

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2023-2024 Regular Session**

SB 1424 (Glazer)  
Version: February 16, 2024  
Hearing Date: April 23, 2024  
Fiscal: Yes  
Urgency: No  
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**SUBJECT**

Hotel and private residence rental reservations: cancellation: refunds

**DIGEST**

This bill expands existing law requiring a minimum cancellation window for reservations for lodging located in California to reservations for lodging advertised in California.

**EXECUTIVE SUMMARY**

In recent years, rates at hotels and other short-term lodging have risen steadily. While this occurs, cancellation policies at these lodging establishments have gotten progressively stricter, a stark departure from traditionally lenient cancellation policies. With the transition to mostly online booking and the troubling practice of drip pricing, consumer unfriendly cancellation policies are particularly problematic.

Last year, SB 644 (Glazer, Ch. 718, Stats. 2023) was passed setting an extremely modest floor for cancellation policies. It requires hosting platforms, hotels, third-party booking services, and short-term rentals to provide consumers at least a 24-hour cancellation window after booking if the reservation is made more than 72 hours before the time of check-in. Any attendant refunds must be returned to the original form of payment, as specified.

This bill simply expands the scope of the existing law to cover not only lodging located within California, but also for properties that are simply advertised in California.

This bill is author-sponsored. No support has been received. The bill is opposed by industry members and coalitions, including Airbnb and Expedia Group.

This bill previously failed passage in this Committee on a vote of 5 to 2, but was unanimously granted reconsideration.

**PROPOSED CHANGES TO THE LAW**

Existing law:

- 1) Requires a hosting platform, hotel, third-party booking service, or short-term rental to allow a reservation for a hotel accommodation or a short-term rental located in California to be canceled without penalty for at least 24 hours after the reservation is confirmed if the reservation is made 72 hours or more before the time of check-in. (Civ. Code § 1748.81.)
- 2) Requires the attendant refund to be issued to the original form of payment within 30 days of the cancellation of the reservation. The refund shall include a refund of all fees charged to the consumer for optional services that the consumer did not use. (Civ. Code § 1748.82.)
- 3) Authorizes the Attorney General, district attorneys, and specified city attorneys and county counsel to bring an enforcement action against those in violation. The court is required to assess a civil penalty of up to \$10,000 for each violation based on various factors, including the extent and severity of the violator's conduct. Each day in violation constitutes a separate violation. (Civ. Code § 1748.83.)
- 4) Defines the relevant terms, as follows:
  - a) "hotel" means a hotel, motel, bed and breakfast inn, or other similar transient lodging establishment located in this state, but it shall not include any residential hotel as defined in Section 50519 of the Health and Safety Code;
  - b) "third-party booking service" means a person that facilitates the booking of a hotel room or short-term rental in this state;
  - c) "short-term rental" means a residential dwelling, or any portion of a residential dwelling, that is rented to a person or persons for 30 consecutive days or fewer and that is located in this state; and
  - d) "hosting platform" has the same meaning as that term is defined in Section 22590 of the Business and Professions Code. (Civ. Code § 1748.80.)
- 5) Clarifies that it does not apply to reservations meeting the following criteria:
  - a) The reservation was made for a negotiated rate that was not advertised, or otherwise made available, for booking by the general public.
  - b) The reservation is for a hotel accommodation or short-term rental reservation that was confirmed before July 1, 2024.
  - c) The reservation is one in which the specific hotel or short-term rental is not disclosed to the consumer until after the booking is confirmed. (Civ. Code § 1748.84.)

- 6) Provides that the duties and obligations imposed by it are cumulative with any other duties or obligations imposed under other law, and shall not be construed to relieve any party from any duties or obligations imposed under other law. (Civ. Code § 1748.83.)

This bill applies the above law to hotel accommodations and short-term rentals advertised in California.

