

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

SB 1524 (Dodd)
Version: June 20, 2024
Hearing Date: June 25, 2024
Fiscal: No
Urgency: Yes
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PURSUANT TO SENATE RULE 29.10(d)

SUBJECT

Consumers Legal Remedies Act: advertisements: restaurant, bar, and other food services

DIGEST

This bill exempts mandatory fees and charges for individual food or beverage items sold directly to a customer by specified entities, but requires such fees to be clearly and conspicuously displayed on any advertisement, menu, or other display of the price.

EXECUTIVE SUMMARY

The issue of “junk” fees and other pricing schemes gained more prominence nationally when President Joe Biden took aim at them in his State of the Union address in February 2023. There are various types of pricing schemes generally deemed unfair or unlawful business practices. When merchants include hidden or “junk” fees in the purchase price of goods and services after putting out a much lower advertised price (“the bait”), consumers are often misled and kept from properly assessing the best prices, thereby hindering the market, especially online.

Last year, SB 478 (Dodd, Ch. 400, Stats. 2023) took aim at such fees and made it an unlawful business practice to advertise, display, or offer a price for a good or service that does not include all mandatory fees or charges, except as provided or exempted. Implementation concerns have arisen regarding application of this law to restaurants, bars, and certain food service providers and the various mandatory fees and charges that are used for myriad reasons. This bill addresses those concerns by exempting out such fees and charges and instead requiring them to be clearly and conspicuously disclosed wherever the food or beverage price is listed.

The bill is sponsored by Lieutenant Governor Eleni Kounalakis. It is supported by a variety of groups, including the California Restaurant Association and UNITE HERE. The bill is opposed by the Consumer Federation of California.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes the Consumer Legal Remedies Act (CLRA), which prohibits unfair methods of competition and unfair or deceptive acts or practices undertaken in a transaction intended to result or which results in the sale or lease of goods or services to any consumer. (Civ. Code § 1750 et seq.)
- 2) Provides that any consumer who suffers any damage as a result of the use or employment by any person of a method, act, or practice declared to be unlawful by Section 1770 of the Civil Code may bring an action against that person to recover or obtain specified damages and other relief. (Civ. Code § 1780(a), (e).)
- 3) Lists the unfair methods of competition and unfair or deceptive acts or practices that undertaken by any person in a transaction intended to result or that results in the sale or lease of goods or services to any consumer are unlawful. (Civ. Code § 1770(a).)
- 4) Makes it an unlawful business practice, as of July 1, 2024, to advertise, display, or offer a price for a good or service that does not include all mandatory fees or charges other than taxes or fees imposed by a government and postage or carriage charges that will be reasonably and actually incurred to ship the physical good to the consumer. (Civ. Code § 1770(a)(29)(A).)
- 5) Provides a number of exemptions to the preceding provision and declares various fees and assessments are taxes or fees imposed by a government for purposes of the statute. (Civ. Code § 1770(a)(29).)
- 6) Establishes the Unfair Competition Law (UCL), which provides a statutory cause of action for any unlawful, unfair, or fraudulent business act or practice and unfair, deceptive, untrue, or misleading advertising, including over the internet. (Bus. & Prof. Code § 17200 et seq.)

This bill:

- 1) Exempts from the provision above a mandatory fee or charge for individual food or beverage items sold directly to a customer by a restaurant, bar, food concession, grocery store, or grocery delivery service, or by means of a menu or contract for banquet or catering services that fully discloses the terms of service.

This exemption does not apply to a third-party food delivery platform, as defined.

- 2) Requires the above mandatory fees and charges to be clearly and conspicuously displayed, with an explanation of their purpose, on any advertisement, menu, or other display that contains the price of the food or beverage item.
- 3) Defines “grocery delivery service” as a company owned by, or under contract with, a grocery store or distributor that delivers food, primarily fresh produce, meat, poultry, fish, deli products, dairy products, perishable beverages, baked foods, and prepared foods, from the grocery store or distributor to a consumer.
- 4) Includes severability and urgency clauses.
- 5) Clarifies that any disclosure, advertisement, or notice that is required to be “clearly” or “clearly and conspicuously” made must have text that is “clear and conspicuous,” as defined, starting July 1, 2025.

