

A Model Junk Fee Prevention Act

AMERICAN
ECONOMIC
LIBERTIES
PROJECT

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Earlier this year, President Biden in a historic and powerful State of the Union address announced his administration's intent to crack down on junk fees. President Biden's focus on corporate power has shone new light on the harms of consolidation in the United States, and we embrace the momentum behind his efforts to end these deceptive practices. This American Economic Liberties Project brief and model legislation explain the problem with junk fees and offer a simple, comprehensive legislative fix to address it.

JUNK FEES EXPLAINED

Junk fees have become an ubiquitous part of the American shopping experience. President Biden has rightly identified their prevalence in banking, air travel, online ticket sales, and hotel bookings. But the problem extends far beyond these sectors — to ride hailing services like Uber, short-term rentals like Airbnb, car rentals, car sales, telephone and internet services, cable television, healthcare, debt collection, and cruises. It makes comparison shopping a painful and time-consuming process, so that by the time we check out, we have consigned ourselves to paying what is effectively a ransom price. Consumers are routinely deceived into paying higher prices than they planned, and competition is impaired. Honest retailers with transparent pricing are punished because their all-in prices appear higher on the front end of the shopping experience, even if they are lower on back end.

Sellers have developed two tried and true methods — drip pricing and partitioned pricing — to conceal junk fees from consumers and lure them in with deceptively low prices. With the first tactic, *drip pricing*, an advertisement discloses only the baseline cost for a product to lure in buyers. Then, as the buyer proceeds through the checkout process, the merchant tacks on what we call junk fees, additional costs with vague names like “resort fee,” “service fee,” “fulfillment fee,” “transaction fee,” “processing fee,” or “ancillary fee,”

that are ill defined and not clearly tied to any commodity or service. With the second tactic, *partitioned pricing*, the ad discloses the existence of additional fees but not the final price. For example, an advertisement will promise “\$25 plus fees” or “\$25 (+\$17 service fee).” As shown below, drip pricing and partitioned pricing create a confusing marketplace for buyers, and their existence structurally harms competition. They have enabled the proliferation of junk fees in transactions, so consumers cannot take advertised prices at face value or comparison shop with any efficiency.

Federal and state agencies have been investigating junk fees for at least a decade. In 2012, the FTC hosted a conference “to examine the theoretical motivation for drip pricing and its impact on consumers, empirical studies, and policy issues pertaining to drip pricing.”¹ In 2016, the Obama administration’s National Economic Council published a paper examining the economic impact of “hidden fees” and pressing state and federal agencies to “enact rules that require any mandatory, or de facto mandatory fee be included *in any advertised price*.”² In 2019, the FTC held a workshop regarding junk fees in online ticket sales, and in a remarkable display of consensus, enforcers, economists, and ticket sellers agreed that legislation or regulations requiring “all-in” pricing for ticket sales, coupled with robust enforcement, was the best approach.³ The CFPB launched its own initiative related to junk fees in financial products last year.⁴ And the White House followed, with President Biden using his State of the Union to denounce them in February and the announcement of various initiatives and strides in the private sector since then.⁵ The problem of junk fees is, in short, well documented.

Junk fees and deceptive pricing have dramatic effects on our economy. Threats to competition and to consumers include:

- (1) systematic transfers of wealth from low-information consumers to more educated ones;⁶

1 Fed. Trade Comm’n, *The Economics of Drip Pricing* (May 21, 2012).

2 Nat’l Econ. Council, *The Competition Initiative and Hidden Fees* (“NEC Hidden Fees Report”), at 15 (Dec. 2016) (emphasis added).

3 Fed. Trade Comm’n, *“That’s the Ticket” Workshop: Staff Perspective*, at 4-5 (May 2020).

4 Consumer Fin. Prot. Bureau, *The Hidden Cost of Junk Fees* (Feb. 2, 2022).

5 The White House, *Remarks of President Joe Biden – State of the Union Address as Prepared for Delivery* (“Biden State of the Union”) (Feb. 7, 2023); Rebecca Shabad and Zoë Richards, *Biden highlights new efforts to lower health care costs and limit ‘junk fees’*, NBC News (July 7, 2023); The White House, *Remarks by President Biden on Protecting Consumers from Hidden Junk Fees* (June 14, 2023).

