' room and using existing bedding. If guest is on a package which includes meals and/or activities, extra charges will apply

Reservation Summary

| | |
|---|-------------------|
| Check-in | Sat, Nov 9, 2024 |
| Checkout | Wed, Nov 13, 2024 |
| Rooms | 1 |
| Guests per room | 1 |
| <p>USD 1,436.00</p> <p>- NON SMOKING 1 adult, 4 nights Change rooms</p> | |

Subtotal USD 1,436.00

TAXES & FEES

| | |
|---------------------------------|------------|
| City Occupancy (5.0% per night) | USD 71.80 |
| State Tax (7.27% per night) | USD 104.40 |
| City (1.75% per night) | USD 25.13 |

Grand Total USD 1,637.33

[Edit reservation](#)

[Next](#)

No \$12 luggage or \$2/day house cleaning fee in reservation summary or reference to these fees during checkout

WH *What regulators are focusing on at the federal level*

- **FTC:**
 - Proposed Trade Regulation Rule on Unfair or Deceptive Fees
 - Negative Options (“Click-to-Cancel”) Rule
 - Combatting Auto Retail Scams (CARS) Rule (2023)
 - Enforcement actions (*Amazon, Invitation Homes*)

- **CFPB:**
 - Proposed rule prohibiting certain NSF fees
 - Finalized Rule banning excessive credit late fees (lowering typical fee from \$32 to \$8)
 - Enforcement actions (*BoA*)

- **FCC:**
 - NPRM to eliminate video service junk fees from cable operators and direct broadcast satellite (DBS) providers
 - Rule for all-in pricing for video service bills and marketing



Federal Trade Commission Announces Final “Click-to-Cancel” Rule Making It Easier for Consumers to End Recurring Subscriptions and Memberships

Non-sufficient fund (NSF) fee practices of the 25 banks reporting the most overdraft/NSF revenue in 2021

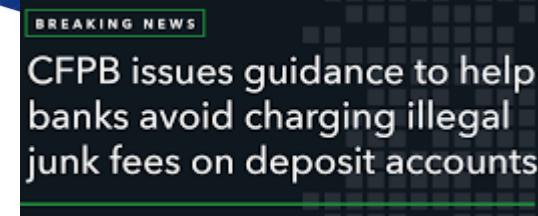
The chart reflects a snapshot of the CFPB's

Banks that do not charge NSF fees, or have publicly announced eliminating them.*

- Arvest
- M&T
- Bank of America
- PNC
- Bank of the West
- Regions
- Capital One
- Santander

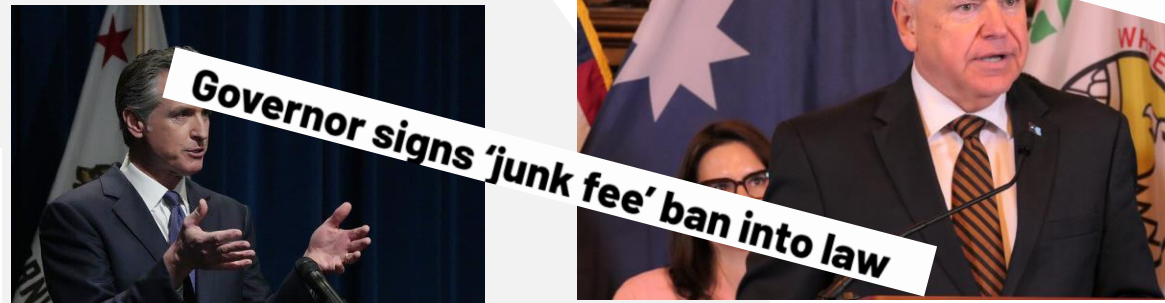
cfpb Consumer Financial Protection Bureau

| Broadband Facts | |
|--|----------------|
| Provider Name | |
| Service Plan Name and/or Speed Tier | |
| [Fixed or Mobile] Broadband Consumer Disclosure | |
| Monthly Price | \$00.00 |
| This monthly price is an introductory rate Yes / No | |
| Time the introductory rate applies | YY months |
| Monthly price after the introductory rate | \$00.00 |
| Length of contract | YY months |
| Link to Terms of Contract https://www.example.com/terms-of-contract | |
| Additional Charges & Terms | |
| Provider Monthly Fees | |
| Fee description | \$00.00 |
| Fee description | \$00.00 |
| Fee description | \$00.00 |
| Fee description | \$00.00 |



