

DELMORE ♦ GREENE

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Hospitality Law Update

Paul J. Delmore

619-702-4334

pdelmore@delmoregreene.com

Elizabeth Donovan

619-702-4322

edonovan@delmoregreene.com

Ross M. Poole

619-702-4307

rpoole@delmoregreene.com

CALIFORNIA SENATE BILL 478

California Senate Bill 478 amends California's Consumers Legal Remedies Act (CLRA) to generally ban so called "junk fees" beginning July 1, 2024. SB478 expressly purports to ban an "advertisement price that is less than the actual price that the consumer will have to pay for a good or service."

With this amendment, it will be considered an unfair or deceptive act to advertise or offer goods at a published price that does not include all mandatory fees or charges other than "taxes and fees imposed by a government" and "reasonably and actually incurred" postage or shipping charges. This new law is designed to increase transparency for consumers by eliminating mandatory fees, such as service fees and surcharges. The law is expansive and reaches any company conducting any meaningful activity in California. The available remedies are significant, including a penalty of \$1,000 per violation, restitution, and attorney's fees. This creates lucrative incentives for plaintiffs to file class action lawsuits alleging violations of the law.

At this point, there is some uncertainty as to whether fees such as surcharges and service charges, including large party service fees, will be banned altogether, or whether more conspicuous disclosures of such fees will be sufficient to comply. The California Attorney General's Office is expected to publish guidelines clarifying what exactly the law prohibits prior to July 1st. For now, it appears large party service fees are covered by the law, and prohibited. If the guidelines indicate that surcharges are banned altogether, companies will need to include the total amount of the goods or service in the advertised price. For example, if a particular menu item costs \$20 and you wish to include a 5% surcharge on the meal, the quoted price of the menu item must be increased to \$21 to incorporate the service fee into the advertised price. Of note, the law does permit food delivery platforms to list menu prices that do not include service fees.

The purpose of this new law is to prevent deceptive advertising practices, not to prevent businesses from charging service fees, or fees that function as gratuities. Therefore, businesses remain free to charge fees, provided those fees are adequately disclosed before the patron's bill comes to the table. That means that any charges should be disclosed on all in-store and online menus in clearly readable font.

As with any claim brought under the CLRA, in order to recover damages, a consumer must notify the business of the alleged violation and ask the business to correct the violation before they are permitted to file a lawsuit. The business then has 30 days to remedy the violation. Thus, if you receive a notice from a consumer, you should act quickly to address it.

We await clarification from the Attorney General's Office regarding guidelines for compliance, but wanted to make you immediately aware of the new law so you may plan accordingly.

Downtown San Diego

600 West Broadway, Fourth Floor
San Diego, CA 92101

www.delmoregreene.com