6 See NEC Hidden Fees Report, *supra* note 2, at 9; Fed. Trade Comm’n, *Economics at the FTC: Drug and PBM Mergers and Drip Pricing* (“FTC Drip Pricing Report”), at 15 (Dec. 2012), (noting evidence that “there are regressive welfare consequences of shrouding because the welfare losses are likely to be borne by consumers with low levels of economic literacy”).

- (2) a consumer’s increased willingness to pay junk fees, which flows from a perception that abandoning a purchase after spending one’s time in the purchasing process would result in some sort of loss;⁷
- (3) consumer confusion around advertised prices, which makes it harder for competitors with genuinely lower prices to compete with those who shroud their prices with hidden junk fees;⁸ and
- (4) tacit collusion in the form of parallel decisions to make certain junk fees a standard part of the purchasing process.⁹

Clearly, combating the prevalence of junk fees and deceptive pricing practices is not only a matter of protecting the individual buyer from deception but also preserving competitive marketplaces overall.

If deceptive junk fees are allowed to persist, we will have markets that reward companies and sellers who put their entrepreneurial energies into finding clever ways to add unlisted fees, “optional” services, and other add-on costs to the final price of what they are selling.¹⁰ Honest businesspeople — who make investments and innovations to grow their companies, provide consumers with better and cheaper services, and expand their workforce — should be the ones to get ahead in a fair marketplace.

Unfortunately though, under the consumer protection laws that exist today, consumers are left with little recourse when saddled with junk fees. Courts frequently reject claims that drip pricing and partitioned pricing are deceptive, because the purchaser is advised of their existence before incurring a binding financial obligation.¹¹ AELP’s legislation would eliminate this loophole by mandating what is known as “all-in pricing.” It would

7 Steffen Huck and Brian Wallace, *The impact of price frames on consumer decision making: Experimental evidence*, at 3 (Oct. 15, 2015); NEC Hidden Fees Report, *supra* note 2, at 9. There are multiple behavioral explanations for this phenomenon. One is called the “endowment effect”, which “can cause consumers to feel as if they own the good as soon as they initiate the buying transaction.” *FTC Drip Pricing Report*, *supra* note 6, at 20. Another is “anchoring”, whereby consumers “focus[] on the base price and adjust incompletely when the additional charges are revealed.” *Id.* These “loss aversions” wipe out 22% of consumer surplus. *Id.*; Huck & Wallace at 1, 2.

8 *NEC Hidden Fees Report*, *supra* note 2, at 9.

9 *Id.*

10 Paul Heidhues, Botond Köszegi, and Takeshi Murooka, *Exploitative innovation*, *American Economic Journal: Microeconomics* (Feb. 2016).

11 See, e.g., *Washington v. Hyatt Hotels Corp*, No. 19-cv-04724, 2020 U.S. Dist. LEXIS 101118, at *13 (N.D. Ill. June 9, 2020) (“a customer booking a room through Defendant’s website or app would have necessarily noticed a price discrepancy between the initial price quote and the final charges before committing to the transaction”); *id.* at *17 (the plaintiff “could have avoided paying the modest resort fees by, among other things, choosing a different hotel or opting for an Airbnb”); *Ford v. Hotwire, Inc.*, No. 07-cv-1312, 2008 U.S. Dist. LEXIS 108584, at *10 (S.D. Cal. Feb. 25, 2008) (“Nothing about Hotwire’s alleged [drip pricing] practices prevent consumers from independently researching hotels or making reservations by contacting the hotels directly.”).

(1) clarify that junk fees are unfair and deceptive, even when disclosed just before a buyer incurs a financial obligation; (2) protect buyers from predatory advertising that lures them into a purchase before they know the full cost; and (3) create a more competitive and transparent marketplace.

HOW TO COMBAT JUNK FEES

Because junk fees have become so pervasive, we have taken a broad legislative approach to stop them. Any attempt to narrowly address one specific deceptive pricing practice is likely to result in its replacement by another, similarly deceptive practice. For example, ad studies show that consumers consistently underestimate the total price of whatever they're purchasing, so partitioned pricing has the same effect as drip pricing.¹² Thus, allowing advertisers to use generic phrases like “plus fees” to partition the displayed price into the base cost and fees is insufficient. Instead, we propose an all-in pricing rule that requires disclosure of all fees that are unavoidable or mandatory, regardless of the industry.