WH What regulators are focusing on at the State Level

- State Legislators:
 - Anti-junk fee laws in California, Minnesota, New York and Connecticut.
- State AGs:
 - Enforcement actions (*Stubhub*)
 - Multistate actions
 - Forming coalitions and filing briefs in support of FTC actions.



| |
|--|
| UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT |
| INTUIT, INC., Petitioner, v. FEDERAL TRADE COMMISSION, Respondent. |
| On Petition for Review of a Final Order of the Federal Trade Commission dated January 19, 2024, FTC Docket No. 9408 |
| BRIEF OF AMICI CURIAE ILLINOIS, DISTRICT OF COLUMBIA, ARIZONA, CALIFORNIA, COLORADO, CONNECTICUT, DELAWARE, HAWAII, MAINE, MARYLAND, MASSACHUSETTS, MICHIGAN, MINNESOTA, NEVADA, NEW JERSEY, NEW YORK, NORTH CAROLINA, OREGON, PENNSYLVANIA, RHODE ISLAND, WASHINGTON, AND WISCONSIN IN SUPPORT OF RESPONDENTS AND AFFIRMANCE |

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.

Put simply, the price a Californian sees should be the price they pay.





Mandatory Fees: Exclude Tax and Shipping

California

Mandatory Fees exclude taxes **or fees** imposed by a government and postage or carrier charges that will be reasonably and actually incurred to ship the good.

Minnesota

Mandatory fees exclude taxes imposed by a government. Reasonable postage or shipping fees that is actually incurred by a consumer may also be excluded from the advertised price.

Handling fees are not excluded and must be factored into the advertised price; Flat rate shipping?

What are reasonable shipping charges?



State-by-State Regulation Compliance

Breakfast Menu

Fees

- 20% Service Charge to cover cost of service, including rising healthcare insurance for staff and to offset other operating expenses.
- 1.5% Credit card processing fee to cover interchange fees
- 15% Gratuity will be added to your bill to recognize our staff for their service
- \$0.10 Environment surcharge: donated to food recycling programs

| | |
|----------|--------|
| Omelet | \$8.00 |
| Oatmeal | \$5.00 |
| Pancakes | \$8.50 |
| Coffee | \$2.50 |

California SB 1524 created certain exemptions for restaurants, bars, grocery where mandatory fees do not need to be included in the price provided there is **Clear and Conspicuous** disclosure and an explanation of the fees purpose.

Minnesota HF3438- only the mandatory gratuity would be permitted to be disclosed outside of the price of item.

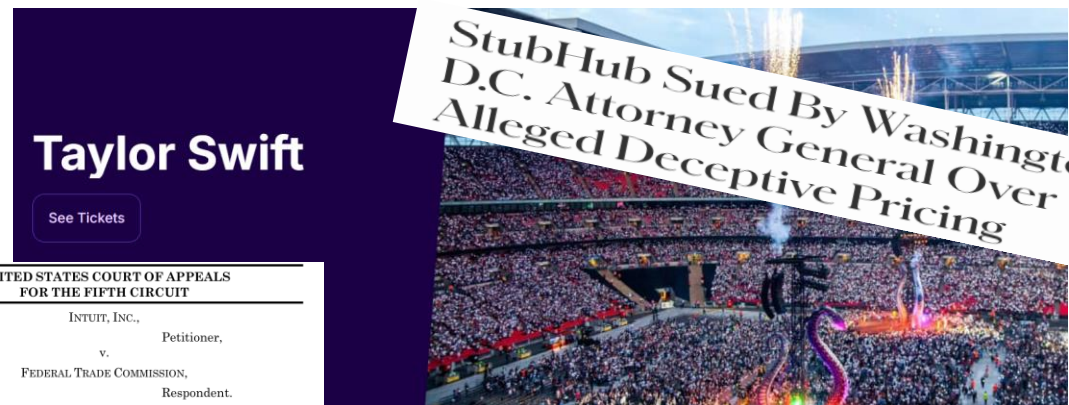
Other states such as NY and CT have restrictions on how credit card processing fees may be charged.



What regulators are focusing on at the State Level (Cont.)

