



TO: The Honorable Members of the PA House Consumer Protection, Technology and Utilities Committee

FROM: Alex Halper, Vice President, Government Affairs

DATE: April 13, 2023

RE: **Concerns and Questions Regarding HB 636**

On behalf of the PA Chamber of Business and Industry (PA Chamber), the largest, broad-based business advocacy organization in the Commonwealth, thank you for the opportunity to provide feedback on HB 636, which is scheduled for an informational hearing before your committee today.

HB 636 would classify “advertising, displaying or offering a price for goods or services that does not include all mandatory fees or charges other than taxes imposed by a government entity” as an unfair method of competition under the Unfair Trade Practices and Consumer Protection Law. We are concerned this language may be overly broad and challenging to implement and enforce.

Vague and Undefined Language

The language contained in HB 636 is broad, vague, and lacks guidelines or definitions necessary to comply. For example, what constitutes a “mandatory fee”? Does the term include fees that are dictated by consumer behavior, such as late fees, overdraft fees, returned check fees, credit card processing fees, expedited shipping fees, etc.? Does it include fees that are collected on behalf of a third party or for a separate activity that is required due to the nature of the purchase or transaction, such as PennDOT processing fees when purchasing a vehicle, closing costs during a real estate transaction, background checks, permitting fees, etc.?

The language also does not distinguish between fixed fees and those that vary based on consumer choice. For example, in some industries, consumers may be charged a service or delivery fee that varies based on the size of the order and how quickly they want it. Including the amount of these fees, if any fees apply at all, in an advertised price would be extremely difficult as the total will vary and a company will not know the amount of any fees until a customer makes their decisions.

These concerns apply to a broad swath of industries in Pennsylvania, particularly as undefined language is likely to spur significant and unwarranted lawsuits.

Conflicting Standards and Regulatory Traps

We are not aware of another state that has adopted a standard similar to the one contained in HB 636. Imposing such a standard in Pennsylvania would force business engaged in e-commerce to adopt Pennsylvania specific pricing models, adapt their pricing models nationwide to fit a regulatory standard in one state, or choose not to do business in Pennsylvania at all.

Contemplation of this legislation also comes in the shadow of efforts by the Federal Trade Commission to regulate fees collected by businesses under similarly vague and subjective terms. That process is in its infancy, and it is unclear at this time how the limitations contained in HB 636 might conflict with federal standards that may be developed. Conflicting state and federal rules create a regulatory trap for businesses. There are already various industry-specific federal laws on pricing practices in the airline industry, insurance, consumer finance, broadband and telecommunications.

Additionally, some fees collected by businesses are expressly authorized in other state statutes. Some examples include PennDOT messenger services, service improvement fees collected by utilities, and various fees for telecommunications and broadband service. We urge the committee to review state statutes that authorize fees to determine where potential conflicts exist, as well as federal laws where conflicts or preemption on additional state regulation exist.

Reduced Transparency and Higher Prices

HB 636 could have the unintended consequence of reducing pricing transparency and increasing prices for all consumers. In many cases, separating fees from the purchase price of a good or service provides greater transparency to consumers as to what they are purchasing and where their dollars are going. Requiring all-in pricing would reduce this level of transparency and remove consumer choices. Some companies may determine that the only practical way to comply is to display the price later in the ordering process when the amount of all fees can be calculated. This would result in decreased price visibility to the consumer.

An all-in pricing model would require that fees be flatly applied, which in turn would result in overall higher fees for the average consumer. Variable pricing schemes often benefit consumers by allowing the ultimate purchase price to scale with the price, volume, or how quickly the consumer wants the product.

Conclusion

We appreciate the House Consumer Protection, Technology and Utilities Committee holding a hearing on the impacts of HB 636. This legislation could have far reaching implications on commerce in Pennsylvania and we encourage the committee to hold off consideration while the full scope of its impact, potential unintended consequences and additional stakeholder feedback, are considered.