The model legislation below is based on various states' deceptive trade practices and consumer protection laws, legislation passed by New York's General Assembly in 2022, and a bill recently introduced in Colorado's General Assembly that outlaws surprise fees in online ticket sales.¹³ It incorporates the following principles:

- The JFPA should create a broad rule mandating “all-in” pricing that applies to advertised prices in all sectors. Taking a fee-by-fee or industry-by-industry approach will not solve the problem. Savvy entrepreneurs will only dream up new ways to tack on charges to their products and services. Meanwhile, some industries will feel unfairly targeted while others will get special treatment and continue to defraud consumers without the scrutiny of our consumer protection laws.

¹² With partitioned pricing, an advertisement discloses the existence of additional fees but not the final price. For example, an advertisement will promise “\$25 plus fees” or “\$25 (+\$17 service fee).” “Empirically, the effects of deceptive drip pricing and partitioned pricing are the same.” Federal Trade Commission, *Economics at the FTC: Drug and PBM Mergers and Drip Pricing*, at 13 (Dec. 2012).

¹³ N.Y. Arts & Cult. Aff. Law § 25.07; A Bill for an Act Concerning Consumer Protections in Event Ticket Sales, S.B. 23-060, 74th Col. Gen. Assembly, First Regular Session (2023).

- It should employ a similarly broad definition of “mandatory fee,” akin to the reasonable consumer standard that already governs most false advertising claims.¹⁴
- Statutory damages are a critical component of the JFPA. Junk fees are small, so facing judgment of \$6 in small claims court would have little deterrent effect. Thus, this model creates statutory damages of \$500 per violation for unintentional conduct and \$1,000 per violation for intentional conduct.
- The Federal Trade Commission, Consumer Financial Protection Bureau, and state attorneys general offices are traditionally tasked with enforcing consumer protections laws and have been investigating the proliferation of junk fees for some time. Those agencies should have enforcement powers with respect to the JFPA as well.
- Private rights of action and a ban on arbitration clauses and class action waivers are essential to the success of a junk fees ban. Protecting consumers’ constitutional right to a jury trial and enabling private enforcement will give real teeth to the JFPA, so predators cannot fall back on the notion that inadequate government funding or disinterested administrations will shield them from wrongdoing.
- At the same time, the JFPA should include a savings clause. The goal is to set a floor for combating junk fees and not preempt more stringent state consumer protection laws.

This approach will address the resort fees, online ticketing fees, banking fees, and early cancellation fees that President Biden promised to eliminate in his State of the Union. The Forbidding Airlines from Imposing Ridiculous (FAIR) Fees Act, introduced earlier this year, already tackles the family seating fees (and a number of other problematic airline fees)¹⁵ that President Biden also addressed in his State of the Union address, so to avoid any conflict, we did not include special provisions for those fees here.

¹⁴ See, e.g., *Fanning v. FTC*, 821 F.3d 164, 170-71 (1st Cir. 2016) (Under the reasonable consumer standard, “if ‘a[.] [claim] conveys more than one meaning, only one of which is misleading, a seller is liable for the misleading interpretation even if nonmisleading interpretations are possible.”); *Becerra v. Dr Pepper/Seven Up, Inc.*, 945 F.3d 1225, 1228-29 (9th Cir. 2019) (in California, “the reasonable consumer standard requires a probability ‘that a significant portion of the general consuming public or of targeted consumers, acting reasonably in the circumstances, could be misled.’”); *Bell v. Publix Super Mkts., Inc.*, 982 F.3d 468, 475 (7th Cir. 2020) (same).

¹⁵ Press Release, *In Wake Of Holiday Travel Chaos, Senators Markey, Blumenthal, Reps. Cohen, García, Khanna Reinroduce Legislation To Ground Airlines’ Skyrocketing Fees* (Jan. 31, 2003).

