

# What Junk Fee Law Means For Biz In California And Beyond

By **Alexandria Ruiz and Amy Lally** (June 4, 2024)

With the enactment of S.B. 478 in October 2023, California broadened its already expansive consumer protection laws to address how a variety of fees and charges, described by some as junk fees, are advertised to consumers.[1]

Companies doing business in California are barred from advertising, displaying or offering a price for a good or service that does not include all mandatory fees or other charges other than taxes and shipping fees as of July 1, 2024.[2]

Given the potential for significant liability, businesses are encouraged to act now to achieve compliance with these new mandates.

## **S.B. 478**

S.B. 478 amends the Consumer Legal Remedies Act to ban "drip pricing," which is defined as a practice that "involves advertising a price that is less than the actual price that a consumer will have to pay for a good or service." [3]

Drip pricing is most typically observed in the form of an advertisement or display of an initial low price for a product that increases at checkout due to the addition of certain fees.

Come July 1, companies doing business in California must ensure that the price of any good or service as offered, displayed or advertised is inclusive of all mandatory fees and other charges, other than taxes and shipping fees.[4]

Because S.B. 478 is limited to advertising activities, the new law only regulates the manner in which prices are advertised; S.B. 478 does not regulate how companies determine prices, e.g., through dynamic or algorithmic pricing models.[5]

Additionally, certain fees charged by designated industries like rental car companies, auto dealerships and food delivery companies are exempt from S.B. 478 since they are separately regulated.[6]

As with any CLRA claim, alleged violations of S.B. 478 may be pursued via litigation on an individual or classwide basis.[7] Prior to filing suit for damages, a plaintiff pursuing claims under S.B. 478 must notify the business of the alleged violation, which triggers a 30-day window for the business to cure the alleged violation.[8]

After the expiration of the cure period, the plaintiff may sue for damages anytime within the three-year statute of limitations.[9] Successful plaintiffs may be entitled to actual damages.[10] And in class actions, the total award to the class cannot be less than \$1,000.[11]

Successful plaintiffs may also be entitled to injunctive relief, restitution, punitive damages and attorney fees, as well as any other relief deemed proper by the presiding court.[12]



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Since S.B. 478 specifically provides that its prohibition against drip pricing also constitutes violations of California's Unfair Competition Law and False Advertising Law,[13] businesses engaging in drip pricing after July 1, 2024, may face additional monetary penalties under those companion consumer protection statutes.[14]

## **Impact and Insights**

California Attorney General Rob Bonta has called S.B. 478 the "most effective piece of legislation in the nation to tackle this problem."[15]

Given the wide applicability of these new laws — they apply to almost all California businesses and to any activity or transaction "intended to result or that results in the sale or lease of goods or services to any consumer"[16] — and their requirement that the "actual" or "all-in" price be provided to consumers at the start of a transaction, the law may have a far-reaching impact on businesses nationwide.

Earlier this month, California's Department of Justice published highly anticipated guidance for S.B. 478, in the form of frequently asked questions.[17]

The FAQs provide insight on optional and variable fees, and how to address fees for certain forms of delivery services.[18] And while it was initially unclear whether S.B. 478 would apply to California restaurants, in connection with the issuance of the FAQs, the department confirmed that "S.B. 478 applies to restaurants, just like it applies to businesses across California."[19]

Violations of S.B. 478 could be costly for California businesses. It is important for businesses to start working now to ensure that their advertising and marketing accurately and adequately complies with the new law.

The state's Department of Justice has stated that it will not constitute compliance to simply disclose fees prior to check out or at the time of final payment. The initial price displayed for the good or service must be the full price that a consumer is required to pay, less only government-imposed taxes and fees and shipping costs.

## **Beyond California**

All businesses should know that California is not alone in its focus on these types of fees.

In November 2023, the Federal Trade Commission published the "Rule on Unfair or Deceptive Fees," which, if adopted, would bar companies — with either brick-and-mortar locations or online, or both — from omitting mandatory fees from advertised prices and misrepresenting the nature and purpose of any fees charged.[20] Public comment on the proposed rule closed on Feb. 7.[21]

Other states are taking similar steps too. At least seven other states have considered enacting similar legislation, including Connecticut, Hawaii, Illinois, North Carolina, New York, Pennsylvania and Tennessee.

