

How States Can Take on Junk Fees

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In May 2023, one TripAdvisor user was stunned by the \$50 “check-in fee” that Hanalei Bay Resort in Hawaii charged just for checking in to the resort.¹ Also earlier this year, a \$2,659 Beyoncé concert ticket had a \$618 “service fee” added on, equaling almost a quarter of the ticket’s face value.²

“Junk fees” like these have overrun the American economy, costing consumers billions of dollars per year.³ Junk fees are extra fees that companies add, often at the end of the purchasing process, for no discernable reason and with no associated cost for the company or benefit to the consumer. These junk fees have proliferated across industries and products – other examples include airline seating fees, bank overdraft fees, “convenience fees” for online services, resort fees, rental car “airport concession fees,” and more.

WHY JUNK FEES ARE HARMFUL

Junk fees are not just an annoying and deceptive way to rip off consumers. Competitive and fair markets depend on transparent pricing, but by distorting the true prices of products, junk fees harm both consumers and businesses, while undermining competition in the market itself.⁴

1 Will Gendron, “Out-of-control tip culture meets summer travel: Are you ready for a \$19 daily charge for staff tips and \$50 ‘check-in fee’?” Business Insider, June 6, 2023, <https://www.businessinsider.com/airlines-and-hotels-tacking-on-extra-fees-during-travel-season-2023-5>.

2 Meghan Bragg, “Fact Check: What do Ticketmaster service fees cover?” WCNC Charlotte, February 16, 2023, <https://www.wcnc.com/article/news/verify/ticketmaster-service-fees-charlotte-nc/275-b9234b03-a523-4d4c-932e-712649751a4c>.

3 “The hidden cost of junk fees,” Consumer Financial Protection Bureau, February 2, 2022, <https://www.consumerfinance.gov/about-us/blog/hidden-cost-junk-fees/>.

4 “Guide for states: Cracking down on junk fees to lower costs for consumers,” The White House, March 2023, <https://www.whitehouse.gov/wp-content/uploads/2023/03/WH-Junk-Fees-Guide-for-States.pdf>.

By adding extra fees onto the originally displayed price, junk fees create a confusing purchasing process where it is hard to determine the real price of a product. This prevents consumers from comparison shopping to find the best product for the best price. With the frustration of dealing with extra fees, consumers often give up searching for cheaper products after spending substantial time in the purchasing process and, out of frustration, end up paying more than they would in a market with transparent prices.⁵ For instance, “drip pricing” is where a seller advertises one price up front, and then adds more fees as the customer goes through the process. One study found that consumers paid 21% more for concert tickets when shown a “dripped” price versus the total price upfront.⁶

The ability to charge higher prices in this way is why many companies add junk fees in the first place. Furthermore, the proliferation of junk fees transfers wealth from low-information consumers to better-informed ones who are willing and able to spend time finding cheaper products.

This is not just a consumer issue. For businesses, junk fees distort competition and unfairly privilege companies that focus on deceptive pricing strategies rather than on making better products. Companies that price fairly and transparently may seem more expensive in terms of their sticker prices, and companies with genuinely lower prices will not appear cheaper when they are competing with companies that cloak their prices in junk fees. Plus, if firms can raise profits by simply tacking on junk fees, there is less incentive to compete by lowering costs or improving product quality.⁷

Junk fees also disproportionately affect low-income households and people of color.⁸ This is best documented in the context of banking and financial products, where overdraft fees and late fees predominantly fall on people of color. For instance, Black consumers pay an average of \$12 per month in banking fees – including service charges, overdraft fees, and ATM fees – compared to a mere \$5 for white customers.⁹ Additionally, vulnerable communities are often targeted by high-cost lenders and predatory financial products known to use junk fees to pad their profits. Among the top 20 banks in the United States

5 “How junk fees distort competition,” The White House, March 21, 2023, <https://www.whitehouse.gov/cea/written-materials/2023/03/21/how-junk-fees-distort-competition/>.

6 Santana, S., Dallas, S. K., & Morwitz, V. G. (2020). Consumer Reactions to Drip Pricing. *Marketing Science*, 39(1), 188–210. <https://doi.org/10.1287/mksc.2019.1207>.

