

Drip Pricing Exemption Isn't A Free Pass For Calif. Eateries

By **Alexandria Ruiz and Amy Lally** (July 31, 2024)

Just days before California's drip pricing ban, S.B. 478, went into effect on July 1, California Gov. Gavin Newsom signed S.B. 1524 into law.[1] The bill came just in time to relieve California bars and restaurants from the pricing and fee advertising requirements of S.B. 478.[2]

While S.B. 1524 exempts California bars and restaurants, among others, from the advertising and disclosure requirements of S.B. 478, these establishments are not entirely off the hook. It is important for businesses to know that S.B. 1524 imposes different disclosure requirements that will go into effect on July 1, 2025.[3]

S.B. 1524: The Restaurant Exemption

S.B. 1524 was enacted in response to industry and labor union concerns about the impact of S.B. 478, California's newly effective law prohibiting drip pricing — the pricing practice where an advertised price of a good or service is less than the final cost to the consumer.[4]

Origins

In 2023, after "junk fees" and pricing transparency issues gained national prominence, the California Legislature enacted S.B. 478 to amend the Consumer Legal Remedies Act to bar companies doing business in the state from advertising, displaying, or offering a price for a good or service that does not include all mandatory fees other than government-imposed taxes and fees and shipping charges.[5]

As a result of the legislation, all businesses in California, as well as any businesses targeting California consumers for the sale or lease of goods and services, were required to include any and all mandatory surcharges and fees in the total advertised price of a good or service as of July 1.[6] Stated differently, the legislation required all-in, up-front pricing whereby the first price a California consumer sees is the actual price they will pay before taxes, shipping fees or other optional charges.

The new law applied broadly, encompassing most sectors of the California economy, including e-commerce, brick-and-mortar retail, event tickets, short-term rentals, hotels and food delivery, among others. Notwithstanding the broad applicability, it was unclear whether the restaurant and food service industry ultimately would be exempted from the new requirements because of its widespread use of mandatory service fees and special surcharges to increase pay equity between front- and back-of-house employees, and to fund wages, healthcare and other discretionary benefits for employees.[7]

However, in May, California Attorney General Rob Bonta released a list of frequently asked questions clarifying that the new law would apply in full force to the restaurant and food service industry.[8]

To avoid upending the pricing and service fee model utilized by the restaurant and food



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service industry, the California Legislature mobilized to fast-track a new bill. S.B. 1524 was signed into law June 29. Since it was passed as an urgency measure, S.B. 1524 went into immediate effect just days before S.B. 478's requirements.

Requirements

S.B. 1524, as enacted, has two key components. Specifically, the legislation provides that:

- A mandatory fee or charge for an individual food or beverage item sold either (1) "directly to a customer by a restaurant, bar, food concession, grocery store, or grocery delivery service"; or (2) through "a menu or contract for banquet or catering services that fully discloses the terms of service," is exempt from the requirements of S.B. 478.[9]
- Any "mandatory fee or charge be clearly and conspicuously displayed with an explanation of its purpose on an advertisement, menu, or other display ... as of July 1, 2025." [10]

What constitutes a clear and conspicuous disclosure for purposes of this law is defined by reference to Subdivision (u) of California Civil Code, Section 1791:

"Clear and conspicuous" and "clearly and conspicuously" means a larger type than the surrounding text, or in a contrasting type, font, or color to the surrounding text of the same size, or set off from the surrounding text of the same size by symbols or other marks, in a manner that clearly calls attention to the language. For an audio disclosure, "clear and conspicuous" and "clearly and conspicuously" means in a volume and cadence sufficient to be readily audible and understandable.[11]

Impact and Insights

While the enactment of the restaurant exemption preserved the restaurant and food industry's ability to continue operating using its preferred pricing models, important questions remain as to the new disclosure requirements.

For example, what types of fee disclosure and explanation qualify as clear and conspicuous? Although it is not yet clear, at a minimum, the pricing and explanation will have to stand out or be set off from other text in the advertisement, menu or other display.[12]

Currently exempt businesses should also continue to watch for federal regulatory action — in particular, whether the Federal Trade Commission adopts its proposed rule on unfair or deceptive fees.[13] The proposed rule would apply to the restaurant and food service industry, requiring the prices of menu items to be inclusive of any mandatory fees.[14] If the FTC's proposed rule is adopted, the enactment of S.B. 1524 would only have put off changes to the industry's fee-based business model.

Conclusion

The passage of the restaurant exemption may have provided immediate relief to restaurants and similar food service entities from the advertising and pricing requirements of S.B. 478. However, as of July 1, 2025, the exemption only applies if the display and explanation of mandatory fees are clear and conspicuous. Moreover, if the FTC's proposed rule on junk

fees is adopted later this year, the relief provided by the restaurant exemption will be short-lived.

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[1] S.B. 1524, 2023-2024 Leg. (Cal. 2024), available at https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240SB1524.

[2] S.B. 478, 2023-2024 Leg. (Cal. 2023), available at https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240SB478.

[3] Cal. Civ. Code § 1770(c).

[4] S.B. 478 § 1.

[5] Cal. Civ. Code § 1770(a)(29).

[6] Id. § 1770(a)(29), (c).

[7] Unfinished Business – SB 1524, Senate Rules Committee, Office of Senate Floor Analysis, (June 26, 2024), https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202320240SB1524#.

[8] Id.

[9] Cal. Civil Code § 1770(a)(29)(D).

[10] Id. § 1770(a)(29)(D)(ii); § 1770 (c).

[11] Cal. Civ. Code § 1791(u).

[12] Id.

[13] "Trade Regulation Rule on Unfair or Deceptive Fees," 88 FR 77420 (proposed Nov. 9, 2023) (to be codified at 16 C.F.R. pt. 464), also available at <https://www.federalregister.gov/documents/2023/11/09/2023-24234/traderegulation-rule-on-unfair-or-deceptive-fees>.

[14] Id.