Myth vs. Fact: State Junk Fee Legislation

State lawmakers across the country are stepping up to protect their communities from exploitative, deceptive junk fees, and for good reason: Junk fees cost the average American family more than $3,000 per year, and can raise the amount consumers spend on a given purchase by more than 20 percent.

But as momentum grows behind highly-popular efforts to rein in junk fees, big corporations and their allies in state governments are gearing up to defend them. This memo debunks some of the common myths and bad faith arguments propagated by opponents to state efforts to eliminate junk fees.

Myth: All-in pricing does not change the price consumers pay.

FACT: A recent study showed junk fees can lead to consumers spending 21 percent more on a given purchase. By giving consumers an accurate expectation of what they will be paying for a product at the very beginning of the purchasing process, all-in pricing allows consumers to easily comparison shop and search for the best product for the best price. As a result, firms are forced to compete by either lowering prices (i.e., getting rid of junk fees) or improving the quality of the product.

Myth: All-in pricing harms auto dealers.

FACT: Consumers consistently complain that the auto-buying process is unfair. Almost 100 percent of surveyed car dealers report that consumers don't trust them. And more than three quarters of consumers said that the car buying process is not transparent. Requiring all-in pricing will make a state's auto dealers more enticing for buyers, helping them compete against neighboring states and online platforms such as Carvana. And to be clear, optional add-ons are not mandatory fees that would be covered by an all-in pricing rule.

Myth: Companies can't comply with all-in pricing rules because of add-ons or consumer choices.

FACT: All-in pricing rules only affect *mandatory* fees that a reasonable person would expect to be included in the overall price. They do not prevent businesses from charging consumers for optional extras. For example, parking at a hotel is an optional add-on, but a mandatory cleaning fee assessed on every room would be covered by the rule.

Myth: Companies can't comply with all-in pricing because of shipping fees.

FACT: Shipping a physical object is a separate service that would not necessarily be covered by an all-in pricing rule, as the price could change depending on method and distance. However, a standard processing fee to facilitate the transaction, akin to Ticketmaster's fees to transmit tickets electronically to consumers, would be covered.

Myth: State laws create a patchwork of regulation that corporations can't follow.

FACT: Companies comply with differing state and federal laws across a host of areas – taxes, labor, consumer protection, environmental standards, etc. – and we are fully confident they can comply with an all-in pricing rule. Complaining about state laws differing is a common tactic corporations use to block regulations they don't want to follow.

Myth: All-in pricing rules are preempted by federal regulations.

FACT: While only the federal government can regulate certain industries, such as most banking entities and airlines, states can address many kinds of junk fees. Where federal rules already govern an industry's ability to charge junk fees, those will preempt state laws. But state laws also give state-based enforcers, such as attorneys general, important powers to protect consumers. For more on state jurisdiction to enforce junk fee bans, see The State Lawmakers' Guide to Common Junk Fees.

Myth: All-in pricing rules will prevent businesses from engaging in "dynamic pricing."

FACT: All-in pricing rules do not prevent businesses from engaging in dynamic pricing. Dynamic pricing is the practice of changing the price of goods based on market conditions, like availability of supply or surges in demand. All-in pricing requires up-front transparency of prices (like unavoidable service or convenience fees), but does not regulate how a business adjusts price based on external market conditions, even if such regulation may be warranted.

Closely related and frequently confused with dynamic pricing is price discrimination. Unlike dynamic pricing, which adjusts prices based on external market conditions, price discrimination adjusts prices based on individual consumers' willingness or ability to pay. Price discrimination can harm consumers who have no other option but to pay higher prices and can favor large corporations over small businesses. It is important to understand this distinction when confronted with bad faith arguments that all-in pricing laws should preserve unfair and often illegal pricing practices.

Myth: All-in pricing would not allow a retailer to advertise or display a discount without also listing the total price.

FACT: All-in pricing does not prevent a retailer from selling goods or services below advertised prices. This legislation is designed to combat drip pricing practices that deceptively increase costs for consumers during a transaction, and activities that lower costs to consumers such as discount pricing are exempt from all-in pricing rules. All-in pricing would still govern any *mandatory* fees assessed on a discounted product.

Myth: All-in pricing is regressive.

FACT: This argument conflates optional fees associated with "à la carte" pricing – where firms sell a stripped-down version of a product and allow consumers to pay for optional add-ons – and deceptive *de facto* mandatory fees that are part of the true price of the product. For example, a charge for an extra cell phone line on an account is distinct from a mandatory fee levied on every account that can't be avoided. Research has shown that many junk fees harm low-income families the most.

Myth: Competition will solve the problem on its own.

FACT: Economic research on junk fees has consistently shown that junk fees and deceptive pricing tactics undermine the very competitive process of the market. The practice takes advantage of consumers' behavioral biases and limited patience to search for cheaper goods, stopping true competition from happening in the first place. Moreover, junk fees may also enable tacit collusion or coordination between firms who agree to charge junk fees as a standard part of the purchasing process, further harming consumers and undermining competition.

Myth: Junk fees do not matter because firms with market power will charge high prices anyway.

FACT: It is true that if a firm is a true monopoly and does not face any competitors, it will charge a higher monopoly price. However, junk fees may allow firms with market power to charge even higher prices than they could otherwise: a monopoly like Ticketmaster can inflate already high prices with even more junk fees. Additionally, not all firms who charge junk fees have market power. As such, a clear, universal all-in pricing requirement is the most appropriate solution to addressing junk fees, even if it does not necessarily confront the additional harms of certain firms' or industries' enduring market power.