

Frequently Asked Questions About Minnesota's New Price Transparency Law

Effective January 1, 2025, Minnesota's Deceptive Trade Practices Act (Minn. Stat. 325D.44, *et seq.*) will contain new provisions that make it illegal for someone to advertise, display, or offer a price for goods or services that does not include all mandatory fees or surcharges. The law is not a pricing regulation and does not dictate how much someone can charge for goods or services. Instead, the law requires that the price advertised, displayed, or offered include all mandatory fees and surcharges.

To help businesses comply with this new law, and to offer consumers guidance about what they can expect, the Attorney General's Office is releasing this set of Frequently Asked Questions. The law, 2024 Minn. Laws chapter 111, will be located at Minnesota Statutes section 325D.44, subdivision 1a-b.

What is the purpose of this law?

This law intends to help businesses compete fairly on price and allow consumers to make accurate price comparisons by requiring disclosure of the total price for goods or services, inclusive of all mandatory fees or surcharges. The law seeks to prohibit drip pricing—which involves advertising a price that is less than the actual price that has to be paid for a good or service—as well as other tactics used to hide or obscure the true, total price that must be paid for a good or service.




What does the law require?

The law requires honest and transparent pricing. It prohibits someone from advertising, displaying, or offering “a price for goods or services that does not include all mandatory fees or surcharges.” In other words, it requires that if persons advertise, display, or offer a price, this must be the total price for a good or service, that includes all mandatory fees and surcharges.

Mandatory fees and surcharges that must be included in the total price advertised, displayed, or offered include any fee or surcharge that: (1) must be paid in order to purchase the good or service; (2) is not reasonably avoidable by the consumer; and (3) a reasonable person would expect to be included in the purchase of the goods or services being

advertised. Taxes imposed by a government entity on the sale, use, purchase, receipt, or delivery of the goods or services are not “mandatory fees” under the new law, and thus, do not need to be included in the total price.

Below is an example of two compliant advertised prices and one non-compliant advertised price under this new pricing transparency law:

 Compliant
Advertised Price: \$20.00
 Compliant
Advertised Price: \$20.00 *Price includes \$2.00 service fee and \$3.00 surcharge.
 Not Compliant
Advertised Price: \$15.00 Surcharge: \$3.00 Service Fee: \$2.00



Who needs to follow this law?

The law broadly applies to any person who, in the course of their business, vocation, or occupation, advertises, displays, or offers a price for goods or services in Minnesota. Accordingly, the law generally applies to individuals or businesses that advertise, display, or offer a price for goods or services in Minnesota or to Minnesota consumers.

While the law generally applies to almost all industries, it does not apply to:

- “fees authorized by law related to the purchase or lease of a motor vehicle that are charged by a motor vehicle dealer”;
- businesses or business affiliates “regulated by the Minnesota Public Utilities Commission”; or
- “any fees, surcharges, or other costs associated with settlement services, as defined in the Real Estate Settlement Procedures Act, United States Code, title 12, section 2602(3)” excluding real estate broker commissions and fees.

When does this new law become effective?

For most industries, this law will become effective January 1, 2025. But for businesses whose prices are regulated by the Metropolitan Airports Commission, this law is not effective until June 1, 2025.

Is this new law retroactive? What about contracts which were signed before January 1, 2025 but are not complete until after January 1, 2025?

This law is not retroactive. To the extent a contract was signed before January 1, 2025, this law does not apply regardless of when the contractual obligations are completed.

Exclusions and Exemptions

What can be excluded from the advertised price under this law?

Taxes imposed by a government entity on the transaction, such as sales tax, can be excluded from the total price advertised, displayed or offered. In addition, the total price does not need to include reasonable shipping costs that are actually incurred by the consumer.

Additionally, if a fee or surcharge is reasonably avoidable by consumers, it is not “mandatory” and thus, can be excluded from the total price advertised, displayed, or offered. Examples of fees or surcharges that may not be mandatory—so long as they are reasonably avoidable by consumers—include but are not limited to: (1) late fees for equipment rentals, (2) charges for smoking in a hotel room, or (3) credit card surcharges (see below question “Can a business still charge a credit card surcharge”).

The law also provides for some industry-specific exceptions, which are discussed in more detail below.

What government-imposed “taxes” can be excluded from the total cost advertised, displayed, or offered?

The price transparency law provides that the mandatory fees that must be included in the total price advertised, displayed, or offered “does not include taxes imposed by a government entity on the sale, use, purchase, receipt, or delivery of the goods or services.” *Minn. Stat. § 325D.44, subd. 1a(a)*.