For example, Illinois' H.B. 4629, the Junk Fee Ban Act,[22] is largely consistent with California's S.B. 478, while Hawaii's S.B. 2140 focuses on hotels and other similar accommodations.[23]

Yet in other states, attorneys general have taken up this mantle. For instance, in November 2023, the Massachusetts attorney general proposed regulations requiring businesses to disclose to consumers the total price of a product, provide information regarding whether charged fees are optional or required, and simplify cancellation of trial offers and other recurring charges.

Most recently, the U.S. House of Representatives passed the Transparency in Charges for Key Events Ticketing Act, which, if passed by the U.S. Senate, would require ticket sellers to list the total ticket cost, including fees.<sup>[24]</sup> The Junk Fee Prevention Act, which addresses fees more broadly, was introduced in the Senate in April 2023, but has yet to be passed.<sup>[25]</sup>

## **Conclusion**

With S.B. 478 going into effect, businesses should evaluate their advertising and marketing practices and make any necessary changes prior to July 1.

Businesses should expect additional changes may be required in the future given the various efforts by Congress, federal agencies, and other state legislatures and regulatory authorities to target drip pricing and other fees.

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[1] S.B. 478, 2023-2024 Leg. (Cal. 2023), available at <https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml>

?bill\_id=202320240SB478 (S.B. 478).

[2] Id. §§ 1, 3.

[3] Id. § 3.

[4] Id.

[5] Id. § 1.

[6] Id. §§ 4, 10, 14.

[7] See Cal. Civ. Code § 1781.

[8] Id. § 1782

[9] Id. § 1783.

[10] Id. § 1780(a)(1).

[11] Id.

[12] Id. § 1780(a)(2)-(5), (e).

[13] S.B. 478 § 1.

[14] Cal. Civ. Code § 1782 (providing CLRA's remedial provisions are not exclusive; Cal. Bus. & Prof. Code §§ 17206, 17536).

[15] Attorney General Bonta's Sponsored Bill to Ban Hidden Fees in California, State of California Department of Justice (Oct. 7, 2023 ), <https://oag.ca.gov/news/press-releases/attorney-general-bonta%E2%80%99s-sponsored-bill-ban-hidden-fees-california-signed-law>.

[16] Cal. Civ. Code § 1770.

[17] California Department of Justice, SB 478 Frequently Asked Questions (May 8, 2024), <https://oag.ca.gov/system/files/attachments/press-docs/SB%20478%20FAQ%20%28B%29.pdf>

[18] Id.

[19] Elena Kadvany, Restaurant surcharges will soon be illegal in California, San Francisco Chronicle (April 30, 2024), <https://www.sfchronicle.com/food/restaurants/article/junk-fees-restaurant-surcharges-19430871.php>.

[20] "Trade Regulation Rule on Unfair or Deceptive Fees," 88 FR 77420 (proposed Nov. 9, 2023) (to be codified at 16 C.F.R. pt. 464), also available at <https://www.federalregister.gov/documents/2023/11/09/2023-24234/trade-regulation-rule-on-unfair-or-deceptive-fees>.

[21] "Trade Regulation Rule on Unfair or Deceptive Fees", 88 FR 38 (originally proposed Nov. 9, 2023) (to be codified at 16 C.F.R. pt. 464), also available at <https://www.federalregister.gov/documents/2024/01/02/2023-28669/trade-regulation-rule-on-unfair-or-deceptive-fees>.

[22] H.B. 4629, 2023-2024 Leg. (Ill. 2024), available at <https://www.ilga.gov/legislation/fulltext.asp?DocName=&SessionId=112&GA=103&DocTypeId=HB&DocNum=4629&GAID=17&LegID=152072&SpecSess=&Session=> (Illinois H.B. 4629).

[23] S.B. 2140, 2023-2024 Leg. (Haw. 2024), available at [https://www.capitol.hawaii.gov/sessions/session2024/bills/SB2140\\_.HTM](https://www.capitol.hawaii.gov/sessions/session2024/bills/SB2140_.HTM) (Hawaii S.B. 2140); S.B. 2239, 2023-2024 Leg. (Haw. 2024), available at [https://data.capitol.hawaii.gov/sessions/session2024/bills/SB2239\\_.HTM](https://data.capitol.hawaii.gov/sessions/session2024/bills/SB2239_.HTM) (Hawaii S.B. 2239).

[24] H.R. 3950, 118th Cong. (2024) (as passed by House, May 15, 2024).

[25] S. 916, 118th Cong. (2023) (as introduced in Senate, Mar. 22, 2023).