



**Consumer Federation of America**

June 7, 2023

Council of the District of Columbia  
1350 Pennsylvania Ave., NW  
Washington, D.C. 20004

re: **B25-0280 Workers and Restaurants are Priorities Act of 2023**

Dear Council Members:

**Consumer Federation of America (CFA) writes to oppose the above-referenced bill, as it contains language which would reward restaurants and bars for imposing a mandatory deceptive junk fee on consumers.**

CFA is a national association of over 250 nonprofit organizations that advances the consumer interest through research, advocacy, education, and service. CFA investigates consumer issues and publishes research that assists policymakers and individuals, and it advances pro-consumer legislation at the national and state levels. CFA has engaged in advocacy work in the nationwide fight against junk fees with the Federal Trade Commission, the Consumer Financial Protection Bureau, the Department of Transportation, and in various states considering junk fee legislation.

The problematic language in B25-0280 relates to the imposition of a service charge by a restaurant or bar. The bill would incentivize restaurants and bars to impose a mandatory fee of up to 22% on consumers for purchasing and consuming food and beverages at a restaurant with no explanation and minimal disclosure. Residents of the District are already openly frustrated about restaurants charging deceptive fees.<sup>1</sup> The Council should reject such a blatant industry attempt to drain money from pockets of the very people supporting restaurants and keeping them afloat during difficult economic times.

The D.C. Attorney General's Office has also expressed concern about the complaints and questions it receives from D.C. consumers about the deceptive and confusing nature of restaurant fees, prompting a Consumer Alert.<sup>2</sup> Instead of empowering the District's consumer protection enforcement agency to effectively fulfill its role to protect consumers from a demonstrated problem, this bill would give restaurants and bars the ability to escape any consumer protection liability for the imposition of this junk fee.

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<sup>1</sup> <https://www.wusa9.com/article/news/investigations/what-to-do-about-unexpected-restaurant-fees-dc-attorney-general-warning/65-b8ac01af-2a8f-4ea1-9f2e-479994321378>

<sup>2</sup> <https://oag.dc.gov/release/consumer-alert-dc-restaurants-are-barred-charging>

The language in the bill is anti-consumer and should be rejected for several reasons:

1. **The bill provides explicit incentives to impose a mandatory service charge.** This bill creates incentives in the wrong direction. It would reward restaurants and bars for charging this junk fee by allowing them to avoid any liability under the D.C. Consumer Protection Procedures Act (CPPA) for an issue about which the Attorney General’s Office has already expressly voiced concern. *See* lines 46-50. Legislation should not be used as an escape route for illegal conduct. It would also reward the imposition of this junk fee by exempting these amounts from gross receipts which would otherwise be taxable by the District. *See* lines 58-60. Finally, the bill defines “service charge” as a mandatory charge, meaning that each of these rewards are available to the restaurants and bars when they do not allow a consumer to opt out of paying these fees. *See* line 54. Instead of restaurants competing to provide quality food and services at fair prices for consumers, this language creates a race to the top by raising prices and punishing restaurants who do not charge this junk fee.
2. **The bill does not require clear disclosure or explanation of the service charge.** It would be difficult to craft language which does less to inform consumers about a 20% fee under the guise of a requirement to “advise” them of the charge. The weak provisions of this bill would permit restaurants and bars to impose the service charge if they advise consumers about the charge:
  - a. Verbally – creating numerous opportunities for misunderstanding, frustration and confusion,
  - b. By signage in the establishment “reasonably visible upon entry” – without any guidance about what information the sign must include, how to accommodate restaurant patrons with visual disabilities or impairments, or regarding the size or placement of the sign, or
  - c. On the “website” of the establishment – permitting restaurants and bars to hide this information in fine print or terms and conditions of the website.

There are no actual safeguards in place to effectively advise consumers about the nature and amount of the service charge, that it is mandatory, what it is being used for, and why it is being imposed. Residents of the District **already ask all of these questions** about restaurant fees, and this bill would only serve to amplify this frustration and confusion by providing blanket permission and encouragement to impose a mandatory fee. Contrast this with the FTC’s position about how to disclose information to consumers. The FTC utilizes a multi-pronged test to ascertain whether a business has effectively disclosed certain required terms to consumers, evaluating the syntax, accompanying text, whether the disclosure is unavoidable, whether it is contradicted or mitigated by other information in the disclosure, and other factors.<sup>3</sup> The language in this bill gives no credence to any of these factors, undoubtedly resulting in an opaque decision making process for consumers.

3. **The fee itself is deceptively named and structured.** The term “service charge” implies that the fee is being used for something very different than what the bill intends to

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<sup>3</sup> Federal Trade Commission Business Blog “Full Disclosure” (Sep. 23, 2014), available at <https://www.ftc.gov/business-guidance/blog/2014/09/full-disclosure>.

encourage and incentivize. A 20% service charge that is to be used “for the base wages of the employees” is intentionally structured to look like a tip and garner less objection from consumers. This is a standard amount that restaurant patrons typically pay as a tip to servers who depend on these tips for income. However, the “base wages of employees” are not the same as tips, and seeing this fee is likely to affect how a consumer spends their money, including whether to leave a tip and in what amount. Without any explanation to consumers about what the service charge is used for, and without more clear requirements about how restaurant workers are to be paid using the revenues, this language should be viewed with great skepticism. It is likely to cause consumer confusion and affect spending habits while providing almost no information about the fee itself.

Multiple federal agencies and President Biden have expressed a desire to rein in the imposition of junk fees such as this one. The Federal Trade Commission recently published an advance notice of proposed rulemaking regarding unfair and deceptive fees, and it defined junk fees as:

“[U]nfair or deceptive fees that are charged for goods or services that have little or no added value to the consumer, including goods or services that consumers would reasonably assume to be included within the overall advertised price.”<sup>4</sup>

The service charge at issue in this bill provides little value to consumers, and in fact will only serve to increase overall prices to consumers. Even worse, it significantly rewards restaurants and bars for making this fee mandatory while eliminating the consumer’s ability to make an informed choice – or any choice at all – about whether to pay it. Patrons of restaurants and bars in the District deserve to have more information about how to spend their hard earned money, not be subject to more fees with less transparency.

We urge you to reject this bill. Please do not hesitate to contact me directly should you have any questions.

Sincerely,



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<sup>4</sup> Federal Trade Commission, Unfair and Deceptive Fees Advance Notice of Proposed Rulemaking, 87 Fed. Reg. 67413 (Nov. 8, 2022), available at <https://www.regulations.gov/document/FTC-2022-0069-0001>.