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**DECEPTION BY DELIVERY FEES:
DEMANDING CONSUMER PROTECTIONS AND TRANSPARENCY IN THE FACE OF
DECEPTIVE FEE PRACTICES**

❖ Note ❖

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I. INTRODUCTION

The use of online food delivery platforms has seen a rampant increase in recent years, with the global food delivery market being valued at a whopping \$242.09 billion in 2023.¹ With the rise and fall of the COVID-19 pandemic, bustling consumer lifestyles, and the increased digitalization of everyday interactions, the ability to order food delivery from over thousands of different restaurant options has never been more convenient.² Every day, thousands of busy consumers utilize apps like DoorDash, Uber Eats, or GrubHub to have food or groceries delivered right to their door step.³ Many have even become reliant on these services, such as those with mobility issues or those who do not own vehicles.⁴ While the necessity and convenience of having food delivery at our fingertips has made it a booming business, consumers have found that this convenience can sometimes come at a heavy price. While many food delivery

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¹ *Online Food Delivery Market to Hit Enormous Growth of 11.92% by 2033*, GLOBENEWSWIRE (Sept. 2, 2024), <https://www.globenewswire.com/news-release/2024/09/03/2939262/0/en/Online-Food-Delivery-Market-to-Hit-Enormous-Growth-of-11-92-By-2033.html>.

² Kabir Ahuja, *Ordering in: The Rapid Evolution of Food Delivery*, MCKINSEY & CO. (Sept. 22, 2021), <https://www.mckinsey.com/industries/technology-media-and-telecommunications/our-insights/ordering-in-the-rapid-evolution-of-food-delivery>; *Robust Platforms and Tech Tools Help Independents Boost Online Ordering Business*, REST. HOSPITALITY (July 22, 2022), <https://www.restaurant-hospitality.com/supplier-news/robust-platforms-and-tech-tools-help-independents-boost-online-ordering-business>; Jim Tab, *The US Food Delivery Scene: What the Numbers Say*, CLOUDKITCHENS (Apr. 3, 2025), <https://cloudkitchens.com/blog/food-delivery-statistics-and-opportunities/>.

³ *Id.*

⁴ *What If More People Bought Groceries Online Instead of Driving to a Store?*, U.S. ENV'T PROT. AGENCY (Apr. 18, 2025), <https://www.epa.gov/greenvehicles/what-if-more-people-bought-groceries-online-instead-driving-store>.

services reel in customers by advertising zero-dollar delivery fees, steep discounts, or offering monthly subscriptions meant to cover delivery fees, customers are often surprised with additional fees that are tacked on at checkout under the guise of “small order fees” or “service fees.”⁵ These kinds of fees fall under what many now refer to as “junk fees,” and have become the center of emerging litigation against food delivery giants like GrubHub and DoorDash.⁶

With junk fees and other deceptive fee practices causing disproportionate harm to consumers, employees, and businesses across industries like event ticket sales, banking, lodging, or food delivery, some government agencies have stepped in.⁷ For instance, the Federal Trade Commission (“FTC”) and the Consumer Financial Protection Bureau (“CFPB”) are two of the primary agencies that have implemented initiatives or brought suit against some of the largest corporate culprits.⁸ In a recent suit brought by the FTC and the Illinois Attorney General, for instance, GrubHub paid \$25 million to settle claims that they engaged in deceptive business practices, including the use of junk fees.⁹ A similar suit was filed by the city of Chicago against DoorDash, alleging that the company engaged in deceptive practices surrounding fees, pricing, and tips for drivers.¹⁰

While recent agency initiatives have provided consumer protections against junk fees in cable, transportation, and banking institutions and litigation has cracked down on some food delivery companies, these measures serve merely as a “cautionary tale” for emerging food and grocery delivery platforms.¹¹ With companies choosing to settle rather than going to trial, millions they pay pale in comparison to the billions they make in junk fees annually.¹² Additionally, regulations against junk fees have been

⁵ Greg Johnson, *Grubhub to Pay \$25M to Settle FTC’s Unlawful Practices Charge*, BLUE BOOK (Dec. 19, 2024), <https://www.bluebookservices.com/grubhub-to-pay-25mm-to-settle-ftcs-unlawful-practices-charge/>.

