

“Junk Fee” Legislative Roundup

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For the past several years, state AGs have been “checked-in” when it comes to hidden hotel and resort fees. (Revisit our round-up of AG actions against those [fees here](#)). To date, these enforcers have largely relied on their standard unfair and deceptive trade practice authority under state consumer protection laws to combat practices like so-called drip-pricing or “hidden” fees.

But now, some states may soon have new tools to combat potential unfair and deceptive practices throughout a variety of industries. With the legislative season coming to a close, we have your rundown of the spread of “hidden fees” regulation including California and beyond. So, if a vacation from hidden resort fees is all you ever wanted – and a trip to see [Carhenge](#) or [the Alamo](#) (attractions in states where attorneys general have been active in enforcement) has already been checked off your bucket list – here are your ideal places to get away:

California: The Golden State’s newly minted [Consumers Legal Remedies Act \(SB 478\)](#) amendment will take effect on July 1, 2024, specifically making it unlawful for companies across virtually all industries to advertise or display a price without including all mandatory fees and charges, save taxes and fees imposed by the government (though the bill states that “drip pricing” is already prohibited). Click [here](#) and [here](#) for more details. California is such a lovely place, and if you are traveling on a dark desert highway looking for somewhere to rest your head, you should be aware the [California Resort Fee Bill \(AB 537\)](#) contains similar measures even more specific to the short-term lodging industry (effective July 1, 2024).

When all of this raises your appetite, you can dig into the legal back-and-forth between lawmakers and California’s food and beverage industry. In response to questions about how SB 478 would apply to bars and restaurants, lawmakers recently introduced an urgency measure ([SB 1542](#)) that would make clear that restaurants may still display mandatory gratuities, services charges, and other fees separately so long as they are clearly displayed on the menu and don’t come as a post-dessert surprise. Interestingly, the legislature specifically noted that this is intended as a clarification, not a change in existing law. As of today, this hasn’t passed yet, but we will be sure to provide updates.

Massachusetts: If [the Cape](#) is more your style, you may want to pay attention to Massachusetts AG Andrea Campbell’s proposal of a [new slate of regulations](#) that would require businesses to “clearly disclose” the total price of goods and services. Like in California, this would apply across industries. If enacted, non-compliance would constitute an unfair and deceptive trade practice. Read our full coverage [here](#).

Minnesota: If you have the [land of 10,000 lakes](#) in mind, the state recently passed [HF3438](#) requiring that an advertised or displayed price include all mandatory fees and surcharges (not

including taxes), including additional clarity on “mandatory fees” compared to California’s statute. The bill provides exemptions or specifications for several industries, including specifically requiring that hotels (among other food or beverage establishments) must clearly and conspicuously disclose the percentage of any automatic or mandatory gratuities that consumers will be charged. The law will take effect January 1, 2025.

The Near Hits: As state lawmakers leave for their own summer vacations, some notable legislation got left on the drawing board. For instance, in the Land of Lincoln, the state’s proposed [Junk Fee Ban Act](#) gained momentum when it easily passed the Illinois House in a 71-35 vote but then never made it to the Senate floor. We saw similar attempts in [Connecticut](#) and [New York](#). While these bills didn’t cross the finish line this year, we expect many states will take on this issue in the next legislative season.

Against this backdrop of state activity, the FTC is in the midst of [rulemaking](#) process that would ban hidden fees and further regulate the types of fees companies can charge. Revisit our coverage on that [here](#) and [here](#). Also in Washington, the House of Representatives just passed the [No Hidden Fees Act](#). If made law, the Act would require hotels and other short-term rentals to clearly display mandatory fees.

Clearly, multiple levels of government are “checking out” hidden fees. Even President Biden denounced “surprise” fees in his 2023 State of the Union Address.

Of Importance...

- **Updates to regulation are occurring but general state consumer laws still apply.** While some states may be setting specific standards in this area, remember state consumer laws, which outlaw deceptive acts and practices (and in many states, unfair acts and practices), still apply. Therefore, just because a state doesn’t specifically spell-out fees requirements in its statutes or regulations, it does not mean fees disclosures comply with states’ interpretations of the law. (For example, the AG’s office in Washington DC [issued guidance](#) on the types of restaurant fees that may violate existing law.)
- **Some fees face greater scrutiny than others.** AGs have sought out so-called “bogus” fees they feel offer consumers little value. Companies should be mindful of *what* the fees actually deliver for consumers and convey the value accurately and clearly.
- **Messaging and disclosures are critical.** The crux of the states’ take on drip pricing is a failure to disclose certain fees in a timely manner (if at all), and AGs have taken issue with tactics that do not clearly describe when a fee is mandatory or not.

We expect to see more on “junk fees” in the weeks and months ahead. [Subscribe](#) to our monthly newsletter [AG Chronicles](#) and [Ad Law Access](#) blog to stay up-to-date.