

Surcharging Illegal at California Restaurants

Beginning July 1st 2024

The California attorney general's office confirmed on Tuesday that a [new California law that bans junk fees](#) will apply to surcharges at restaurants, following months of anxiety and confusion in the food industry.

Starting July 1, under SB478, California restaurants will no longer be able to charge service fees — which have become an increasingly common tool to [sustain higher wages for workers as food businesses move away from tips](#) — and must instead fold them into menu prices, the attorney general's office said. The law applies to all fees other than taxes, the attorney general's office said, including other [surcharges restaurants use to offset costs](#), such as San Francisco's ordinance requiring businesses to provide health care or credit card processing fees.

"SB 478 applies to restaurants, just like it applies to businesses across California," a Department of Justice spokesperson wrote in an emailed statement Tuesday. "The law is about making sure consumers know what they are going to pay and requires that the posted price include the full amount that a consumer must pay for that good or service."

This will have dramatic consequences for California's restaurant industry, owners said, including significant pay cuts for employees and price increases for diners. They're worried it will unravel a [movement toward more equitable pay structures](#) in an industry that's long struggled with wage disparities. The law could also spark a wave of lawsuits against restaurants, similar to the [many disability lawsuits](#) filed [under the Americans with Disabilities Act](#). Some predicted that the disruption could be enough to convince some operators to close their restaurants entirely.

It feels like the state “lit the fuse to this bomb” and is “standing back to see what happens,” said Tim Stannard of Bacchus Management Group, which operates Bay Area restaurants including Spruce in San Francisco and the Village Pub in Woodside.

“It is terrifying,” he said. “We can’t pay the wages we’re paying now unless we dramatically increase prices and hope guests actually come in and pay those prices.”

SB478 prohibits businesses from charging “junk fees,” or burying added costs to artificially lower prices, such as for concert tickets or hotel rooms. It was co-authored by the attorney general’s office and two Bay Area senators, Sen. Nancy Skinner, D-Berkeley, and Sen. Bill Dodd, D-Napa). The California Restaurant Association and Golden Gate Restaurant Association in San Francisco have been lobbying for months to clarify what the law means for the industry, from automatic service charges to private dining fees.

Stannard started personally calling the bill’s co-authors and other elected representatives weekly to get a clear answer without any success, he said.

The California Restaurant Association, which represents thousands of restaurants throughout the state, disagreed with the attorney general’s interpretation of SB478.

“This legislation was promoted as a measure that would clarify, but not expand, the scope of current law,” President Jot Condie wrote in an emailed statement. “Unfortunately, the Attorney General appears to have broader ambitions for this law than the legislators that wrote and passed it.”

Even Dodd said in a statement, emailed following this story’s publication, that “there remain open questions and varying views on the law.”

Skinner's office declined an interview request for this article. The attorney general's office is releasing a much-anticipated FAQ on the law Wednesday. Golden Gate Restaurant Association Executive Director Laurie Thomas said she hopes it will address whether there will be a delay in implementation to allow restaurants time to adjust their business models.

"This is radically changing long-acting ways of doing business," said Thomas, whose group represents San Francisco restaurants. She also owns Rose's Cafe and Terzo. "If the operators can't function, people will lose jobs. We will go back to what is perceived to be a less equitable model, the tip model."

Prominent Bay Area restaurants have made waves in recent years for replacing tips with service charges, including [San Francisco institution Zuni Cafe](#) and [Italian restaurant Che Fico](#). These fees are typically advertised on restaurants' websites, menus and receipts; reservation service OpenTable even now offers a feature that requires diners to acknowledge the restaurants' terms to book a table.

Without surcharges, restaurants will have to raise prices or absorb the cost of higher wages and local mandates. Two San Francisco restaurants whose owners have been outspoken advocates for the service charge model, Liholiho Yacht Club and Good Good Culture Club, have already made changes in part due to SB478. Liholiho reverted to tips earlier this year and Good Good Culture Club will next week, said co-owner Jeff Hanak. Both raised prices by about 8% to maintain higher wages for staff, particularly in the kitchen.

This comes during a time when both owners and consumers are already feeling the economic squeeze. In a [recent San Francisco Chronicle reader survey](#), the majority of respondents said they're already dining out less due to increased menu prices. Many also expressed frustration with service fees — some said they avoid restaurants that charge them — and that they would prefer if they were incorporated into menu prices.

"All of these added fees just make it too expensive and it seems deceiving," one reader wrote. "Tipping and additional fees upset me enough to cut back on eating [out]," wrote another.

Stannard said the 1,000 employees across Bacchus' nine restaurants could see their pay drop by as much as 25%, even if they raise prices to offset the difference. Restaurants will likely return to tips, which can fluctuate and aren't always shared with back-of-house employees such as cooks and dishwashers. He's also worried about the potential impact on private dining and catering, which typically use automatic fees and make up a third of his restaurants' business.

"You're talking about cocktails going from \$16 to \$26. I'm pretty sure that's not what they intended," he said, "but that is what's going to happen."

Owners fear the law, which allows consumers to sue businesses that continue using surcharges for at least \$1,000 in damages, could spark class-action litigation — a "death sentence" for most independent restaurants, Stannard said.

Unlike restaurants, however, food delivery platforms like DoorDash got an exception. They do not have to "include in the menu price shown to the consumer the fees it charges for providing its services," as stated in the bill text.