⁶ Joanna Fantozzi, *Chicago Accuses Grubhub, DoorDash of Deceptive Business Practices*, REST. DIVE (Aug. 30, 2021), <https://www.restaurantdive.com/news/chicago-accuses-grubhub-doordash-of-deceptive-business-practices/605739/>.

⁷ Council of Economic Advisers, *The Price Isn’t Right: How Junk Fees Cost Consumers and Undermine Competition*, THE WHITE HOUSE (Mar. 5, 2024), <https://bidenwhitehouse.archives.gov/cea/written-materials/2024/03/05/the-price-isnt-right-how-junk-fees-cost-consumers-and-undermine-competition/>.

⁸ *Id.*

⁹ Leonard L. Gordon & Ellis McKennie, *FTC and Illinois Attorney General Settle with Grubhub for Deceptive Practices*, VENABLE LLP (Dec. 19, 2024), <https://www.allaboutadvertisinglaw.com/2024/12/ftc-and-illinois-attorney-general-settle-with-grubhub-for-deceptive-practices.html>.

¹⁰ Mike Vilensky, *Chicago’s Suit Over DoorDash Fees Gets Trimmed by Federal Court*, BLOOMBERG L. (Sept. 20, 2023), <https://news.bloomberglaw.com/litigation/chicagos-suit-over-doordash-fees-gets-trimmed-by-federal-court>.

¹¹ James Palmer & Greg Andrews, *\$25M Grubhub Settlement Sheds Light on How Other Gig Economy Firms Can Avoid Regulatory Trouble*, LAW.COM: CORP. COUNS. (Dec. 18, 2024), <https://www.law.com/corpcounsel/2024/12/18/25m-grubhub-settlement-sheds-light-on-how-other-gig-economy-firms-can-avoid-regulatory-trouble/>.

¹² Council of Economic Advisers, *supra* note 7.

implemented in some industries, leaving others, such as the food delivery industry, without protection.¹³ Even the FTC’s “Rule on Unfair or Deceptive Fees,” which was meant to provide widespread reform, was ultimately limited to the event-ticketing and short-term lodging industries.¹⁴

Although most states lack rigid protections for consumers facing deceptive business practices that can cost them hundreds in additional fees per year on food delivery, some states are leading the way in proposing legislation to combat these schemes.¹⁵ California, for example, recently proposed two bills that would ban “drip pricing” and require food delivery apps to provide customers with an itemized list of fees at checkout, including all fees, commissions, and costs paid by the restaurant.¹⁶ Some opponents argue that disclosure of these fee schedules can harm business competition by making information on commission schemes publicly available, prohibiting them from negotiating exclusive partnerships and pricing with delivery services.¹⁷ However, with risks like consumer harm and distrust weighing in the opposite direction, the benefits to consumer protection and the increased ability to make informed purchasing decisions far outweigh the drawbacks.¹⁸

As consumers continue to require convenience in the age of advancement and as the food delivery industry is projected to grow, states must implement requirements for clear and conspicuous fee structures. Part II of this Note will discuss the past and present trends of deceptive fee practices in food and delivery service platforms, current measures implemented by the FTC, CFPB, and other government entities, and recent litigation against food delivery apps.¹⁹ Part III of this note will analyze how excessive or deceptive delivery fees harm consumers, businesses, and those who partake in the gig economy, why the current FTC measures fall short, and how an implementation of more specific measures at the state or national level can ensure consumer protection.²⁰ Part IV recommends that state and national legislatures require “clear

¹³ *Id.*

¹⁴ Monique N. Bhargava, et al., “Junk” Fees No More: The FTC Releases Final Rule on Unfair or Deceptive Fees, REED SMITH LLP (Jan. 7, 2025), <https://www.reedsmith.com/en/perspectives/2025/01/junk-fees-no-more-the-ftc-releases-final-rule-on-unfair-or-deceptive-fees>.