7 Heidhues, P., Kőszegi, B., & Murooka, T. (2016). Exploitative Innovation. *American Economic Journal: Microeconomics*, 8(1), 1–23. <https://doi.org/10.1257/mic.20140138>.

8 Brian Deese, Neale Mahoney, and Tim Wu, “The President’s initiative on junk fees and related pricing practices,” The White House, October 26, 2022, <https://www.whitehouse.gov/briefing-room/blog/2022/10/26/the-presidents-initiative-on-junk-fees-and-related-pricing-practices/>.

9 “Minorities, millennials among those who pay the most bank fees,” Bankrate, January 15, 2020, <https://www.bankrate.com/pdfs/pr/20200115-best-banks-survey.pdf>.

that generate most of their revenue from junk fees, nearly 60% of their branches are located in counties where the poverty rate is higher than the national average.¹⁰

Junk fees leveraged on everyday consumer products also disproportionately affect low-income communities. They represent a disproportionately high cost to these households and may significantly disrupt their financial health. Additionally, consumers with limited English proficiency may have a hard time understanding junk fees that are hidden in the fine print or disclosed upfront due to language and cultural barriers.¹¹

Essentially, companies are “nickel and diming” working Americans through exorbitant service fees, add-on charges, and other junk fees, and making hefty profits in doing so.

BEST PRACTICES

Both state and federal legislators and regulators are beginning to act against junk fees. Notably, in President Joe Biden’s 2023 State of the Union Address, he addressed the proliferation of junk fees in the economy and urged Congress to pass a Junk Fee Prevention Act.¹² At the state level, legislators have drafted a variety of bills tackling junk fees across different industries and sectors. Junk fee legislation has received overwhelming bipartisan support, with over three-quarters of American adults somewhat or strongly supporting these proposals.¹³

Here we outline the best practices for state legislators that effectively prohibit junk fees, as well as important provisions for enforcement. These best practices are centered around requiring “all-in” pricing, which would require companies to advertise the total price upfront, inclusive of all unavoidable fees and any other fees that a consumer would reasonably expect to be included in the price.

10 Kevin Robillard, “The hidden fees Joe Biden wants to eliminate hit the poor the hardest,” HuffPost, February 8, 2023, https://www.huffpost.com/entry/joe-biden-junk-fees-banks_n_63e2ea84e4b0c2b49ae66067.

11 “Request for information regarding junk fees imposed by providers of consumer financial products or services,” National Consumer Law Center, May 2, 2022, <https://www.nclc.org/wp-content/uploads/2022/09/NCLC-comments-on-CFPB-Junk-Fees-RFI-87-FR-5801-pubd-2-2-22-filed-5-2-22.pdf#page=76>.

12 “Biden introduces Junk Fee Prevention Act during State of the Union address,” ABC News, February 7, 2023, https://www.youtube.com/watch?v=QZbHs_pfo8w.

13 Saleah Blancaflor, “Biden’s plan to limit ‘junk fees’ has overwhelming, bipartisan support,” Morning Consult, February 15, 2023, <https://pro.morningconsult.com/instant-intel/biden-junk-fees-plan-has-bipartisan-support>.

(1) All-In Pricing

Require that all mandatory fees be disclosed upfront and in all advertisements. The basic principle underlying “all-in” pricing is that a consumer should know exactly how much they will end up paying for a product upfront, rather than thinking they found a good deal only for various fees to be tacked on at the very end. With all-in pricing, a consumer can quickly check between different sellers or products to compare the prices of each to best suit their needs and obtain the best value for their money. This also lets competition in the market work: companies will need to compete on the merits for business by providing better or cheaper products to consumers.

North Carolina House Bill 714 provides a good example of language around all-in pricing: “A covered entity shall clearly and conspicuously display, in each advertisement and whenever a price is first shown to a consumer, the total price of the good or service provided by the covered entity, including any mandatory fees a consumer would incur during the transaction.”¹⁴

As an affirmative approach, all-in pricing is preferable to alternative approaches from many other legislative proposals, which focus on prohibiting certain types of fees (e.g., specifically prohibiting or limiting “resort fees”) rather than affirmatively outlining how prices must be advertised in general. Instead of creating a confusing laundry list of prohibited fees, all-in pricing requires firms to disclose upfront all fees that are mandatory or unavoidable. Otherwise, companies may find ways to charge other forms of junk fees that are not covered by the law.

