



Testimony of Nate Cloutier

Before the Joint Standing Committee on Housing and Economic Development

February 27, 2025

In Opposition to LD 414, “An Act to Prohibit Deceptive Pricing”

Senator Curry, Representative Gere, and distinguished members of the Housing and Economic Development Committee, my name is Nate Cloutier, and I am here today on behalf of HospitalityMaine, representing Maine’s restaurant and lodging industries. I am also speaking on behalf of the Maine Tourism Association, the state’s largest tourism organization with over 1,500 members. Together, HospitalityMaine and the Maine Tourism Association respectfully yet strongly oppose LD 414.

The Maine hospitality industry includes over 3,400 restaurants and more than 670 hotel properties, employing more than 70,000 Mainers.

While we share the sponsor’s goal of providing price transparency for consumers, LD 414 is unnecessary and redundant, given existing federal regulations. Additionally, it would impose burdensome and costly requirements on Maine’s restaurants, lodging establishments, and other businesses. We appreciate the opportunity to provide testimony and look forward to discussing these concerns in more detail.

Federal Trade Commission Rule

Effective May 12, 2025, the Federal Trade Commission (“FTC” or “Commission”) issued its final rule on “Trade Regulation Rule on Unfair or Deceptive Fees”¹ (“rule” or “final rule”) ([Document Number 2024-30293](#)). The FTC’s rulemaking process spanned over a year and received more than 70,000 public comments from a broad range of industries. As you will see, much of the legislative intent behind LD 414 is mirrored in the FTC’s proposed rule.

The final rule specifies that it is an unfair and deceptive practice for businesses to offer, display, or advertise any price of live-event tickets or short-term lodging (e.g., hotels, motels, and vacation rentals) without clearly, conspicuously, and prominently disclosing the total price.

¹ “Trade Regulation Rule on Unfair or Deceptive Fees,” Federal Register, January 10, 2025, <https://www.federalregister.gov/documents/2025/01/10/2024-30293/trade-regulation-rule-on-unfair-or-deceptive-fees>.

When a price is advertised, the total price must be more prominent than any other pricing information and must include all associated fees. The rule further specifies that it is an unfair and deceptive trade practice for businesses to misrepresent any fee or charge in any offer, display, or advertisement.

While the final rule focuses on these industries, the FTC has broad authority under Section 5 of the Federal Trade Commission Act (FTCA) (15 U.S.C. §45) to address deceptive practices across all sectors. The rule also carries civil penalties of up to \$51,744 per violation, adjusted regularly for inflation.

Additionally, every state and territorial attorneys general already has enforcement power under state consumer protection laws. They can independently or jointly prosecute violations with the FTC, ensuring comprehensive oversight without additional state legislation.

The FTC initially considered a sector-neutral and economy-wide rule but ultimately excluded industries like restaurants, where compliance would be unworkable or disrupt long-standing business practices. Industries often have unique pricing structures, and a broad, one-size-fits-all approach would have unintended consequences.

Given the FTC's thorough review process and federal resources—including staff attorneys and subject matter experts—we believe LD 414 is unnecessary. The FTC's deliberate decision to exclude restaurants and other industries from its final rule further underscores its exhaustive process and that state-level intervention would be problematic for businesses.

Restaurants

In the proposed rule, the FTC proposed that restaurants be banned from adding any surcharges to their customer checks. This would have included commonly used delivery fees, large party fees, surcharges, and service fees. However, after extensive feedback, the Commission ultimately excluded restaurants from the rule, recognizing that such restrictions would have unintended consequences, especially for small businesses.

Surcharges and Service Fees

Existing state law already regulates how restaurants disclose surcharges and service fees. Operators are required to clear display notices on menus or table placards so that diners are informed before receiving their final bill.

For decades, restaurants have used fees and surcharges to communicate added value or services. According to the National Restaurant Association 2024 State of the Restaurant Industry report, only 16% of all restaurants are adding surcharges. The FTC also acknowledges

that large-party service charges and catering/banquet service charges are widespread and well-established industry practices.