¹⁵ Joanna Fantozi, *Surge in Food-Delivery-Related Legislation and Lawsuits Could Lead to Industry Reckoning*, NATION’S REST. NEWS (Apr. 22, 2024), <https://www.nrn.com/delivery-takeout-solutions/surge-food-delivery-related-legislation-and-lawsuits-could-lead-industry>.

¹⁶ Joe Guzkowski, *California Bill Would Force Delivery Apps to Disclose What Restaurants Pay*, REST. BUS. ONLINE (Apr. 8, 2023), <https://www.restaurantbusinessonline.com/technology/california-bill-would-force-delivery-apps-disclose-what-restaurants-pay>.

¹⁷ *Id.*

¹⁸ Guzkowski, *supra* note 16; *Widespread Consequences of Junk Fees Uncovered, With Financial Transactions Showing Most Impact on Americans*, WISE NEWSROOM, (Jan. 23, 2024), <https://newsroom.wise.com/en-NAM/233952-widespread-consequences-of-junk-fees-uncovered-with-financial-transactions-showing-most-impact-on-americans>.

¹⁹ *See infra* Part II.

²⁰ *See infra* Part III.

and conspicuous” disclosure of all transaction fees, minus government fees and fees for optional, ancillary goods or services.²¹

II. BACKGROUND

A. How Deceptive Fee Practices Have Taken Shape Within the Food Delivery Industry

Food delivery apps and services have seen explosive growth in the United States market within the past decade.²² Prior to the 2010’s, most food delivery options were limited to delivery services offered by restaurants themselves, lacked any standardized or commonplace delivery service platforms, and were largely reliant on individual business practices and delivery personnel.²³ With the emergence of some of today’s food delivery giants, UberEats, DoorDash, and Postmates between 2011 and 2014, the restaurant industry got its first taste of food delivery apps.²⁴ These applications streamlined and standardized the process of placing an online order with a restaurant, having a gig-economy delivery driver pick up the order, and getting food delivered directly to one’s doorstep.²⁵

However, it wasn’t until nearly a decade later, when the COVID-19 pandemic shocked the world, that this industry saw its biggest boom.²⁶ With lockdowns taking place across the country and precautionary social-distancing practices becoming the norm, millions of Americans were forced to stay home and make use of contactless delivery services to receive food and other essentials. This critical need for food delivery not only boosted business for existing food delivery platforms, but brought new contenders into the market, further launching this industry into prominence. With shifting cultural norms and recognition of the inherent convenience or necessity of these services, the industry has continued to see growth even after the pandemic.²⁷ It is estimated that the online food delivery market will continue to see a compounded annual growth rate of about 10.3 percent until 2030.²⁸

²¹ See *infra* Part IV.

²² Ahuja, *supra* note 2.

²³ *The Rise of Food Delivery Services: A Revolution in Convenience*, INTERSTATE COURIER SERV., INC. (Aug. 26, 2024), <https://interstatecourier.net/the-rise-of-food-delivery-services-a-revolution-in-convenience/>.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Online Food Delivery Market to Hit Enormous Growth of 11.92% by 2033*, GLOBENEWSWIRE (Sept. 2, 2024), <https://www.globenewswire.com/news-release/2024/09/03/2939262/0/en/Online-Food-Delivery-Market-to-Hit-Enormous-Growth-of-11-92-By-2033.html>.

²⁸ *ONLINE FOOD DELIVERY MARKET SIZE, SHARE & TRENDS ANALYSIS REPORT BY TYPE (PLATFORM TO CONSUMER, RESTAURANT TO CONSUMER), BY REGION (NORTH AMERICA, EUROPE), AND SEGMENT FORECASTS, 2023 – 2030*, GRAND VIEW RSCH.