VESTING THE FTC WITH SOLE ENFORCEMENT POWER IS INSUFFICIENT

Legislation designating junk fees as “unfair and deceptive trade practices” is redundant and will have little impact. In October 2022, the FTC issued an Advanced Notice of Public Rulemaking related to junk fees, and the FTC undeniably has authority under Magnuson-Moss to enact rules outlawing junk fees as unfair and deceptive trade acts and practices.¹⁶ However, the impact of those rules is limited because they do not create private rights of action and violators face little in the way of economic consequences. The rules can only be enforced through administrative actions and requests for injunctive relief in federal courts. Thus, the FTC, already stretched thin by budget and staffing constraints, would shoulder the full burden of litigation.

SECTION-BY-SECTION SUMMARY

Junk fees are a serious threat to the health of our economy. Whether implemented through drip or partitioned pricing, they are deceptive advertising practices that significantly distort the marketplace for competitors and consumers alike. Consumers cannot rely on advertised prices because the true cost of most goods and services is concealed, and comparison shopping has become a time-consuming and confusing process. This bill provides a comprehensive approach to combat junk fees, ensure fair competition, and protect consumers across our economy.

- **Sections 1 and 2** title the bill and describe its purpose.
- **Section 3** describes how junk fees affect the U.S. economy.
- **Section 4** defines key terms used in the bill and clarifies that this bill only applies to consumer transactions.

¹⁶ See 15 U.S.C. § 57a(1) (explicitly giving the FTC authority to create “rules which define with specificity acts or practices which are unfair or deceptive acts or practices in or affecting commerce”).

- **Section 5** declares certain deceptive pricing methods, acts, and practices unlawful. It also exempts certain fees, namely charges covering taxes and delivery fees, and provides a safe harbor for unlawful fees that are the result of bona fide errors and are refunded to consumers.
- **Section 6** creates a private right of action for consumers that are victims of conduct proscribed by the bill and vests jurisdiction in United States district courts. It allows for equitable and monetary relief, creates minimum statutory damages, and explicitly authorizes class actions and the recovery of attorneys' fees by a prevailing plaintiff. Finally, it makes arbitration agreements and class action waivers unenforceable against claims brought pursuant to this section.
- **Section 7** vests state attorneys general with power to enforce this bill as *parens patriae* on behalf of consumers and seek identical equitable and monetary relief, offsetting amounts already covered in other actions.
- **Section 8** designates deceptive pricing methods, acts, and practices as unfair methods of competition and unfair and deceptive acts and practices under the FTC Act, making it easier for the FTC to prosecute violations of the bill. It further instructs the FTC to assist state attorneys general with investigations related to the bill.
- **Section 9** designates deceptive pricing methods, acts, and practices related to consumer financial products as violations of 12 U.S.C. § 5536, giving the Consumer Financial Protection Bureau additional authority to investigate violations and enforce the bill through administrative and civil proceedings.
- **Section 10** creates a four-year statute of limitations.
- **Section 11** is a savings clause clarifying that the bill does not preempt any state laws that provide greater protections against the deceptive practices that are the subject of the bill.

A BILL

To create standards for transparent pricing; outlaw deceptive pricing methods, acts, and practices; and improve competition in the American marketplace.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SEC. 1. SHORT TITLE

This Act may be cited as the “Junk Fee Prevention Act”.

SEC. 2. PURPOSE

The purpose of this Act is to address the rampant use of deceptive pricing methods, acts, and practices known as junk fees, which artificially increase prices, exacerbate inflation, and harm competition across the American economy.

SEC. 3. FINDINGS

(a) Americans are charged billions of dollars every year for junk fees added on to the costs of goods and services provided across a large swath of the American economy, including in banking, air travel, online ticket sales, hotel bookings, delivery services, ride sharing, and car rentals.

(b) Junk fees obfuscate the true cost of a company’s goods and services, luring in customers and undercutting competitors by advertising deceptively low prices and slowly adding on surcharges and fees later in the purchasing process.

(c) These junk fees result in systematic transfers of wealth from low-information consumers to more educated ones. They also result in confusion around advertised prices, which makes it harder for competitors with genuinely lower prices to compete with those who shroud their prices with hidden junk fees, and enable tacit collusion between competitors in the form of parallel decisions to make certain junk fees a standard part of the purchasing process.