— State AGs:

- Enforcement actions (*Stubhub*)
- Multistate actions
- Forming coalitions and filing briefs in support of FTC actions.



Taylor Swift
See Tickets

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Image: Office of California Attorney General Rob Bonta



State Trends in Enforcement: State AGs – Broad Powers and Varied Tools

Unfair, Deceptive or Abusive
Acts or Practices
Enforcement
(UDAAP)

Antitrust Enforcement
(Clayton, Sherman Acts, state
law)
Privacy & Cybersecurity
Enforcement
(COPPA, HIPAA, state law)

Charities, Consumer
Protection, and/or Securities
Regulators

Parens Patriae Authority
&
“Special Solitude” Standing

Plaintiffs’ bar as outside
counsel to AGOs

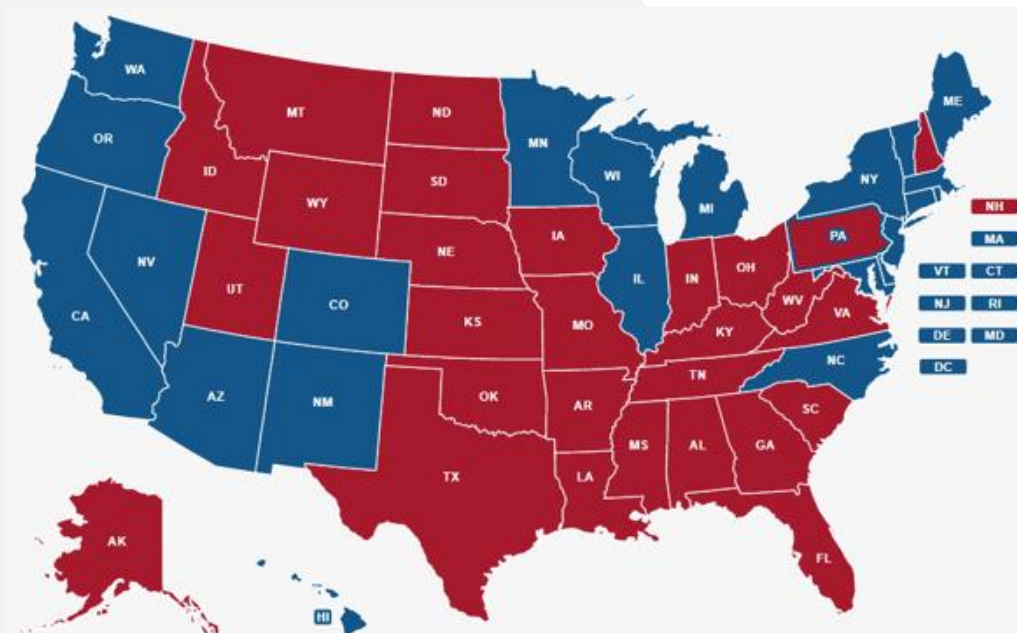
Multistate investigations and
litigation

Amicus briefs, comment
letters re federal actions

Alliances with interest groups
to challenge federal action



2024-25 State AG Landscape



- 10 AG Elections in 2024
- New AGs: PA, NC, WA, OR, UT, WV
- 46/50 in alignment with Governor (NV, KY, PA, KS)



Disclosures and Pricing: 5 Things to Consider

- *Variable Pricing* – adjusts prices based on demand, supply, competition, or other factors.
- *Optional Fees* – whether optional fees are truly “optional” vs. “mandatory”
- *Shipping & Handling* – shipping vs. handling fees
- *Reference Pricing* – prohibited by many state laws where the first year price is described as a deeply discounted rate off of the second year price, but it is the same first year price that is always advertised
- *Dark Patterns* – risks related to design choices and fee disclosure
- *Subscriptions* – introductory offers and recurring charges



Price Transparency and Implementation Challenges

- These laws do not dictate prices or eliminate “junk” fees.
- Including all mandatory fees in the advertised price doesn’t always square with the realities of the market or industry.
- California FAQ proposes that business that don’t know how much they will charge a consumer at the beginning of a transaction *should wait to display a price* until they know how much they will charge.
 - *Is this practical or helpful for consumers to not have a sense of a starting price prior to engagement?*
- State-by-state regulation creates compliance challenges for nationwide providers to track and comply with disparate state provisions.
- Private right of action; Government Enforcement with civil penalties

Questions?



Questions

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