CLIENT ALERTS & INSIGHTS

Fee-Fallin': Why "Tariff Fees" Are Not A Quick Fix to Offset New Costs

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In the wake of the Trump administration's newly imposed tariffs, many retailers are facing significant unanticipated cost increases across their supply chains, from raw materials to manufacturing to transporting goods manufactured abroad to the United States.

As they search for ways to offset these costs, many are considering adding a so-called "tariff fee" to their prices-i.e. a certain dollar amount or percentage surcharge added at checkout, along with an explanation for the reason behind the addition.

At first blush, this may seem a good solution; if implemented, it seemingly allows retailers to avoid raising prices and preserve goodwill with customers while also cushioning the impact of a spike in costs on the bottom line. However, as discussed below, this strategy carries significant risks of state enforcement and consumer class actions and potentially violates the laws of several states, including California.

Overview of "Drip Pricing" (aka "Junk Fee") Bans

California, Minnesota and Massachusetts all have laws or regulations that ban "drip pricing:" they require businesses to advertise the full total cost of any product they sell, and they prohibit the addition of further charges to advertised prices (with exemptions for shipping fees and taxes). This means no environmental surcharges, "resort fees," "processing fees" or (as the California Attorney General's office has made clear) even "handling" fees. This almost certainly means tariff fees are also prohibited.

California was the first state to ban junk fees. Effective July 1, 2024, S.B. 478 amended the Consumers Legal Remedies Act (CLRA) by explicitly prohibiting companies from "advertising, displaying, or offering a price for a good or service that does not include all mandatory fees or charges." The CLRA provides a private right of action to any consumer who suffered "damages as a result of" this practice.

In response to questions concerning whether it is sufficient to note up-front that a fee will be added, the California AG's office has been clear:

Can a business comply with this law by disclosing additional required fees before a consumer finalizes a transaction?

No. The advertised or listed price must be the full price that the consumer is required to pay.

Can a business comply with this law by advertising a price that is less than what a consumer will actually have to pay, but disclosing that additional fees will be added?

No. The price advertised to the consumer must be the full price that the consumer is required to pay.

Can a business comply with this law by listing or advertising one price and separately stating that an additional percentage fee will apply?

No. The price listed or advertised to the consumer must be the full price that the consumer is required to pay.

The Minnesota law, effective as of January 1, 2025, similarly amends Minnesota's Uniform Deceptive Trade Practices Act to add offering a price for a good or service without all mandatory fees as an unfair business practice. Unlike the CLRA, however, the Minnesota Uniform Deceptive Trade Practices Act does not allow for a private right of action for damages (only for injunctive relief and associated fees). However, the Minnesota AG can seek civil penalties up to $25,000 per violation.

Similar to California, the Minnesota AG's office has issued FAQ's explaining that breaking out fees is not allowed:

Can businesses comply with this law by disclosing mandatory fees or surcharges separately from the advertised price, before a consumer finalizes a transaction?

No. The price advertised, offered or displayed to consumers must be the full price that the consumer is required to pay, inclusive of all mandatory fees or surcharges.

On March 3, 2025, Massachusetts became the third state to ban hidden mandatory fees, effective September 2, 2025. To prove a claim, a consumer will need to show that they sent a 30-day demand letter to the business and that the business's mandatory fees resulted in the loss of money or property.

Other States

Junk fee statutes are not an isolated phenomenon; to the contrary, they are spreading rapidly. Connecticut, Hawaii, Illinois, New York, Rhode Island and Maine all have similar bills pending. In Virginia, a new fee law has passed and awaits the governor's signature.

However, even in states without drip pricing laws, failing to clearly disclose mandatory fees can violate deceptive trade practices laws. Indeed, California has seen many dozens of fee-related cases over the last decade, well before the state's fee ban took effect on July 1, 2024. These suits have been based on the idea that it is a "bait and switch" to advertise one price and then charge a higher price at check-out.

So, What Can Retailers Do?

Given the rapid proliferation of "drip fee" laws, and the fact that most businesses with an online presence have customers nationwide, ***the safest approach to tariff fees is to avoid them***.

If retailers nonetheless choose to implement tariff fees for customers in states other than California, Minnesota and Massachusetts, they should endeavor to confirm their customers' locations, where

possible, to avoid accidentally charging prohibited fees. Then, it is critical to make the surcharge as clear and conspicuous as possible, as early in the shopping process as possible. Even in California, however, it may be hard for a plaintiff to satisfy the CLRA's damage requirement where a fee was clearly and conspicuously disclosed from the start, such that any reasonable consumer would understand it applied.

Companies that choose to implement tariff fees of any kind should also closely monitor pending legislation in this area and remove fees for customers in any jurisdiction that passes a new "drip fee" law.

In states that already have explicit fee bans, retailers' options are more limited:

- **Raising Prices (Offering an Explanation is Okay!):** The laws around price transparency are focused on the total price-you can raise that total price for a product but display a price breakdown that shows the original price of the item + a tariff fee, as long as the total price is more prominent.
- **Optional Fees:** California, Minnesota and Massachusetts only prohibit mandatory fees. (In Minnesota, "mandatory" is more broadly defined to include fees a reasonable person would expect to be included in the purchase of the goods or services being advertised.) Thus, they each allow retailers to offer "choose what you pay" options, "optional tariff offsets," etc.
- **Shipping Fees:** California, Minnesota and Massachusetts all have exceptions for fees relating to reasonable incurred shipping costs. Retailers who currently offer free or subsidized shipping could consider charging shipping fees and even including an explanation that the company could no longer afford to offer free shipping.

Conclusion

Although very few legal landscapes are changing as rapidly as the tariffs, fee laws come close. Retailers should monitor this landscape and work with experienced counsel to develop a strategy that works best for their business during this difficult time.

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