However, consumers of these services are realizing that the convenience comes at a hefty cost.²⁹ Contrary to the prior expectation that the increasing prominence of food delivery apps would lower food delivery costs by providing a larger, easily-accessible network of delivery drivers, the price tag on these services has only gotten higher.³⁰ In 2024, over forty-one percent of consumers who reported that they ordered less delivery attributed the decrease to “high delivery fees.”³¹ In other words, many customers are finding themselves unable or unwilling to afford food delivery after services tack on an array of delivery fees, service fees, and even suggested driver tips.³² In 2022, data revealed that those using food delivery apps see an average of \$12.80 in hidden fees per order.³³ These kinds of fees, commonly referred to as ‘junk fees,’ often go undisclosed in advertisements and initial food prices and are misleadingly added on at the end of the transaction before a customer can check out.³⁴ With additional pressures like search cost coming into play, in which consumers decide to purchase a good or service they have already selected instead of spending additional time and resources in locating a lower-priced alternative, the issue of junk fees has greatly impacted consumers but gone largely unchecked.³⁵ With recent economic tensions and Americans spending an estimated \$5 billion in delivery fees per year, the role that deceptive fee practices play in consumer spending cannot be ignored.³⁶

B. Current Measures in Place Against Exorbitant or Deceptive Fees Across Industries

Junk fees have impacted consumers in more than just the food delivery service industry – they have also taken hold in markets such as the lodging, banking, auto dealership, airline, and even ticketing sales industries.³⁷ While there are still insufficient measures in place to combat junk fees in the food delivery industry, entities like the FTC, CFPB, and U.S. Department of Transportation (“USDOT”) have implemented measures to combat deceptive fee practices in the cable, transportation, and banking industries. For instance, in 2022, the CFPB implemented an initiative that would save American families billions of dollars in exploitative junk fees like non-sufficient fund fees and credit card late fees.³⁸ Accordingly, the CFPB has slashed average credit card

²⁹ Justine Fisher, *Food Delivery Fees are Rising, and Everyone’s Feeling the Pinch*, CNBC (July 27, 2024), <https://www.cnbc.com/2024/07/27/food-delivery-fees-are-rising.html>.

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ Lynn Beyrouthy, *Average Food Delivery Hidden Cost per Order in the U.S.*, STATISTA (Apr. 17, 2025), <https://www.statista.com/statistics/1358860/average-food-delivery-hidden-cost-per-order-us/>.

³⁴ Council of Economic Advisers, *supra* note 7.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Junk Fees*, CONSUMER FIN. PROT. BUREAU, <https://www.consumerfinance.gov/rules-policy/junk-fees/> (last visited Feb. 23, 2025).

late fees,³⁹ closed a loophole that allowed banks to charge high overdraft fees,⁴⁰ refunded consumers \$140 million in predatory bank fees, and more.⁴¹ Furthermore, in March 2023, the FCC proposed an “all-in” pricing requirement for cable and satellite television providers, which would require providers to clearly and accurately disclose pricing for video programming service in their promotional materials.⁴² Additionally, in 2023, the USDOT put forth initiatives urging U.S. airlines to provide fee-free family seating.⁴³ Previously, parents who wished to sit near underage children were forced to pay exorbitant fees to do so.⁴⁴ In 2024, the FTC also rolled out a final Junk Fees Rule prohibiting ‘bait-and-switch’ pricing practices in the event ticketing and hotel industries and requiring fees to be disclosed up-front.⁴⁵

In addition to agency initiatives, states like Minnesota, New York, and California are paving the way in implementing legislation against junk fees.⁴⁶ In 2024, a California law went into effect, prohibiting businesses who engage with California consumers from using drip pricing and similar deceptive fee practices.⁴⁷ Drip pricing is a pricing scheme in which a business or service provider discloses only part of the price for a service or product, and then discloses or adds on additional, and often mandatory, charges later in the transaction.⁴⁸ Similarly, a 2025 Minnesota law now mandates businesses to include all mandatory fees in advertised prices. New York has also enacted legislation requiring businesses to be transparent about fees and surcharges

³⁹ *CFPB Bans Excessive Credit Card Late Fees, Lowers Typical Fee from \$32 to \$8*, CONSUMER FIN. PROT. BUREAU (Mar. 5, 2024), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-bans-excessive-credit-card-late-fees-lowers-typical-fee-from-32-to-8/>.

