CLIENT ALERTS & INSIGHTS

# California AG Issues Guidance Regarding Hidden Fees Ban

MAY 13, 2024

Since the enactment of California's so-called "Junk Fee Ban," S.B. 478 (more formally known as the "Honest Pricing Law" or the "Hidden Fees Statute"), Benesch has been fielding a wide range of questions from retailers and e-commerce companies on how to comply before the law takes effect on July 1, 2024.

On May 8, 2024, the California Attorney General's Office released guidance on how to comply, in the form of "Frequently Asked Questions" (FAQs). Below, we summarize the new FAQs.

**California S.B. 478:**

As discussed in more detail in our previous article for Law360, California S.B. 478 amends the Consumers Legal Remedies Act ("CLRA") by expressly prohibiting companies from "advertising, displaying, or offering a price for a good or service that does not include all mandatory fees or charges." In short, the law makes it illegal for businesses to advertise or list a price that does not list all required fees or charges, with the exception of certain government taxes and shipping costs. The legislative history to S.B. 478 notes that deceptive fees have always been prohibited under California law, but this amendment will alert consumers to the final price at the outset, lessening the potential harm to consumers.

The CLRA creates a cause of action for consumers who actually suffer damages. It also provides for actual damages, injunctive relief, restitution, and punitive damages, as well as an additional statutory award to senior citizens or disabled persons when certain facts are met.

**The Attorney General's Guidance:**

The FAQs closely follow the plain language of the statute. To the potential disappointment of many retailers and e-commerce companies, it confirms that the law rigidly applies to all fees, regardless of any unique circumstances that might make its requirements impractical. Specifically, the FAQs provide:

- **S.B. 478 applies to most businesses that sell or lease goods and services for a consumer's personal use:** S.B. 478 applies equally to online and brick-and-mortar businesses, hotels, and restaurants, as well as to the resale of event tickets and other goods and services.

- **Disclosure must occur in the listed price, not just before finalizing the transaction:** The law's focus is preventing customers from being tricked into buying a product by advertising a lower price and then adding on more fees later on. It is not sufficient to note that additional fees will be added, or that a listed price does not include certain fees. The FAQs explain (in bold, underlined, and italicized font): "**the price a Californian sees should be the price they pay.**" However, the law does not limit a business's ability to tell consumers that the listed prices include fees or charges, explain how they set their prices, or provide a subsequent breakdown of the various fees or charges that are included in its listed price. Additionally, advertisements that mention discounts, but that do not list a price (e.g., "half price after 4pm") do not violate the law.
- **Retailers can determine how much to charge:** S.B. 478 does not limit the amount businesses can charge, or the types of fees they impose; it is a price transparency law, not a price control law.
- **While shipping costs are excluded, handling fees are not:** The FAQs clarify that while S.B. 478 allows businesses to exclude "[p]ostage or carriage charges that will be reasonably and actually incurred to ship the physical good to the consumer," handling charges must still be included in the advertised price.
- **Mandatory fees only:** The advertised price does not need to include fees for optional services or features; fees that are contingent on certain later conduct by a consumer (like late fees or smoking charges in a hotel room); or gratuities voluntarily left by customers.
- **Businesses should know the total price before displaying the price:** Businesses that do not know how much they will charge a customer at the beginning of a transaction should wait to display a price until they know how much they will charge. Similarly, the law prohibits a business from advertising one price and adding a variable service fee later in the transaction. However, the FAQs also clarify that fees that are contingent on certain later conduct by a consumer, such as a fee for returning rented equipment after the deadline to do so, or charges for smoking in a non-smoking hotel room, are not mandatory and do not need to be included in the advertised price.
- **Retailers may still offer discounts or otherwise charge less than the listed price:** S.B. 478 does not prohibit retailers from offering discounts or otherwise charging a customer a price that is less than the advertised price. The law just prohibits advertising a price that is less than what the customer will have to pay for a good or service.

**Conclusion:**

California's S.B. 478 represents one of the many rapid developments in legislation aimed at transparency around fees, which will require businesses across all industries operating in California to assess their current advertising and marketing practices.

Businesses should carefully evaluate how they assess their fees to ensure their practices and disclosures are compliant with the new legislation.

**For more information, please contact a member of Benesch's Litigation Practice Group, along with our Retail & E-Commerce industry team**.