All-in pricing is also preferable to approaches that seek to ban a particular type of deceptive pricing tactic, such as drip or partitioned pricing. With drip pricing, firms advertise only one part of the product’s price and unveil additional charges later as the consumer moves through the purchasing process. Partitioned pricing separates a product’s price into multiple mandatory parts but may not explicitly disclose the total price. Banning one tactic will simply lead to its replacement with another, and studies have shown that the effects of drip and partitioned pricing on consumer behavior are essentially the same.¹⁵

Define “mandatory fees” with a reasonable consumer standard. In many other areas of consumer protection, false advertising claims are evaluated under a “reasonable consumer

¹⁴ H.B. 714, 2023 Reg. Sess. (N.C., 2023). <https://www.ncleg.gov/Sessions/2023/Bills/House/PDF/H714v1.pdf>.

¹⁵ Howard A. Shelanski et al., “Economics at the FTC: Drug and PBM mergers and drip pricing,” Federal Trade Commission, December 2012, https://www.ftc.gov/sites/default/files/documents/reports/economics-ftc-drug-and-pbm-mergers-and-drip-pricing/shelanskietal_rio2012.pdf.

standard,” where companies are liable for misrepresentation if most reasonable consumers would or could be misled. The reasonable consumer standard should provide guidance for defining mandatory fees.

Require that expected “add-on” services be included in the all-in price. One type of deceptive junk fee that existing state legislative proposals do not cover is “add-on” fees for services that a reasonable consumer would expect to be included in the base price. Think, for example, of how airlines have progressively shifted from including checked luggage or carry-ons as part of the base ticket price, as consumers at the time had come to expect, to now charging an additional fee for these services.¹⁶ All-in pricing should include a clear definition of reasonably expected “add-on” fees to prevent firms from charging consumers for “add-ons” that they would reasonably expect to be included in the product or service (e.g., charging extra fees for hotel room cleaning services).

(2) Coverage

Include all industries, products, and services in the all-in pricing rule. Junk fee legislation should cover all sectors and industries. Many states are currently employing a piecemeal approach targeting specific markets, which permits junk fees to continue in other parts of the economy. Such piecemeal approaches are also unnecessarily complex and may result in drastically different results and rules in different markets, creating further confusion.

(3) Enforcement

The successful implementation of all-in pricing as a policy solution also requires robust enforcement measures and economic consequences for violators.

Enforcement by state attorneys general. State attorneys general should have enforcement powers over junk fee legislation.

Private rights of action. Junk fee legislation should also create private rights of action and include a ban on arbitration clauses. This enables enforcement without placing the full burden of litigation on government agencies whose time and resources are already stretched thin, while also protecting consumers’ rights to a jury trial.

¹⁶ Tuzovic, S., Simpson, M. C., Kuppelwieser, V. G., & Finsterwalder, J. (2014). From ‘free’ to fee: Acceptability of airline ancillary fees and the effects on customer behavior. *Journal of Retailing and Consumer Services*, 21(2), 98-107. <https://doi.org/10.1016/j.jretconser.2013.09.007>.

Statutory damages for victims and government enforcers. Junk fee legislation should also create sufficiently punitive statutory damages for violators as economic consequences to deter wrongdoing.

ADDRESSING COMMON COUNTERCLAIMS

Unsurprisingly, moves to regulate junk fees have elicited organized opposition. For instance, Congressmen Patrick McHenry and Blaine Luetkemeyer have questioned the legitimacy of junk fees and the Biden administration's efforts to regulate them.¹⁷ Worth noting, however, is that both politicians receive substantial financial contributions from industries that make significant revenues from junk fees.¹⁸ In addition, research from government watchdog Accountable.US found that companies and industries affected by junk fee proposals have spent over \$1.7 million lobbying against a federal bill to prohibit junk fees in the first quarter of 2023.¹⁹

Here we address the common arguments against all-in pricing and regulating junk fees.

