II

118TH CONGRESS
2D SESSION

S. 4435

To limit and eliminate excessive, hidden, and unnecessary fees imposed on incarcerated individuals and their families, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 23, 2024

Mr. BOOKER (for himself and Ms. WARREN) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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A BILL

To limit and eliminate excessive, hidden, and unnecessary fees imposed on incarcerated individuals and their families, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Families Over Fees Act of 2024".

SEC. 2. PROTECTING CONSUMERS AGAINST EXCESSIVE AND HIDDEN FEES.

(a) IN GENERAL.—

(1) HIDDEN FEES.—A covered entity shall clearly and conspicuously display the total price (inclusive of any mandatory fees) of any good or service provided by the covered entity—

(A) in each advertisement for the good or service to a consumer; or

(B) whenever presenting the price of such good or service to a consumer.

(2) EXCESSIVE FEES.—

(A) IN GENERAL.—A covered entity may not advertise or charge to a consumer any mandatory fees that are excessive with respect to any good or service provided by the covered entity.

(B) CONSIDERATIONS.—In determining whether a mandatory fee advertised by or charged to a consumer by a covered entity is excessive, the Commission shall consider—

(i) whether the fee is reasonable and proportional to the cost of the good or service provided by the covered entity;

(ii) the reason for which the covered entity charges such fee;

(iii) the cost of a similar good or service provided to individuals who are not incarcerated; and

(iv) the degree of available consumer choice for the good or service, including whether there are viable alternatives available that provide the consumer with the opportunity to avoid an excessive fee.

(3) EARLY TERMINATION.—A covered entity may not advertise or charge to a consumer any mandatory fees that are excessive for the early termination of a contract for any good or service provided by the covered entity.

(4) REFUNDS.—A covered entity shall—

(A) clearly and conspicuously disclose any guarantee or refund policy prior to the completion of a transaction by a consumer; and

(B) in the event of a request by a consumer for a refund, provide to the consumer a refund in the amount of the total cost (including any mandatory fees) of the good or service provided by the covered entity or any good or service that is undelivered or defective.

(5) RULE OF CONSTRUCTION.—Nothing in this subsection shall apply to any—

(A) tax, duty, or custom levied by any local, State, Federal, or other governmental entity; or

(B) fee covering the cost of delivery of goods, the amount of which is based upon the delivery method selected by the consumer, so long as the covered entity discloses the amount of the delivery fee prior to accepting payment from the consumer.

(b) ENFORCEMENT.—

(1) ENFORCEMENT BY THE COMMISSION.—

(A) UNFAIR OR DECEPTIVE ACTS OR PRACTICES.—A violation of this section or a regulation promulgated thereunder shall be treated as a violation of a rule defining an unfair or deceptive act or practice under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

(B) POWERS OF THE COMMISSION.—

(i) IN GENERAL.—The Commission shall enforce this section in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15

U.S.C. 41 et seq.) were incorporated into and made a part of this section.

(ii) PRIVILEGES AND IMMUNITIES.—Any person who violates this section or a regulation promulgated thereunder shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act (15 U.S.C. 41 et seq.).

(iii) AUTHORITY PRESERVED.—Nothing in this section shall be construed to limit the authority of the Commission under any other provision of law.

(iv) RULEMAKING.—The Commission may promulgate in accordance with section 553 of title 5, United States Code, such rules as may be necessary to carry out this section.

(C) NOTICE TO STATES.—Whenever the Commission has brought an action for a violation of this Act and has reason to believe that the attorney general of a State, Territory, or the District of Columbia would be entitled to bring an action under this Act based substantially on the same alleged violation, the Commission shall promptly give written notification thereof to such attorney general.

(2) ENFORCEMENT BY THE STATES.—

(A) IN GENERAL.—If the attorney general of a State has reason to believe that a covered entity has violated or is violating this section or a regulation promulgated thereunder that affects the residents of that State, the State, as parens patriae, may bring a civil action in any appropriate district court of the United States, to—

(i) enjoin any further violation by the covered entity;

(ii) enforce compliance with this section or such regulation;

(iii) obtain other remedies permitted under State law; and

(iv) obtain damages, restitution, or other compensation on behalf of residents of the State.

(B) NOTICE.—The attorney general of a State shall provide prior written notice of any action under subparagraph (A) to the Commission and provide the Commission with a copy of the complaint in the action, except in any case in which such prior notice is not feasible, in which case the attorney general shall serve such notice immediately upon instituting such action.

(C) INTERVENTION BY THE COMMISSION.—Upon receiving notice under subparagraph (B), the Commission shall have the right—

(i) to intervene in the action;

(ii) upon so intervening, to be heard on all matters arising therein; and

(iii) to file petitions for appeal.

(D) LIMITATION ON STATE ACTION WHILE FEDERAL ACTION IS PENDING.—If the Commission has instituted a civil action for a violation of this section or a regulation promulgated thereunder, no State attorney general, or official or agency of a State, may bring a separate action under subparagraph (A) during the pendency of that action against any defendant named in the complaint of the Commission for any violation of this section or a regulation promulgated thereunder that is alleged in the complaint.

(E) VENUE; SERVICE OF PROCESS.—

(i) VENUE.—Any action brought under subparagraph (A) may be brought in the district court of the United States that meets applicable requirements relating to venue under section 1391 of title 28, United States Code.