(d) Deceptive pricing methods, acts, and practices create a confusing marketplace for buyers, and their existence structurally harms competition. They have enabled the proliferation of junk fees in the American economy, so consumers cannot take advertised prices at face value or comparison shop with any efficiency.

SEC. 4. DEFINITIONS

In the construction of this chapter, unless the contrary is plainly apparent from the context—

(a) “Commerce” means all commerce which may lawfully be regulated by Congress.

(b) “Consumer” means an individual who seeks or acquires, by purchase or lease, any goods or services for personal, family, or household purposes.

(c) “Goods” means tangible chattels bought or leased primarily for personal, family, or household purposes, including but not limited to (1) consumer financial products as that term is defined in 12 U.S.C. § 5481; (2) certificates or coupons exchangeable for these goods; and (3) goods that, at the time of the sale or subsequently, are to be so affixed to real property as to become a part of real property, whether or not they are severable from the real property.

(d) “Mandatory fee” includes but is not limited to:

(1) Any fee or surcharge that must be paid in order to purchase the advertised good or service;

(2) A fee or surcharge that is not reasonably avoidable; or

(3) A fee or surcharge for any good or service that a reasonable consumer would expect to be included with the purchase of the advertised good or service.

(e) “Person” means an individual, partnership, corporation, limited liability company, association, or other group, however organized.

(f) “Pre-dispute arbitration agreement” means an agreement to arbitrate a dispute that has not yet arisen at the time of the making of the agreement;

(g) “Pre-dispute joint-action waiver” means an agreement, whether or not part of a pre-dispute arbitration agreement, that would prohibit, or waive the right of, one of the parties to the agreement to participate in a joint, class, or collective action in a judicial, arbitral, administrative, or other forum, concerning a dispute that has not yet arisen at the time of the making of the agreement.

(h) “Services” means work, labor, and services bought primarily for personal, family, or household purposes, including but not limited to (1) consumer financial services as that term is defined in 12 U.S.C. § 5481 and (2) services furnished in connection with the sale or repair of goods.

(i) “Transaction” means an agreement between a consumer and any other person, whether or not the agreement is a contract enforceable by action, and includes the making of, and the performance pursuant to, that agreement.

SEC. 5. DECEPTIVE PRICING METHODS, ACTS, AND PRACTICES

(a) The following deceptive pricing methods, acts, and practices undertaken by any person in a transaction affecting commerce and intended to result in or which results in the sale or lease of goods or services to any consumer are unlawful:

- (1) Advertising or otherwise displaying the price of a good or service without displaying the total price of the good or service inclusive of all mandatory fees in a clear and conspicuous manner;
- (2) Selling a good or service, or displaying a good or service being sold by a third party, without disclosing the portion of the purchase price that represents a mandatory fee for the purchase in a clear and conspicuous manner prior to accepting payment for the good or service selected;
- (3) Making a false or misleading disclosure of subtotals, fees, charges, or any other component of the total price of a good or service;
- (4) Presenting subtotals, fees, charges, or other components of the total price of the good or service less prominently or in a font size that is smaller than the font size used to present the total price of the good or service;
- (5) Increasing the price of a good or service after a purchaser has selected the good or service for purchase;
- (6) Charging an excessive or unreasonable fee or surcharge for the early termination of a contract for goods or services; and
- (7) Charging any fee or surcharge for or imposing any other conditions or requirements on the early termination of a contract for goods or services that was automatically renewed upon the expiration of the original contract.

(b) Subsection (a) does not apply to:

- (1) Any tax, duty, or custom levied by any local, state, federal, or other governmental entity;
- (2) Fees covering the cost of delivery of goods, the amount of which is based upon the delivery method selected by the purchaser, so long as the person discloses the amount of the delivery fees prior to accepting payment; or
- (3) A method, act, or practice declared to be unlawful by subsection (a) if the person alleged to have employed or committed such method, act, or practice:
 - (A) Proves that such violation was not intentional and resulted from a bona fide error notwithstanding the use of reasonable procedures adopted to avoid any such error; and
 - (B) Upon notice, makes an appropriate refund of the resulting overcharge to the consumer or consumers harmed by the violation within 30 days of receipt of such notice.