“Tax” is generally defined under Minnesota law to mean any fee, charge, exaction, or assessment imposed by a governmental entity on an individual, person, entity, transaction, good, service, or other thing. It excludes a price that the purchaser chooses voluntarily to pay in return for receipt of goods or services provided by the governmental entity. A government good or service does not include access to or the authority to engage in private market transactions with a nongovernmental party, such as licenses to engage in a trade, profession, or business or to improve private property. *Minn. Stat. § 645.44, subd. 19*.

Taxes that do not need to be included in the total price advertised, displayed, or offered under the price-transparency law also must be “imposed ... on the sale, use, purchase, receipt or delivery of the goods or services.”

Examples of taxes that do not need to be included in total price advertised, displayed, or offered under the law include sales tax, retail delivery fees, and local bag fees. By contrast, taxes that do not qualify for this exemption include, for example, taxes incurred by the seller in the course of business and not assessed *on the sale or purchase of the goods or services*—such as corporate income tax, import duties or sales taxes incurred by the seller in procuring materials used to manufacture goods offered

for sale, employment tax, and property taxes—even if the seller factors such costs into the prices of goods or services offered for sale to the public.

Are industries or businesses that are already governed by state law for pricing disclosures exempt?

Generally, no. While the law provides several exemptions for certain industries and fees, for all other businesses, regardless of whether those businesses are also regulated by state law for certain pricing disclosures, this law will apply. Also, this new law does not act to supersede any other statutes, rules, or regulations that businesses may be subject to.

Prices, Fees, and Surcharges

Can businesses comply with this law by disclosing mandatory fees or surcharges *separately* from the advertised price, before a consumer finalizes a transaction?

No. The price advertised, offered, or displayed to consumers must be the full price that the consumer is required to pay, inclusive of all mandatory fees or surcharges.

Does the law limit how much someone can charge for a good or service or the types of fees that someone can charge?

No. A business is generally free to charge however much it wants and can then provide a breakdown of the various fees that are included in its advertised, displayed, or offered total price. But the total price advertised, displayed, or offered must include the full amount, including all mandatory fees or surcharges, that a consumer must pay for that good or service.

Can businesses still advertise discounts or sales?

Yes. Nothing in this new law prevents a business from offering goods or services at a discounted price from the advertised, displayed, or offered price. But other Minnesota laws prohibit advertising that is false or misleading, so businesses that advertise discounts must do so in compliance with those laws.

Can a business still charge a credit card surcharge? Does that surcharge need to be included in the advertised price?

This law does not govern what fees or surcharges a business can charge. It governs how those fees or surcharges are disclosed to consumers. If the credit card surcharge is an optional charge, meaning a consumer could reasonably avoid the surcharge by paying with cash, then this credit card surcharge is not a “mandatory fee” under the law and the surcharge would not need to be included in the total price that is advertised, displayed, or offered. Businesses should be aware, however, of other consumer protection provisions that still apply to such surcharges. So to the extent a business decides to impose such surcharges or fees, its communication of such surcharges or fees must comply with other state consumer protection laws.

What if a business cannot determine the total price at the outset, because the price depends on consumer selections and preferences, or the total price relates to distance or time?

If the total price of a service is determined by consumer selections and preferences, or if the total price relates to distance or time, the seller must disclose “in a clear and conspicuous manner (1) the factors that determine the total price, (2) any mandatory fees associated with the transaction, and (3) that the total cost of the services may vary.”

Restaurants

Can restaurants continue to charge an automatic and mandatory gratuity (e.g., a 15% automatic gratuity is added for parties of 8 or more)?

Food and beverage establishments, including hotels, can continue to charge automatic and mandatory gratuities. These gratuities do not need to be included in the advertised total price, but instead, this law requires that such automatic and mandatory fees be disclosed clearly and conspicuously. However, if the charge at issue is not a gratuity as that term is defined under applicable Minnesota laws and rules, and is instead a mandatory fee, then that fee must be included in the total price advertised, displayed, or offered to consumers by the restaurant. Below is an example of two compliant menus and one non-compliant menu under this new pricing transparency law:

✓ **Compliant**

Sandwich	\$10.50
Salad	\$7.88
Soup	\$7.10

All parties of 8 or more people will incur a 20% automatic gratuity.

✓ **Compliant**

Sandwich	\$10.50
Salad	\$7.88
Soup	\$7.10

All parties of 8 or more people will incur a 20% automatic gratuity.

*All prices include a 5% health and wellness fee, which helps pay for health insurance for our employees.

✗ **Not Compliant**

Sandwich	\$10.00
Salad	\$7.50
Soup	\$6.75

All parties of 8 or more people will incur a 20% automatic gratuity.

*All orders will incur a 5% health and wellness fee, which helps pay for health insurance for our employees.