(ii) SERVICE OF PROCESS.—In an action brought under subparagraph (A), process may be served in any district in which the defendant—

(I) is an inhabitant; or

(II) may be found.

(F) RULE OF CONSTRUCTION.—For purposes of bringing a civil action under subparagraph (A), nothing in this section shall be construed to prevent the chief law enforcement officer or official or agency of a State, from exercising the powers conferred on such chief law enforcement officer or official or agency of a State, by the laws of the State to conduct investigations, administer oaths or affirmations, or compel the attendance of witnesses or the production of documentary and other evidence.

(3) PRIVATE RIGHT OF ACTION.—

(A) IN GENERAL.—An individual who is injured by a violation of this Act or any regulation promulgated thereunder may bring a civil action in a district court of the United States to—

(i) obtain damages, restitution, or other compensation;

(ii) injunctive or declaratory relief;

(iii) attorney's fees and litigation costs; and

(iv) any other relief the court deems proper.

(B) VENUE.—In a civil action brought under subparagraph (A), the venue shall be—

(i) a Federal judicial district in which the defendant is found, is an inhabitant, or transacts business; or

(ii) wherever venue is proper under section 1391 of title 28, United States Code.

(C) CLASS ACTIONS.—An individual entitled to bring an action under this paragraph may bring such action as a representative or class action under rule 23 of the Federal Rules of Civil Procedure or any other provision of law.

(D) STATUTE OF LIMITATIONS.—An action for a violation of this Act may be commenced not later than the later of 4 years after the date on which—

(i) the violation occurs; or

(ii) the violation is discovered or should have been discovered through exercise of reasonable diligence.

(E) NO ARBITRATION AGREEMENT OR WAIVER.—No pre-dispute arbitration agreement or pre-dispute joint-action waiver shall be valid or enforceable with respect to a dispute arising under this Act. Any determination as to the scope or manner of applicability of this section shall be made by a court, rather than an arbitrator, without regard to whether such agreement purports to delegate such determination to an arbitrator.

(F) RULE OF CONSTRUCTION.—Any rights provided under this subsection are in addition to, and not in lieu of, any other rights or remedies provided by State or Federal law.

(c) DEFINITIONS.—In this section:

(1) COMMISSION.—The term ''Commission'' means the Federal Trade Commission.

(2) CONSUMER.—The term ''consumer'' means—

(A) an incarcerated individual who seeks or acquires, by purchase or lease, any goods or services from a covered entity for personal, family, or household purposes; or

(B) an individual seeking or acquiring such goods or services from a covered entity for the benefit of or in relation to an incarcerated individual.

(3) CORRECTIONAL FACILITY.—The term ''correctional facility'' means a jail, prison, immigration detention center, juvenile detention center, or other facility used to house individuals who are accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of law or the terms and conditions of parole, probation, pretrial release, or a diversionary program.

(4) COVERED ENTITY.—The term ''covered entity'' means an entity that knowingly provides goods or services, for compensation, to consumers within a correctional facility or in connection to a consumer's release from a correctional facility.

(5) GOOD.—The term ‘‘good’’ means any ware, product, commodity, merchandise, or article sold or offered for sale in or affecting interstate commerce.

(6) INCARCERATED INDIVIDUAL.—The term ‘‘incarcerated individual’’ means an individual housed at a correctional facility.

(7) MANDATORY FEE.—The term ‘‘mandatory fee’’ means—

(A) any fee or surcharge that a consumer is required to pay to purchase or use a good or service; or

(B) a fee or surcharge that is not reasonably avoidable by a consumer.

(8) PRE-DISPUTE ARBITRATION AGREEMENT.—The term ‘‘pre-dispute arbitration agreement’’ means an agreement to arbitrate a dispute that has not yet arisen at the time of the making of the agreement.

(9) PRE-DISPUTE JOINT-ACTION WAIVER.—The term ‘‘pre-dispute joint-action waiver’’ means an agreement, whether or not part of a pre-dispute arbitration agreement, that would prohibit or waive the right of any or all of the parties to the agreement to participate in a joint, class, or collective action in a judicial, arbitral, administrative, or other

forum, concerning a dispute that has not yet arisen at the time of the making of the agreement.

(10) SERVICE.—

(A) IN GENERAL.—The term "service" means work or labor bought primarily for personal, family, or household purposes, including—

(i) consumer financial services (as defined in section 1002 of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5481)); and

(ii) services furnished in connection with the sale of goods in or affecting interstate commerce.

(B) EXCLUSIONS.—The term "service" shall not include:

(i) any service described in section 276(d) of the Communications Act of 1934 (47 U.S.C. 276(d)); or

(ii) market-dominant products offered by the United States Postal Service under subchapter I of chapter 36 of title 39, United States Code.

(11) STATE.—The term ''State'' means the 50 States, the District of Columbia, and any territory or possession of the United States.

(12) TRANSACTION.—The term ''transaction'' means an agreement between a consumer and a covered entity, whether or not the agreement is a contract enforceable by action, and includes the making of, and the performance pursuant to, such agreement.

(d) SEVERABILITY.—If any provision of this section, or the application of such provision to any person or circumstance, is held to be unconstitutional, the remainder of this section, and the application of the provisions of such section to any person or circumstance, shall not be affected.

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