



# Fee Transparency: What You Need To Know

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Presented By:  
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## Presenter: Robert V. Schnitz

Rob has broad experience and deep knowledge in the areas of hospitality law, labor and employment law, internal investigations and commercial law and leads KCO's Hospitality Group. Prior to joining KCO Rob spent 22 years at Hyatt Hotels Corporation, including serving as Senior Vice-President and Associate General Counsel overseeing legal support for global operations and providing counsel to the senior leadership team. Rob's experience also includes labor and employment law, negotiating complex commercial contracts, privacy, corporate governance, litigation, public relations, crisis communications, enterprise risk management, mergers and acquisitions, franchise matters, government affairs and business torts. Rob also serves as General Counsel to the National Domestic Violence Hotline and teaches a class on Hospitality Law at DePaul University.

Prior to his time at Hyatt, Rob was a partner at a national labor and employment law firm, where he worked primarily out of their Southern California offices and focused his practice on employment litigation including wrongful discharge and wage and hour class action matters, internal investigations and traditional labor disputes.

Rob graduated from Loyola University of Chicago Law School and received his undergraduate from Northwestern University.

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### Practice Areas

- Hospitality Law
- Labor Relations and Employment Litigation
- Complex Commercial Contracts and Transactional Support
- Internal Investigations

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- You should contact an attorney to obtain advice with respect to any particular legal matter.
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# Claimer

- The presentational should be informative and provide a good explanation of the recent fee transparency legislation in California and how it impacts the hotel industry.

# New California Laws Impacting Pricing in the Hotel Industry

## **AB 537** and **SB 478**

- Passed October 2023
- Effective July 1, 2024

## **AB 537** is much narrower than **SB 478**

- Both laws fundamentally change how pricing in the industry must be displayed/presented by California businesses and to California consumers
- Shift from “Disclose, Disclose, Disclose” to Total Price (almost)

# Things We Will Cover Today

What does each law require?

What are the remedies?

Specific pricing issues

- Room rate display
- Event/catering contracts
- Menus and service charges
- Room service
- Other charges – spas, health clubs, equipment rental, business center, beach/pool services

The reach of each law

- Out of state properties
- Business vs. personal
- Public vs. non-public

# AB 537 – What it Requires

## CA Business & Professions Code Section 17568.6

(a) (1) A place of short-term lodging, an internet website, application, or other similar centralized platform, or any other person shall not **advertise, display, or offer** a room rate, as defined in Section 17561, that does not include **all fees or charges required** to stay at the short-term lodging **except** taxes and fees imposed by a government on the stay.

(2) A place of short-term lodging, an internet website, application, or other similar centralized platform, or any other person shall **include in the total price to be paid, before the consumer reserves the stay, all taxes and fees imposed by a government** on the stay.

# AB 537 – What is Covered?

## Section 17568.6

(d) This section shall apply to any advertising, display, or offer **before the public in this state**, or from this state before the public in any state.

# AB 537 – What are the Remedies?

## Section 17568.6

**(e) (1)** A person that knew or should have known that it has advertised, displayed, or offered a room rate in violation of this section shall be subject to a civil penalty not exceeding ten thousand dollars (\$10,000) for each violation.

**(2)** An action to enforce this section may be brought by a city attorney, district attorney, county counsel, or the Attorney General.



# SB 478 – What it Requires

## **Amends the California's Consumer Legal Remedies Act (CLRA)**

Section 1770 of the Civil Code is amended to read:

**1770. (a)** The unfair methods of competition and unfair or deceptive acts or practices listed in this subdivision 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:

# SB 478 – What it Requires

**(29)(A) Advertising, displaying, or offering** a price for a good or service that does not include **all mandatory fees or charges** other than either of the following:

**(i)** Taxes or fees imposed by a government on the transaction.

**(ii)** Postage or carriage charges that will be reasonably and actually incurred to ship the physical good to the consumer.

# SB 478 – What it Requires

(20) **Advertising** that a product is being offered at a **specific price plus a specific percentage of that price** unless (A) **the total price** is set forth in the advertisement, which may include, but is not limited to, shelf tags, displays, and media advertising, **in a size larger** than any other price in that advertisement, and (B) the specific price plus a specific percentage of that price represents a markup from the seller's costs or from the wholesale price of the product. This subdivision shall not apply to in-store advertising by businesses that are open only to members or cooperative organizations organized pursuant to Division 3 (commencing with Section 12000) of Title 1 of the Corporations Code if more than 50 percent of purchases are made at the specific price set forth in the advertisement.

# SB 478 – What is Covered?

## As used in this title:

(a) “Goods” means tangible chattels bought or leased for **use primarily for personal, family, or household purposes**, including certificates or coupons exchangeable for these goods, and including goods that, at the time of the sale or subsequently, are to be so affixed to real property as to become a part of real property, whether or not they are severable from the real property.