Tip Credit

One of the most common surcharges diners see in restaurants is service fees, which are typically added to large party checks and in states where the tip credit has been eliminated by law. The FTC's proposed rule acknowledged that seven states and major localities have eliminated the tip credit. There have been multiple attempts in Maine within the last decade to eliminate the tip credit, including last year. In 2022, 61% of Portland voters rejected a proposal that would have eliminated the tip credit.

If a jurisdiction eliminates its tip credit system, baseline wages for tipped workers change dramatically. As the hourly wages shift to being paid entirely by the restaurant operator, their labor costs increase, and a restaurant operator must choose to:

- 1) Overhaul menu prices or limit menu selections.
- 2) Cut opportunities in employee benefits and available shifts.
- 3) Eliminate server positions.
- 4) Apply a mandatory service charge to help offset new wage requirements.

Given customer aversion to increased menu prices or across-the-board menu changes and the long-term consequences of limiting opportunity for waitstaff, restaurant operators need the ability to apply a service charge, especially should the tip credit become unavailable.

Furthermore, the Fair Labor Standards Act (FLSA) provides strong protections for workers and ensures that tipped employees never earn less than the local minimum wage. In reality, waitstaff at full-service restaurants generally earn far more than a minimum hourly wage. Nationally, tipped servers make a median of \$27 an hour, and the highest-paid tipped servers make \$41.50 an hour.

Meal Delivery

Restaurant food delivery has become a key service for consumers, with 41% of diners considering it an essential part of their lifestyle. Among Gen Z adults and Millennials, that number jumps to 60%—a trend expected to grow, according to the National Restaurant Association.

Many restaurant operators have invested in their own delivery infrastructure for decades, absorbing costs such as:

- Insurance

- GPS tracking systems
- Vehicles & fuel
- Driver training for quality and safety assurance

When a restaurant operator decides to provide a dedicated delivery service, customers are widely aware of the defined benefit and expect an extra fee for this added service. This bill would create significant compliance challenges for operators because delivery fees are often not the same for each customer's order and instead are dependent on such factors as the order volume or distance of the customer to the restaurant location.

LD 414 would also apply to popular third-party delivery services, further complicating compliance for restaurants that rely on outside platforms.

Menu Compliance Costs

LD 414 would ultimately force operators to create multiple menus with different pricing based on:

- Dine-in pricing
- Delivery pricing
- Large-party pricing

The FTC's Notice of Proposed Rulemaking (NPRM) estimates compliance would cost \$4,818.27 per operator just to update menus. That's over \$16 million in costs for restaurants across Maine—many of which are small, independent, and family-run and typically operate on 3-5% pre-tax margins.

Short-Term Lodging

The final rule also considered short-term lodging and included certain requirements. It requires that short-term lodging businesses clearly and conspicuously disclose the true total price inclusive of all mandatory fees whenever they offer, display, or advertise any price.

HospitalityMaine and the American Hotel and Lodging Association (AHLA) have also supported federal legislation in the 118th Congress, including two federal fee-transparency bills, the [No Hidden FEES Act](#) and the [Hotel Fees Transparency Act](#). We've supported establishing a single, federal standard for lodging fee display across the industry because consumers deserve to have transparency regardless of where or how they book their stays.

Notably, according to recent AHLA data, only 6% of hotels nationwide charge a mandatory resort/destination/amenity fee, at an average of \$26 per night.

Conclusion

The FTC has already conducted an exhaustive review of unfair and deceptive pricing practices and underscored its enforcement authority, making LD 414 unnecessary. The federal rule sets clear, nationwide standards, preventing the need for conflicting state regulations and ensuring consistent consumer protections.

For these reasons, we urge the committee to vote ought not to pass on LD 414. Thank you for the opportunity to provide this testimony.