COMMENTS

1. Pricing transparency

Junk fees artificially disrupt the balance of the market, resulting in “significant market misallocations.” “Because in a price-obscuring transaction consumers initiate purchasing decisions without knowing the actual cost, [t]ickets will not necessarily go to the consumers who value them the most.”¹

This troubling practice is particularly well-suited for government regulation as market participants are not best situated to refrain from such pricing practices if competitors are not held to account. The FTC conducted a workshop that “highlighted the inability of market participants to correct this course without intervention.” Case in point: “After a market leader took unilateral action to phase out hidden fees, the platform ‘lost significant market share and abandoned the policy after a year because consumers perceived the platform’s advertised prices to be higher than its competitors’ displayed prices.’”²

In response, SB 478 amended the CLRA making it an unlawful business practice to advertise, display, or offer a price for a good or service that does not include all mandatory fees or charges. This excluded taxes or fees imposed by a government and

¹ Federal Register, *Unfair or Deceptive Fees Trade Regulation Rule Commission Matter No. R207011* (November 8, 2022) FTC, <https://www.govinfo.gov/content/pkg/FR-2022-11-08/pdf/2022-24326.pdf>. Internet citations are current as of June 23, 2024.

² *Ibid.*

postage or carriage charges that will be reasonably and actually incurred to ship the physical good to the consumer.

2. Addressing concerns

According to the author:

SB 1524 seeks to enhance consumer protections by providing that restaurants, bars, and certain food service providers must clearly and transparently disclose all mandatory fees up-front to consumers on all menus and advertising in a clear and conspicuous manner with a description of its purpose. SB 478 (Dodd, 2023) sought to address bait and switch practices in which a business advertising a lower price only to add additional “hidden fees” during the final purchase process or revealed only upon receiving a bill. In working through implementation of the measure, potential harms have come to light in the form of lost wages and benefits provided to workers whose employers or unions have negotiated additional benefits afforded by service fees in the food service industry. In recent years, many restaurants have moved away from tipping to a service fee model to create greater equity between front and back-of-the-house employees. If service charges are eliminated and instead prices are increased – the benefit of those increases will flow disproportionately to employees that will receive higher tips – exasperating compensation inequities. Unions have bargained for service charges to supplement healthcare coverage, pension payments, and other health and welfare benefits. Elimination of service charges will upend these collectively bargained benefits, leaving workers with lost wages and other collectively bargained protections. SB 1524 codifies best practices by restaurants and certain food service providers by ensuring that any and all fees are clearly disclosed to consumers up-front so that consumers are empowered with the full and complete costs ahead of making any purchase.

This bill exempts from SB 478 mandatory fees or charges for individual food or beverage items sold directly to a customer by a restaurant, bar, food concession, grocery store, or grocery delivery service, or by means of a menu or contract for banquet or catering services that fully discloses the terms of service.

To mitigate the impact of this exemption, the bill requires mandatory fees or charges to be clearly and conspicuously displayed, with an explanation of its purpose, on any advertisement, menu, or other display that contains the price of the food or beverage item.

The federal and state constitutions guarantee equal protection under the law.³ Where discrimination is not based on a protected class, however, the classification is upheld so long as “there is a rational relationship between the disparity of treatment and some legitimate governmental purpose.”⁴ The bill’s author explains that the charges being exempted here are unique in the food service industry and therefore warrant different treatment under the law.

The law also clarifies where required disclosures, advertisements, and notices are required to be “clearly and conspicuously” made, as that term is defined.

Writing in support, the sponsor of this bill, Lieutenant Governor Eleni Kounalakis states:

In the restaurant industry, questions and concerns have been raised regarding the applicability of SB 478, as many have turned to service fees to cover costs, including benefits to employees. For example, many restaurants have moved away from a tipping model to a service fee model to create greater equity between front- and back-of-the-house employees. If service charges are eliminated and instead prices are increased – the benefit of those increases will flow disproportionately to employees that will receive higher tips – exasperating compensation inequities. Similarly, many restaurants that provide full health care and other discretionary worker benefits recapture those costs through a surcharge.