(b) “Services” means work, labor, and services for **other than a commercial or business use**, including services furnished in connection with the sale or repair of goods.

(c) “Person” means an individual, partnership, corporation, limited liability company, association, or other group, however organized.

(d) “Consumer” means an individual who seeks or acquires, by purchase or lease, any goods or services **for personal, family, or household purposes**.

# SB 478 – What are the Remedies?

## **Section 1782:**

30 days prior to filing a lawsuit

- Send notice of the particular alleged violations
- Demand that the person correct, repair, replace, or otherwise rectify the goods or services alleged to be in violation

No action can be brought if “appropriate” correction, etc. has been provided within 30 days of notice.

Otherwise, a party may bring a lawsuit, including a class action, and an action to enforce this section.

# SB 478 – What is the Intent?

**Section 1.** The Legislature finds and declares all of the following:

(a) This act is intended to specifically prohibit **drip pricing**, which involves advertising a price that is less than the actual price that a consumer will have to pay for a good or service.

• • •

(c) This act is not intended to prohibit any particular method of determining prices for goods or services, including algorithmic or dynamic pricing. This act is intended to regulate how prices are advertised, displayed, or offered.

**NOTE:** Existing Advertising and Deceptive Trade Practice Laws also apply.

# Out of State Businesses

**Question:** Is the advertising, display or offer of the price of a good or service to a consumer in California by a property located outside of California covered by SB 478?

**Answer:** Favorite lawyer answer, and least favorite client answer, "It depends."

- Unlike AB 537 which specifically limits scope to room rates by California properties or directed to the public in California, SB 478 does not limit its application other than by focusing on a consumer

# Out of State Businesses

**Legal Issue:** Is there sufficient contact between the out of state property and the California consumer to establish personal jurisdiction in the California courts under the California Consumer Legal Remedies Law?

- Fact driven analysis:
  - ✓ Online offers vs. F&B outlet menu prices
  - ✓ What is the amount of contact?
  - ✓ Where does the transaction take place?
  - ✓ Where does the potential harm occur?
- Case law



# What is a Mandatory Fee or Charge under these Laws?

Any charge or fee in addition to the price of a good or service that is required in order to purchase that good or service, other than those mandated by a governmental entity. For example:

- Resort and destination fees
- Service charges, administrative fees, mandatory gratuity, health care surcharge, minimum wage offset.

Non-mandatory fees/charges include: contingent fees such as damage deposits, smoking fees; parking, bag check, voluntary gratuity.

# Room Rates

**AB 537:** Where does the hotel advertise, display or offer room rates to the public in California and from California to the public in another state?

**AB 478:** Where does the hotel advertise, display or offer room rates (prices) to a consumer?

- Online
- Telephone
- Email
- Front desk
- Contracts

# Price Display – Not Quite Right



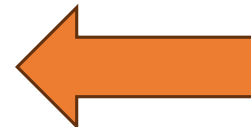
1 King Bed

A luxurious 350 square foot room with floor-to-ceiling windows offering panoramic city views...

[Room Details](#)

Standard Rate \$300  
Plus \$30 Resort Fee

SELECT & BOOK



# Price Display – All Mandatory Fees Included in Price



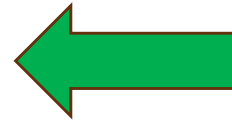
1 King Bed

A luxurious 350 square foot room with floor-to-ceiling windows offering panoramic city views...

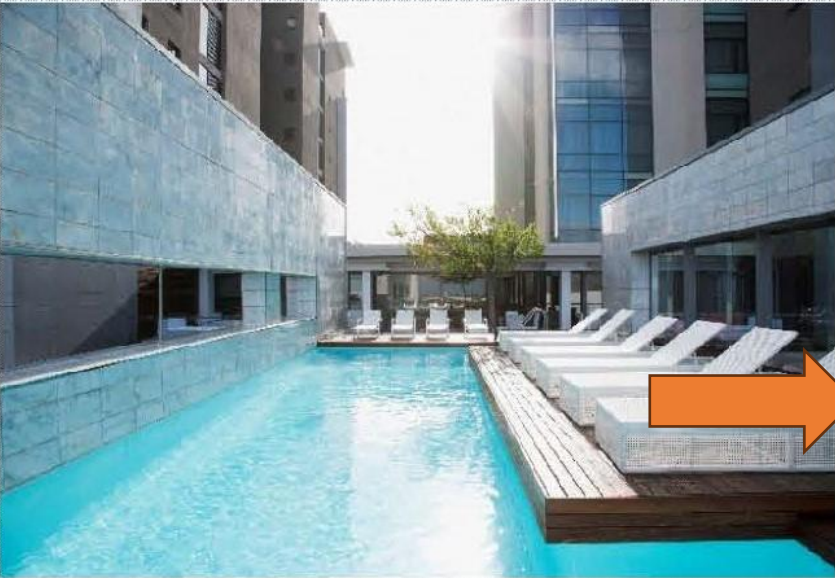
[Room Details](#)