(c) The district courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this section.

SEC. 6. PRIVATE RIGHTS OF ACTION

(a) Any consumer that suffers any damage as a result of the use or employment by any person of a deceptive pricing method, act, or practice declared to be unlawful by this Act may bring an action against that person to recover or obtain any of the following:

- (1) For unintentional violations, damages in the amount of \$500 per consumer per incident or actual damages, whichever is greater;
- (2) For intentional, knowing, or willful violations, damages in the amount of \$1,000 per consumer per incident or actual damages, whichever is greater;
- (3) Injunctive or declaratory relief; and
- (4) Any other relief the court deems proper.

(b) In assessing the amount of statutory damages, the court shall consider any one or more of the relevant circumstances presented by any of the parties to the case, including but not limited to the nature and seriousness of the misconduct, the number of violations, the persistence of the misconduct, the length of time over which the misconduct occurred, the willfulness of the defendant's misconduct, and the defendant's assets, liabilities, and net worth.

(c) An action under subsection (a) may be commenced in any district court of the United States in (1) the district in which the person against whom it is brought resides, has his or her principal place of business, is doing business, or has an agent or (2) the district where the transaction or any substantial portion thereof occurred.

(d) Any consumer entitled to bring an action under subsection (a) may, if the deceptive pricing methods, acts, or practices have caused damage to other similarly situated consumers, bring an action on behalf of themselves and such other consumers, consistent with Rule 23 of the Federal Rules of Civil Procedure, to recover damages or obtain other relief as provided for in this section.

(e) No pre-dispute arbitration agreement or pre-dispute joint-action waiver shall be valid or enforceable with respect to an action initiated pursuant to this section for violations of this Act.

(f) The applicability of this chapter to a pre-dispute arbitration agreement or pre-dispute joint-action waiver and the validity and enforceability of such an agreement to which this chapter applies shall be determined by a court, rather than an arbitrator, irrespective of whether the party resisting arbitration challenges the arbitration agreement specifically or in conjunction with other terms of the contract containing such agreement, and irrespective of whether the agreement purports to delegate such determinations to an arbitrator.

(g) In any action brought under subsection (a), the court shall, at the conclusion of the action, award to a substantially prevailing claimant the cost of suit attributable to such claim, including a reasonable attorney's fee.

(h) The award made under subsection (g) may be offset in whole or in part by an award in favor of any other party for any part of the cost of suit, including a reasonable attorney's fee, attributable to conduct during the litigation by any prevailing party that the court finds to be frivolous, unreasonable, without foundation, or in bad faith.

SEC. 7. ACTIONS BY STATE ATTORNEYS GENERAL

(a) Any attorney general of a State, Territory, or the District of Columbia may bring a civil action in the name of such State, Territory, or the District of Columbia, as *parens patriae* on behalf of consumers that suffer any damage as a result of the use or employment by any person of a deceptive pricing method, act, or practice declared to be unlawful by this Act, in any district court of the United States having jurisdiction of the defendant, to secure:

- (1) For unintentional violations, damages in the amount of \$500 per consumer per incident or actual damages, whichever is greater;
- (2) For intentional, knowing, or willful violations, damages in the amount of \$1,000 per consumer per incident or actual damages, whichever is greater;
- (3) Injunctive or declaratory relief; and
- (4) Any other relief the court deems proper.

(b) The court shall exclude from the amount of monetary relief awarded in such action any amount of monetary relief (1) which duplicates amounts which have been awarded for the same injury, or (2) which is properly allocable to consumers who have excluded their claims pursuant to subsection (e) of this section.

(c) In any action under subsection (a), the court shall, at the conclusion of the action, award to a substantially prevailing State, Territory, or the District of Columbia the cost of suit attributable to such claim, including a reasonable attorney's fee.

(d) In any action brought under subsection (a) of this section, the attorney general for the State, Territory, or District of Columbia shall, at such times, in such manner, and with such content as the court may direct, cause notice thereof to be given by publication. If the court finds that notice given solely by publication would deny due process of law to any person or persons, the court may direct further notice to such person or persons according to the circumstances of the case.