SB 1524 will bring much needed clarity to how state law applies to restaurant fees by requiring restaurants, bars, and other food service providers to clearly and conspicuously disclose any service charge, mandatory gratuity or other mandatory fee to consumers on advertisements, menus or other displays. SB 1524 strikes the right balance between strengthening transparency for consumers and providing restaurants with clarity and flexibility in how they cover their costs.

The Consumer Federation of California writes in opposition:

CFC is sympathetic to the notion of the mandatory tip and how it helps many struggling workers in the always-challenging restaurant industry. In fact, many labor unions actually collectively bargain on such matters, and those negotiations ought to be respected by the Legislature when contemplating the approach taken by this bill. Many a restaurant server has been economically disadvantaged by serving a table of 6, 8 or more diners and losing out on adequate voluntary tips at that table and also by

³ U.S. Const., 14th Amend.; Cal. Const., art. I, § 7(a).

⁴ *Heller v. Doe* (1993) 509 U.S. 312, 320.

not being able to serve other smaller tables. We urge the Legislature to seriously contemplate the needs of all union workers who may be in the scope of SB 1524 (which we again urge the authors to narrow by clarifying the issue of who is within the scope of “other food service provider[s].”

At the core of last year’s SB 478, much of CFC’s junk and hidden-fee work, and many of the initiatives of the Biden Administration is the simple concept that consumers should know with as much specificity as possible what something will actually cost before they choose whether to buy it or not. This guiding principle of being aggressively open and honest with consumers should help narrow the scope of SB 1524.

SUPPORT

Lieutenant Governor Eleni Kounalakis (sponsor)

Arrow Up Training

Barra Santos

Bavel restaurant

Bestia

Botanica Restaurant & Market

California Airports Council

California Attractions and Parks Association

California Restaurant Association

California Travel Association

Citrin Hospitality

Golden Gate Restaurant Association

Independent Hospitality Coalition

Jeff Manno Consulting, LLC

Jolie Limited Partnership

Kismet

Kismet Rotisserie

Last Word Hospitality

Saffys

San Diego County Regional Airport Authority

San Francisco International Airport

Sprout LA

State Bird Provisions, LLC

The Anchovy Bar

The Copper Room

The Lucques Group

The Progress

The Red Dog Saloon

Torrance Area Chamber of Commerce

Tri-County Chamber Alliance

UNITE HERE, AFL-CIO
UNITE HERE Local 11
Valley Industry and Commerce Association
Wine Down SF

OPPOSITION

Consumer Federation of California

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

SB 478 (Dodd, Ch. 400, Stats. 2023) *See Executive Summary and Comment 1.*

SB 537 (Becker, Ch. 805, Stats. 2023) prohibited a place of short-term lodging or an internet website, application, or other similar centralized online platform whereby rental of a place of short-term lodging is advertised or offered from advertising, displaying, or offering a room rate that does not include all required fees or charges, as provided.

AB 1904 (Grayson, Ch. 324, Stats. 2022) required financial service and product providers to clearly disclose in solicitations that the material is an advertisement and to include their name and contact information.

AB 790 (Quirk-Silva, Ch. 589, Stats. 2021) made clear that the Consumer Legal Remedies Act's prohibition on certain home solicitations of senior citizens applies to Property Assessed Clean Energy (PACE) assessments that are part of a pattern or practice in violation of PACE regulations.

AB 1556 (Friedman, Ch. 180, Stats. 2021) required, for cancelled events, that a refund be made within 30 calendar days of the cancellation; and required a ticket price at any event which is postponed, rescheduled, or replaced with another event at the same date and time be fully refunded to the purchaser by the ticket seller upon request within 30 calendar days of the refund request.

PRIOR VOTES:

Assembly Privacy and Consumer Protection Committee (Ayes 11, Noes 0)

Assembly Judiciary Committee (Ayes 12, Noes 0)

Senate votes are from a prior version of the bill.

Senate Floor (Ayes 37, Noes 0)

Senate Governmental Organization Committee (Ayes 16, Noes 0)