⁴⁰ *Proposes Rule to Close Bank Overdraft Loophole that Costs Americans Billions Each Year in Junk Fees*, CONSUMER FIN. PROT. BUREAU (Jan. 17, 2024), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-proposes-rule-to-close-bank-overdraft-loophole-that-costs-americans-billions-each-year-in-junk-fees/>.

⁴¹ *CFPB Exams Return \$140 Million to Consumers Hit by Illegal Junk Fees in Banking, Auto Loans, and Remittances*, CONSUMER FIN. PROT. BUREAU (Oct. 11, 2023), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-exams-return-140-million-to-consumers-hit-by-illegal-junk-fees-in-banking-auto-loans-and-remittances/>.

⁴² *FCC Proposes Pricing Transparency Requirement for Cable and Satellite*, FED. COMM’NS COMM’N, <https://www.fcc.gov/document/fcc-proposes-pricing-transparency-requirement-cable-and-satellite> (last visited Feb. 23, 2025).

⁴³ *Biden-Harris Administration Proposes Ban on Family Seating Junk Fees Charged by Airlines*, U.S. DEPT OF TRANSP. (Aug. 1, 2024), <https://www.transportation.gov/briefing-room/biden-harris-administration-proposes-ban-family-seating-junk-fees-charged-airlines>.

⁴⁴ *Id.*

⁴⁵ *Federal Trade Commission Announces Bipartisan Rule Banning Junk Ticket and Hotel Fees*, FED. TRADE COMM’N (Dec. 17, 2024), <https://www.ftc.gov/news-events/news/press-releases/2024/12/federal-trade-commission-announces-bipartisan-rule-banning-junk-ticket-hotel-fees>.

⁴⁶ Council of Economic Advisers, *supra* note 7.

⁴⁷ Vejay Lalla, et al., *California’s Hidden Fee Ban: FAQs and Guidance*, FENWICK (July 18, 2024), <https://www.fenwick.com/insights/publications/californias-hidden-fee-ban-faqs-and-guidance>.

⁴⁸ *The Economics of Drip Pricing*, FED. TRADE COMM’N (May 21, 2021), <https://www.ftc.gov/news-events/events/2012/05/economics-drip-pricing>.

whenever customers pay with a credit card. Additionally, legislation has been adopted in states like New York and Massachusetts to help manage extortionate apartment fees, with New York implementing legislation that would prevent landlords from passing broker fees onto tenants and Massachusetts banning rental application fees since 2014.⁴⁹

C. Recent Litigation Against Food Delivery Giants

Government entities have also attempted to address the junk fee problem by bringing lawsuits on consumer protections grounds against some of the leaders in the food delivery service industry that engaged in these kinds of practices.⁵⁰ In 2021, the City of Chicago filed lawsuits against both DoorDash and GrubHub, alleging that the companies had engaged in deceptive practices such as advertising delivery from unaffiliated restaurants without their consent, using bait-and-switch fee schemes, and being deceptive about in-app menu prices being higher than restaurant prices.⁵¹ Additionally, the complaint alleged that GrubHub employed tactics like providing customers with phone numbers and fake websites that appeared to belong to restaurants, using deceptive promotional materials, and exceeding Chicago's fifteen percent cap on restaurant commissions.⁵² Moreover, it alleged that DoorDash misled customers into thinking that tips went directly to drivers and imposed a misleading "Chicago fee," which was not mandated by the city.⁵³ The U.S. District Court for the Northern District of Illinois later barred some of these claims, stating that any claim that occurred prior to August 27, 2019, was past the statute of limitations period.⁵⁴ DoorDash later settled the suit with the Illinois Attorney General Kwame Raoul, agreeing to pay a total of \$11.25 million to settle the claims.⁵⁵ Similarly, GrubHub agreed to pay \$25 million to settle their claims.⁵⁶

⁴⁹ Simón Rios, *For Many Renters, Apartment Application Fees Add Up. Some are Illegal*, WBUR (Nov. 27, 2023), <https://www.wbur.org/news/2023/11/27/renters-application-fees-illegal-landlords>.

⁴⁹ *FARE Act Becomes Law, Reforming Broker Fees to Help Working-Class New Yorkers Afford Housing*, N.Y. CITY COUNCIL (Dec. 14, 2024), <https://council.nyc.gov/press/2024/12/14/2770/>.

