

New Junk Fees Rules to Take Effect in 2025

by F. Matthew Ralph and Alex Hake

The new year will bring significant changes to Minnesota's retail landscape. Effective January 1, 2025, the Minnesota Deceptive Trade Practices Act ("MDTPA") will contain new price transparency provisions requiring that advertised prices to consumers include all mandatory fees that cannot be reasonably avoided by the consumer.^[1] The purpose of the law is to reduce consumers' exposure to so-called "junk fees" that are added to the end of a transaction at checkout and to restore consumer confidence that the prices they see are the prices they will actually pay. The new law does not dictate the types or amounts of fees or surcharges that may be charged, only the way that prices are advertised.

What Must Be Disclosed?

The law prohibits anyone from advertising, displaying, or offering "a price for good or services that does not include all mandatory fees or surcharges." In other words, advertised prices must be total prices, inclusive of all mandatory fees and surcharges. If a person who disseminates an advertisement is independent of the advertiser, the person is not liable for the content of the advertisement.

Included in the rule are any fees or surcharges that: (1) must be paid in order to purchase the good or service, (2) are not reasonably avoidable by the consumer; or (3) a reasonable person would expect to be included in the purchase of the good or services being advertised.

Excluded from the rule are (a) automatic and mandatory gratuities charged by food and beverage establishments and hotels that are expressed as a percentage of the transaction provided that the nature of these charges be disclosed clearly and conspicuously, (b) taxes imposed by a government entity on the sale, use, purchase, receipt, or delivery of the good or services, and (c) reasonable shipping costs that are incurred by the consumer.

The Minnesota Attorney General has taken the position that credit card surcharges are

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not subject to disclosure if “a consumer could reasonably avoid the surcharge by paying with cash.”[2] However, businesses must comply with other Minnesota consumer protection provisions that apply to credit card surcharges.[3]

How Does the Law Apply to Online Marketplaces or Delivery Platforms?

A third-party delivery platform is compliant if it satisfies all of the following requirements: (1) at the point when a consumer views and selects either a vendor or items for purchase, the delivery platform must display in a clear and conspicuous manner (a) that an additional flat fee or percentage is charged, and (b) the amount of the additional fee or percentage, and (2) after a consumer selects items for purchase, but prior to checkout, a delivery platform must display a subtotal page that itemizes the price of the menu items and the additional fee that is included in the total cost.

Does the Law Limit Prices or Discounts?

The new law does not limit how much may be charged, either overall or in any particular fee or surcharge. Nor does the law limit the types of fees or surcharges that may be assessed.

Businesses remain free to offer goods and services as prices discounted from the advertised prices, provided that the advertised prices comply with the law and the discounts otherwise comply with Minnesota’s other advertising laws.

What Are the Penalties for Noncompliance?

The Minnesota Attorney General is authorized to enforce the new law and may seek the remedies of injunctive relief, restitution, disgorgement, civil penalties of up to \$25,000 per violation, and costs and disbursements (including costs of investigation and reasonable attorneys’ fees).[4]

The MDTPA authorizes private actions solely for injunctive relief.[5] However, because violations are considered deceptive practices, private plaintiffs may have other potential routes for seeking money damages under different Minnesota laws. *E.g.*, Minn. Stat. Sec. 325F.68 to 325F.70.

New FTC Rule

On December 17, 2024, the Federal Trade Commission finalized a similar long-awaited “Rule on Unfair or Deceptive Fees” that aims to eliminate hidden fees in the sale of certain goods and services.[6] While the earlier proposed rule would have covered all industries, the final rule has been narrowed significantly and only applies to “live-event tickets” and “short-term lodging,” such as hotels and vacation rentals.

Like the MDTPA, the final rule does not limit the price or pricing method for any given sale. Rather, it states that it is “an unfair and deceptive trade practice . . . for any Business to offer, display, or advertise any price of a Covered Good or Service without

Clearly and Conspicuously disclosing the Total Price.” The “Total Price” includes all fees and ancillary goods or services that are mandatory, and excludes any government charges, shipping costs, or optional goods or services.

To be Clear and Conspicuous:

1. the disclosure must be made through the same visual or audible means by which the communication is presented;
2. a visual disclosure must “stand out from any accompanying text or other visual elements”;
3. an audible disclosure must be delivered so that it can be easily heard and understood;
4. an interactive online or software-based communication must feature a disclosure that is “unavoidable”;
5. the diction and syntax of the disclosure must be easily understood and the disclosure must be the same language as the communication;
6. the disclosure requirements must be met “in each medium through which [the communication] is received,” including face-to-face communications;
7. the disclosure must not be contradicted or mitigated by anything in the communication; and
8. if there is a targeted specific audience, such as children or older adults, the disclosures must be understandable to those groups as well.

The rule is set to take effect 120 days after its publication in the Federal Register. Once in effect, the Federal Trade Commission can bring civil suit against violators and can seek over \$50,000 per violation in penalties.

Legislation in Other States

Minnesota is the latest in a long list of States that have sought to address junk fees. Most notably, since July 1, 2024, a new law in California has required businesses to include “all mandatory fees” in their displayed prices. The California law contains an exception for restaurants, which can leave mandatory fees out of the price so long as they are conspicuously displayed elsewhere on menus and advertisements.

In addition to California, New York has since 2022 required entertainment operators and third-party ticket resellers to disclose all required “ancillary fees” on any ticket listing prior to a ticket being selected. It also prohibits increasing the price of a ticket during the purchase process, with the exception of reasonable fees for physical ticket delivery if selected by the purchaser. The law allows any person who has been injured by a violation of the law to sue for actual damages, including attorney fees.

But where Minnesota, California, and New York have pushed forward, efforts to regulate junk fees in other states have stalled—or even failed entirely. Ten other states have introduced junk fee legislation in recent years but have yet to enact any change to their laws. And in three of those states, junk-fee bills were affirmatively voted down.

[1] See HF 3438 3rd Engrossment - 93rd Legislature (2023 - 2024).

[2] See State AG Guidance.

[3] See Sec. 325G.051 MN Statutes.

[4] See Sec. 8.31 MN Statutes

[5] See Sec. 325D.45 MN Statutes.

[6] See Federal Trade Commission Announces Bipartisan Rule Banning Junk Ticket and Hotel Fees | Federal Trade Commission.