Can restaurants continue to charge a health and wellness fee as long as it is clearly and conspicuously disclosed ahead of time?

The law governs how mandatory fees, such as a restaurant’s “health and wellness” fee, are disclosed to consumers. To the extent the “health and wellness” fee is a mandatory fee as defined under the new law, any such fee would need to be included in the total price the restaurant advertises, displays, or offers to consumers. This law does not prohibit a restaurant from charging such a fee nor does this law prohibit a restaurant from also itemizing the fee, in addition to showing the total price.

How does this law affect tips or gratuities left voluntarily by customers?

This law does not affect tips or gratuities because they are not mandatory.

What about mandatory fees charged by restaurants?

If a restaurant charges a mandatory fee, other than an automatic and mandatory gratuity as gratuity is defined elsewhere in Minnesota law, it must be included in the total price advertised, displayed, or offered to consumers by the restaurant.

Delivery Platforms

What about delivery platforms? How do they comply with this new law?

Third-party delivery platforms must clearly and conspicuously display any flat fee or percentage charged for delivery at the time that the customer selects a vendor or item for purchase, and again prior to checkout.

Who is defined as a “delivery platform” for purposes of this new law?

The price transparency law provides that a “delivery platform” is compliant with the law if it satisfies the following requirements:

- (1) At the point when a consumer views and selects either a vendor or items for purchase, a delivery platform must display in a clear and conspicuous manner than an additional flat fee or percentage is charged. The disclosure must include the additional fee or percentage amount; and
- (2) After a consumer selects items for purchase, but prior to checkout, a delivery platform must display a subtotal page that itemizes the price of the menu items and the additional fee that is included in the total cost.

Minn. Stat. § 325D.44, subd. 1a(c).

Both the plain language and legislative history of the law support that a “delivery platform” is a third-party delivery service provider that does not produce the goods itself or set the price of the goods being delivered. For example, a pizza restaurant that also delivers its pizza, is not a “delivery platform” for purposes of the law because it makes itself the goods being delivered and sets the price of the goods being delivered. Accordingly, a restaurant company that runs its own digital channels and makes its own deliveries is not a “delivery platform.”

Private Banquets

Are Private Banquet Contracts Subject to this new law?

Yes, the new law generally applies to a business's banquet or catering contracts signed on or after January 1, 2025, with consumers, which is the date the new law takes effect.

Banquet or catering event orders, invoices, or contracts with consumers that disclose the total price—inclusive of all mandatory fees such as a surcharge or service charge—are compliant with the price transparency law. Here is an example of a compliant and non-compliant banquet or catering event order:

✓ Compliant

	Food	Liquor	Labor	Total
Subtotal	\$9,000	\$7,000	\$5,000	\$21,000
Service Charge	\$2,000	\$1,000	\$0	\$3,000
Total	\$11,000	\$8,000	\$5,000	\$24,000

✗ Not Compliant

	Food*	Liquor*	Labor	Total
Total	\$9,000	\$7,000	\$5,000	\$21,000

* Service Charge – An additional service charge will be added to all food and beverage sales. The service charge is not a gratuity, and is used to cover the costs associated with employing staff.

If certain charges cannot be quantified because they will be determined by consumer selections or preferences, it is compliant to disclose in a clear and conspicuous manner (1) the factors that will determine the total price; (2) any mandatory fees associated with the transaction; and (3) that the total cost of the services may vary. *Minn. Stat. § 325D.44, subd. 1a(g).*

Auctions

How does this new law apply to auctions?

Persons selling goods or services in an auction must disclose “in a clear and conspicuous manner any mandatory fees associated with the transaction and that the total cost of the goods or services may vary.”

Non-Compliance

What if an individual or business does not comply with the new law?

First and foremost, the Attorney General's Office is focused on working with businesses and individuals to get voluntary compliance with this law. Our Office will continue to educate businesses and consumers about this law to promote and ensure voluntary compliance. However, if a business or person refuses to comply with the law, the Attorney General can further investigate their business practices. If the Attorney General substantiates that a person or business is not complying with the law, it can file a civil law enforcement action in district court and seek to recover the remedies of injunctive relief, restitution, disgorgement, civil penalties of up to \$25,000 per violation, costs and disbursements, including costs of investigation and any reasonable attorneys' fees.

Legal Advice

We Cannot Give Legal Advice to Individuals

We are not authorized to give specific legal advice to individuals or to act on behalf of individuals in private legal matters. If you feel you need legal advice and want an attorney to advise you, the Minnesota State Bar Association's Attorney Referral Service is available on the Internet at www.mnfindalawyer.com. A flyer called “Hiring an Attorney” is also available on the Attorney General's website, which provides tips on locating and retaining an attorney.