⁵⁰ Fantozzi, *supra* note 6.

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ Vilensky, *supra* note 10.

⁵⁵ Timothy Bado, et al., *DoorDash Settles Illinois' Investigation into Misleading Tip Policy*, JDSUPRA (Nov. 19, 2024), <https://www.jdsupra.com/legalnews/door-dash-settles-illinois-investigation-2349741>.

⁵⁶ Gordon & McKennie, *supra* note 9.

III. ANALYSIS

A. How Deceptive Fee Practices Harm Consumers, Delivery Drivers, and Businesses

The prevalence of junk fees and other deceptive fee practices within the food delivery sector has numerous negative implications, causing disproportionate harm to restaurants, consumers, and delivery drivers who participate in the gig economy.⁵⁷ As a press release by the Biden Administration points out, junk fees “undermine competition by making it impractical for consumers to compare prices, a linchpin of our economic system.”⁵⁸ Junk fees, which are added on at the end of a transaction but prior to checkout, harm consumers by exerting search cost pressures and making consumers spend more money than they had originally planned to.⁵⁹ In addition to tricking consumers into spending up to twenty-one percent more than if they were shown all-in pricing, hidden fees also make it difficult for consumers to compare prices and encourage healthy competition among others in the market.⁶⁰ Furthermore, these practices can frustrate and erode consumer trust, as consumers get reeled in by lower advertised prices and then end up paying much more in exorbitant fees that add little to no value.⁶¹

By causing distrust and impairing consumer purchasing decisions, deceptive fee practices can also significantly harm restaurants and other businesses that use food delivery platforms.⁶² While businesses engaging in bait-and-switch pricing reap the advantages of locking in customers at a deceptively ‘lower’ price, businesses who do not engage in these practices are disadvantaged and out-competed.⁶³ This is attributable to the fact that businesses who hide their fees can attract customers by advertising a price that initially seems lower, even if their final price ends up being higher than that of their competitors.⁶⁴ Therefore, businesses are pressured, and even incentivized, into advertising a lower price and then adding on additional fees.⁶⁵

Lastly, the practice harms gig economy workers and delivery drivers by potentially reducing delivery driver earnings, since forty to sixty percent of their pay is derived from tips.⁶⁶ With unanticipated costs being tacked on in the form of delivery and service fees, the unforeseen increase in delivery price can have the direct effect of

⁵⁷ Council of Economic Advisers, *supra* note 7.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² Trade Regulation Rule on Unfair or Deceptive Fees, 90 Fed. Reg. 1234 (Jan. 10, 2025).

⁶³ *Id.*

⁶⁴ *Biden-Harris Administration Proposes Ban on Family Seating Junk Fees Charged by Airlines*, *supra* note 43.

⁶⁵ *Id.*

⁶⁶ Caitlyn Rosen, *GrubHub Ordered to Pay \$25 million, End ‘Junk Fees’ in FTC Settlement*, COURTHOUSE NEWS. SERV. (Dec. 17, 2024), <https://www.courthousenews.com/grubhub-ordered-to-pay-25-million-end-junk-fees-in-ftc-settlement/>.

leading the customer to tip less.⁶⁷ With an average hidden cost of about \$12.80 per food delivery transaction, some customers may see a final total that is nearly double the amount they expected to pay, and detract from any tip money that would have gone to the delivery driver.⁶⁸

B. Why the Limited Nature and Scope of Current Regulations Fall Short

Though the lawsuits against DoorDash and GrubHub were monumental in being the first suits filed against food delivery companies for deceptive fee practices, the settlement of these cases has merely served as a warning for other companies wishing to engage in similar practices.⁶⁹ Because these cases have settled, food delivery businesses like DoorDash and GrubHub have not had to face trial, and no binding legal precedent has been made on the issue.⁷⁰ While the sizeable settlement costs might dissuade some businesses from engaging in deceptive fee practices, some businesses might not heed the warning, given the small price to pay for large incentives.⁷¹ Additionally, even if the FTC can bring lawsuits and other enforcement actions against companies who harm consumers through deceptive fees, this relief only comes after consumers have been harmed, and is more reminiscent of a remedy than a prevention measure.⁷² Furthermore, enforcement actions and lawsuits, while effective at providing relief, can take significant time and resources to do so, which some might not have.⁷³ As a result, consumers can wait years before getting any substantive relief, or might not get any at all.⁷⁴