Standard Rate \$330  
(Includes \$30 Resort Fee)

SELECT & BOOK







# Initial Price Display – Old/New?



Hotel Schnitz

★ 4.8 (3140) | Award Category 4 | 1.5 mi

Rates from:

**\$259** Avg/Night

[HOTEL WEBSITE](#) [VIEW RATES](#)

An orange arrow points from the pool area in the image to the price display.



# Initial Price Display – New



**Hotel Schnitz**

★ 4.8 (3140) | Award Category 4 | 1.5 mi



Rates from:  
**\$289** (includes \$30 Destination Fee)

[HOTEL WEBSITE](#) [VIEW RATES](#)

# At Booking: Total Cost – Not Quite Right

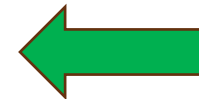
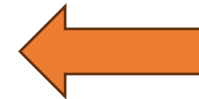
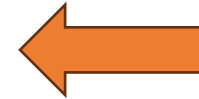
## Price Summary

1 Night Stay	\$300.00
Wed, Aug 28	\$300.00
Taxes & Fees	\$80.00
DESTINATION FEE	\$42.00
DEST FEE TAX	\$5.00
OCCUPANCY TAX	\$32.00
TMD ASSESSMENT	\$6.00
CA TOURISM FEE	\$1.00

[Hide Price Details ^](#)

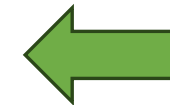
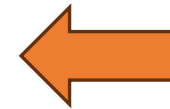
Total Cost Per Room\* \$466.00

\*Changes in taxes or fees will affect the total price.



# At Booking: Total Price and Room Rate w/ Mandatory Fees

<b>Price Summary</b>	
1 Night Stay	<b>\$342.00</b>
(incl. Dest. Fee \$42)	
Wed, Aug 28	\$342.00
Taxes & Fees	80.00
DEST FEE TAX	\$5.00
OCCUPANCY TAX	\$32.00
TMD ASSESSMENT	\$6.00
CA TOURISM FEE	\$1.00
<a href="#">Hide Price Details ^</a>	
<b>Total Cost Per Room*</b>	<b>\$466.00</b>
*Changes in taxes or fees will affect the total price.	





# Government Mandated Taxes and Fees

Government mandated taxes and fees can be excluded from pricing under AB 537 and SB 478 but must be included in the final price before booking a room under AB 537.

Mandated means mandated by a governmental entity

- If property is not required by law to implement a fee, then it is not a “mandatory” tax or fee.
- Local marketing funds that are optional are not mandatory even if they are government operated or required as part of an association membership
- Fees to offset health costs, wages and other costs are not government mandated fees. They are property mandated fees.

# Catering, Event, Rooming Agreements

**Key Question:** Is the agreement between the property and a “consumer”?

A consumer means “an individual who seeks or acquires, by purchase or lease, any goods or services for **personal, family, or household purposes.**”

Commercial and business purposes are excluded

Personal events: weddings, graduation or retirement party, quinceañera, bar/bat mitzvah, friend’s getaway

- Meeting planner involved?

# Catering, Event and Rooming Agreements

What are the mandatory fees connected to price of another item in an agreement?

- Service Charge
- Gratuity
- Meeting Room rental

# Menus

## **Mandatory Gratuity/Service Charge**

- Mandatory charges for service, to offset costs, or other purposes, must be included as part of individual pricing
  - Flat fees vs. percentages
- Large parties: “Gratuity of 18% added to parties of six or more”
  - Pricing for parties of six or more must include the mandatory charge on a per item basis
    - ✓ Separate menu for parties of six or more?
    - ✓ If so, consider including notice of mandatory gratuity for larger parties on both menus

# Room Service

**Question:** Are service or delivery charges considered mandatory fees to purchase F&B and therefore must be included in pricing?

- It's a bit unclear based upon CA Attorney General guidance
- Flat fees vs percentage charges, e.g., delivery fee vs. service charge
- Is pick-up option offered?
- Is room service a separate menu?

# Other Hotel Related Pricing

Where does the property specify pricing for any goods or services?

Examples:

- Spa
- Health Clubs
- Equipment Rental
- Beach/Pool Services
- Business Center

Are there any mandatory fees connected to the pricing?

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# Questions?

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