Myth: All-in pricing does not change the price consumers pay. Critics argue that all-in pricing does not change the price consumers end up paying, since it only serves to wrap mandatory fees into the price firms advertise, rather than getting rid of them altogether.

By giving consumers an accurate expectation of what they will be paying for a product at the very beginning of the purchasing process, all-in pricing allows consumers to easily comparison shop and search for the best product for the best price. As a result, firms are forced to compete by either lowering prices (i.e., getting rid of junk fees) or improving the quality of the product. By restoring the competitive nature of the market through fair and transparent pricing, consumers **will in fact** pay less with all-in pricing.

Myth: All-in pricing is regressive. Some opponents also suggest that all-in pricing is regressive in nature, because add-on fees allow consumers to decide what services or aspects of a product they would like to pay for. They argue that wrapping all costs up into

¹⁷ Pablo Manríquez, "Meet the brave House Republicans defending junk fees," The New Republic, February 28, 2023, <https://newrepublic.com/article/170818/house-republicans-defend-junk-fees>.

¹⁸ "Here's why Chairman McHenry is desperate to justify junk fees," Accountable.US, June 14, 2023, <https://accountable.us/watchdog-heres-why-chairman-mchenry-is-desperate-to-justify-junk-fees/>.

¹⁹ "Junk fee-abusing industries already spent \$1.7M lobbying against 'Junk Fee Prevention Act,'" Accountable.US, June 8, 2023, <https://accountable.us/junk-fee-abusing-industries-already-spent-1-7m-lobbying-against-junk-fee-prevention-act/>.

a single all-in price represents a disproportionately high cost to lower-income consumers who may end up paying for add-ons that they do not want.²⁰

This argument conflates optional fees associated with “à la carte” pricing – where firms sell a stripped-down version of a product and allow consumers to pay for optional add-ons – and deceptive *de facto* mandatory fees that are part of the true price of the product.²¹ Paying for a snack on an airplane is an example of an optional à la carte fee – but paying to bring baggage on an airplane, something that is an expected part of the service and is hard to do without, is a deceptive *de facto* mandatory fee that should be included in the advertised price.

Myth: Competition will solve the problem on its own. Critics argue that in a competitive market, firms compete for customers by offering a better product, service, and experience – in other words, they must keep their customers happy. That means companies that charge unjustifiable junk fees would quickly lose unhappy customers to their competitors, creating an incentive to price fairly and transparently.

However, economic research on junk fees has consistently shown that junk fees and deceptive pricing tactics undermine the very competitive process of the market. The practice takes advantage of consumers’ behavioral biases and limited patience to search for cheaper goods, stopping such competition from happening in the first place. Moreover, junk fees may also enable tacit collusion or coordination between firms who agree to charge junk fees as a standard part of the purchasing process, further harming consumers and undermining competition.²²

Myth: Junk fees do not matter because firms with market power will charge high prices anyway. Other critics point out that specifically addressing junk fees will not resolve the issues of high prices from a monopoly or a firm with market power, as they are free to charge excessive prices anyway.

20 Ryan Bourne and Sophia Bagley, “Junk fees or junk economics? (Part I),” CATO Institute, March 30, 2023, <https://www.cato.org/commentary/junk-fees-or-junk-economics-part-i>.

21 “The competition initiative and hidden fees,” National Economic Council, December 2016, https://obamawhitehouse.archives.gov/sites/whitehouse.gov/files/documents/hiddenfeesreport_12282016.pdf.

22 *Ibid.*

It is true that if a firm is a true monopoly and does not face any competitors, it will charge a higher monopoly price – after all, there is no competition to undermine. However, junk fees may allow firms with market power to charge even higher prices than they could otherwise: a monopoly like Ticketmaster can inflate already high prices with even more junk fees. Additionally, not all firms who charge junk fees have market power. As such, a clear, universal all-in pricing requirement is the most appropriate solution to addressing junk fees, even if it does not necessarily confront the additional harms of certain firms’ or industries’ enduring market power.



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