Some initiatives have been implemented in hopes of targeting junk fees, such as the FTC's rule against junk fees in the event ticketing and lodging industries, federal agency actions against junk fees in cable, transportation, and lodging, and the few state laws presently in place.⁷⁵ However, these initiatives narrowly address junk fees in certain settings or industries, leaving gaps across different jurisdictions and business

⁶⁷ Fisher, *supra* note 29.

⁶⁸ Beyrouthy, *supra* note 33.

⁶⁹ Bado, et al., *supra* note 55.

⁶⁹ Gordon & McKennie, *supra* note 9.

⁷⁰ *Id.*

⁷¹ Biden-Harris Administration Proposes Ban on Family Seating Junk Fees Charged by Airlines, *supra* note 43.

⁷² James McNulty, *Consumer Protection Settlements: Theory and Policy* (July 30, 2021), <https://ssrn.com/abstract=3896139>.

⁷³ Nora Freeman Engstrom and David Freeman Engstrom, *Justice for All? Why We Have an Access to Justice Gap in America – and What Can We Do About It?*, STAN. L. SCH. (June 13, 2024), <https://law.stanford.edu/2024/06/13/justice-for-all-why-we-have-an-access-to-justice-gap-in-america-and-what-can-we-do-about-it>.

⁷⁴ Leonard Willis, *Access to Justice: Mitigating the Justice Gap*, A.B.A. (Dec. 3, 2017), <https://www.americanbar.org/groups/litigation/resources/newsletters/minority-trial/access-justice-mitigating-justice-gap/>.

⁷⁵ Trade Regulation Rule on Unfair or Deceptive Fees, *supra* note 62.

sectors.⁷⁶ Due to the limited reach of these regulations, many consumers continue to experience harm in the form of impaired purchasing decisions and additional spending.⁷⁷ Instead, an issue as widespread and harmful as deceptive fee practices necessitates a well-established and widely-enforced law to result in any substantial deterrence and provide greater consumer protection.⁷⁸

IV. RECOMMENDATION

Given the limited reach of current federal and state laws or regulations, implementation of comprehensive legislation on junk fees is critical for protecting U.S. consumers. To bridge these gaps and further executive and legislative efforts to crack down on deceptive fee practices, a law requiring businesses to clearly and conspicuously disclose fees must be implemented at both the state and federal level.⁷⁹ To provide for substantial, effective, and uniform consumer protections, a law including these provisions should be implemented at the federal level or in a similar format in all fifty states.⁸⁰

The law or regulation should impose these requirements on businesses wishing to engage in online transactions with United States consumers.⁸¹ Though broadly defined, this requirement would ensure that junk fees are addressed across widely varying industries, including the food delivery sector.⁸² Specifically, such law should provide for the “clear and conspicuous” disclosure of all mandatory fees that a consumer cannot reasonably avoid, exclusive of any state-level or federal taxes.⁸³ The law should require these fees to be disclosed at some time before checkout, and for industries that make heavy or disproportionate use of advertisement and promotional materials, these prices should be included in the advertised price.⁸⁴

Additionally, the law should require that all language related to fees be subjected to a “plain language requirement,” using clear language and avoiding jargon so that

⁷⁶ *Id.*

⁷⁷ Council of Economic Advisers, *supra* note 7.

⁷⁸ *Id.*

⁷⁹ U.S. FTC Narrows Junk Fee Rule: How New Guidelines Will Affect Event Ticketing and Short-Term Lodging, SIDLEY AUSTIN LLP (Dec. 20, 2024), <https://www.sidley.com/en/insights/newsupdates/2024/12/ftc-announces-final-junk-fees-rule-that-is-significantly-narrower-than-proposed-rule>.