(e) Any consumer on whose behalf an action is brought under subsection (a) may elect to exclude from adjudication the portion of the claim by the State, Territory, or the District of Columbia for monetary relief attributable to them by filing notice of such election with the court within such time as specified in the notice given pursuant to subsection (d).

(f) The final judgment in an action under subsection (a) shall be res judicata as to any claim for violations of this Act by any consumer on behalf of whom such action was brought and who fails to give such notice within the period specified in the notice given pursuant to paragraph (1) of this subsection.

(g) An action under subsection (a) shall not be dismissed or compromised without the approval of the court, and notice of any proposed dismissal or compromise shall be given in such manner as the court directs.

(h) Monetary relief recovered in an action under this section shall (1) be distributed in such manner as the district court in its discretion may authorize; or (2) be deemed a civil penalty by the court and deposited with the State, Territory, or the District of Columbia as general revenues. In either case, any distribution procedure adopted shall afford each consumer a reasonable opportunity to secure his appropriate portion of the net monetary relief.

SEC. 8. POWERS OF THE FEDERAL TRADE COMMISSION

(a) Deceptive pricing methods, acts, and practices in violation of this Act are hereby declared unfair methods of competition in violation of 15 U.S.C. § 45 and an unfair or deceptive act or practice in violation of 15 U.S.C. § 52, which the Federal Trade Commission is hereby empowered to prevent and prohibit, including through administrative and civil actions, in accordance with the FTC Act, 15 U.S.C. § 41, et seq.

(b) Whenever the Commission has brought an action for violations of this Act and has reason to believe that any attorney general for a State, Territory, or the District of Columbia would be entitled to bring an action under this Act based substantially on the same alleged violation, the Commission shall promptly give written notification thereof to such attorney general.

(c) To assist attorneys general for the States, Territories, and the District of Columbia in evaluating the notice or in bringing any action under this Act, the Commission shall, upon request by such attorney general, make available to them, to the extent permitted by law, any investigative files or other materials which are or may be relevant or material to the actual or potential cause of action under this Act.

SEC. 9 POWERS OF THE BUREAU OF CONSUMER FINANCIAL PROTECTION

(a) Deceptive pricing methods, acts, and practices related to consumer financial products and services in violation of this Act are hereby declared unfair, deceptive, and abusive acts and practices in violation of 12 U.S.C. § 5536, which the Bureau of Consumer Financial Protection (or “CFPB”) is hereby empowered to prevent and prohibit, including through administrative and civil actions, in accordance with the Dodd-Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. § 5481 et seq.

(d) Whenever the Bureau has commenced an action for violations of this Act and has reason to believe that any attorney general for a State, Territory, or the District of Columbia would be entitled to bring an action under this Act based substantially on the same alleged violation, the Bureau shall promptly give written notification thereof to such attorney general.

(e) To assist attorneys general for the States, Territories, and the District of Columbia in evaluating the notice or in bringing any action under this Act, the Bureau shall, upon request by such attorney general, make available to them, to the extent permitted by law, any investigative files or other materials which are or may be relevant or material to the actual or potential cause of action under this Act.

SEC. 10. LIMITATION OF ACTIONS

Any action to enforce any cause of action under this Act shall be forever barred unless commenced within four years after the cause of action accrued. No cause of action barred under existing law on the effective date of this Act shall be revived by this Act.

SEC. 11. PREEMPTION

Nothing in this Act shall be construed to restrict or preempt any State or local law that provides protections against deceptive pricing methods, acts, or practices that are greater than those set forth in this Act; imposing civil or criminal sanctions or penalties greater than those imposed by this Act; or creating any public or private right of action related to deceptive pricing methods, acts, or practices or any other unfair or deceptive methods, acts, or practices.

ABOUT THE AUTHOR

Katherine Van Dyck is Senior Counsel at American Economic Liberties Project, where she focuses on developing policies and legal strategies to combat the growing threat of corporate consolidation in the United States. Prior to joining Economic Liberties, Ms. Van Dyck spent over a decade representing consumers, small businesses, and employees in false advertising, product defect, antitrust, and wage and hour class actions and other matters across the country.

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