⁸⁰ Seth Frotman and Brian Shearer, *Strengthening State-Level Consumer Protections*, CONSUMER FIN. PROT. BUREAU (Jan. 14, 2025), <https://www.consumerfinance.gov/about-us/blog/strengthening-state-level-consumer-protections/>.

⁸¹ *Deceptive Practices of Online Sellers*, PSECU, <https://www.psecu.com/learn/financial-tips-for-every-stage-in-life/2020/08/12/deceptive-practices-of-online-sellers> (last visited Feb. 23, 2025).

⁸² *39 Food Delivery Statistics Restaurateurs Can Learn From in 2025*, OWNER, (Apr. 25, 2024), <https://www.owner.com/blog/food-delivery-statistics>.

⁸³ Trade Regulation Rule on Unfair or Deceptive Fees, *supra* note 62.

⁸⁴ Council of Economic Advisers, *supra* note 7.

consumers may easily understand these terms and any fees they are expected to pay.⁸⁵ Moreover, in businesses or industries where fees are subject to frequent fluctuations, businesses should have a statement disclosing the nature of and explaining the variability of these fees.⁸⁶ Lastly, the law should provide a maximum fee percentage cap that limits the amount of add-on fees that a service may charge, including delivery fees, small order fees, service fees, and more.⁸⁷ To ensure deterrence, these laws should also provide for fines and a right of action for consumers who are harmed by violations.⁸⁸

V. CONCLUSION

As American consumers make increasing use of the online marketplace to procure everyday goods and services, the need to combat junk fees and other deceptive fee practices has never been greater. These practices have taken root in the food delivery, online ticketing, lodging, and banking industries, and can result in significant harm to consumers, employees, and businesses alike.⁸⁹ While present legislation and litigation against these practices have been a step in the right direction, the gaps in the law are apparent, and state and federal legislatures must step in to protect consumers.⁹⁰ To combat misleading fees across these industries, state and federal legislatures must implement legislation that requires clear and conspicuous disclosure of fees prior to checkout or in advertising materials, plain language requirements for all language related to fees, maximum fee percentage caps, and more.⁹¹

⁸⁵ Michael A. Blasie, *Plain Language: Lawmakers' Preferred Solution*, NATIONAL ASSOCIATION OF ATTORNEYS GENERAL (Apr. 21, 2023), <https://www.naag.org/attorney-general-journal/plain-language-lawmakers-preferred-solution/>.

⁸⁶ Marco Bertini and Oded Keonigsberg, *Dynamic Pricing Doesn't Have to Alienate Your Customers*, HARVARD BUSINESS REV. (May 9, 2024), <https://hbr.org/2024/05/dynamic-pricing-doesnt-have-to-alienate-your-customers>.

⁸⁷ *City Council Approves 15% Cap on Service Fees Charged by Food Delivery Apps*, CBS NEWS (Nov. 23, 2020), <https://www.cbsnews.com/chicago/news/city-council-approves-15-cap-on-service-fees-charged-by-food-delivery-apps/>.

⁸⁸ Anne Fleming, *Consumer Rights are Worthless Without Enforcement*, GOV'T EXEC. (Mar. 15, 2019), <https://www.govexec.com/management/2019/03/consumer-rights-are-worthless-without-enforcement/155585/>.

⁸⁹ Council of Economic Advisers, *supra* note 7.

⁹⁰ Trade Regulation Rule on Unfair or Deceptive Fees, *supra* note 62.

⁹¹ *City Council Approves 15% Cap on Service Fees Charged by Food Delivery Apps*, CBS NEWS (Nov. 23, 2020), <https://www.cbsnews.com/chicago/news/city-council-approves-15-cap-on-service-fees-charged-by-food-delivery-apps/>; Michael A. Blasie, *Plain Language: Lawmakers' Preferred Solution*, NATIONAL ASSOCIATION OF ATTORNEYS GENERAL (Apr. 21, 2023), <https://www.naag.org/attorney-general-journal/plain-language-lawmakers-preferred-solution/>; Trade Regulation Rule on Unfair or Deceptive Fees, *supra* note 62.