## COMMENTS

### 1. Providing a floor for lodging cancellation

Last year, SB 644 (Glazer, Ch. 718, Stats. 2023) sought to address the trend toward stricter cancellation policies in the short-term lodging industry, as hotels and others look to the generous profits that can be generated by doing so. One study summarizes the issue with quantitative data:

The annual revenue of the US lodging industry from fees and surcharges has steadily increased since 2000, except for brief periods during economic recessions in the early 2000s and in 2008 (Hanson 2017). In 2001, the US hotels generated an estimated \$1 billion in fees and surcharges. This figure increased to an estimated record of \$2.7 billion in 2017 (Hanson 2017). The trend toward stricter cancellation policies in the hotel industry is an important driver of this impressive growth in fee and surcharge revenue.

Not too long ago, most hotels were allowing their customers to cancel their reservations free of charge until 4 PM, or 6 PM, on their check-in day. . . . Despite negative reactions from both leisure and business travelers, it appears that stricter cancellation policies are now becoming an industry standard without no sign of cancellation leniency in the foreseeable future.<sup>1</sup>

Given the issues of pricing transparency in the industry, this move toward stricter cancellation policies can have a serious impact on consumers. SB 644 created an extremely modest cancellation floor for hotels, short-term rentals, other lodging establishments, and booking platforms, requiring at least a 24-hour cancellation window for reservations booked at least 72 hours in advance for accommodations and short-term rentals located in California.

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<sup>1</sup> Arash Riasi, Zvi Schwartz, & Chih-Chien Chen, *A paradigm shift in revenue management? The new landscape of hotel cancellation policies* (2019) *Journal of Revenue and Pricing Management* (citations omitted), available at <https://link.springer.com/article/10.1057/s41272-019-00189-3> [as of Mar. 29, 2023].

To expand the impact of the law, this bill expands it to apply to hotel accommodations and short-term rentals advertised in California.

Given the historic leniency of allowing same day cancellation and even the current practices generally offering free cancellation several days in advance of the stay, it does not seem overly onerous to require a no-penalty 24-hour window after booking, regardless of where the property is located.

A similar consumer protection is found in the airline industry. The federal Department of Transportation promulgated regulations establishing the “Enhancing Airline Passenger Protections.” The regulation requires carriers to adopt a Customer Service Plan that complies with specified minimum standards. Relevant here, the plan must allow “reservations to be held at the quoted fare without payment, or cancelled without penalty, for at least twenty-four hours after the reservation is made if the reservation is made one week or more prior to a flight’s departure.”<sup>2</sup>

Enforcement is left to the Attorney General, district attorneys, and specified city attorneys and county counsel. Practically speaking, this means only the most egregious violators will likely be held accountable. These public prosecutors can seek a penalty of up to \$10,000 per violation.

According to the author:

Internet searches can provide a jungle of conflicting links, and consumers can easily fall into a quicksand of misleading lodging prices. Many bookings are irreversible and non-refundable with some third-party reservation sites, hotels, and short-term rentals. Last year the Legislature passed and the Governor signed, SB 644 (Glazer, 2023), a first in the nation law to protect consumers by requiring properties located in California to allow consumers to cancel for at least 24 hours as long as they booked 72 hours in advance of their stay. As a California consumer, having a guaranteed 24 hour cancellation period in-state, but not out-of-state, is confusing. Consumers will not be able to rely on the protection for all of their bookings, so just applying the protection in-state is insufficient. This bill would build upon SB 644 by allowing California consumers staying out of state to have a 24 hour period to cancel.

## 2. Regulating lodging located outside of California

Some concerns have been raised about the bill regulating lodging outside of California’s jurisdiction, including international properties.

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<sup>2</sup> 14 C.F.R. § 259.5.

Section 8 of Article I of the United States Constitution grants the United States Congress the power to regulate interstate commerce.<sup>3</sup> Since the early nineteenth century, the Supreme Court has held that inverse proposition – that states may not usurp Congress’s express power to regulate interstate commerce – must also be true.<sup>4</sup> This rule against state interference in interstate commerce, sometimes known as the dormant Commerce Clause, serves as an absolute bar to regulations that discriminate against interstate commerce, i.e., by favoring in-state businesses or excluding out-of-state businesses.<sup>5</sup> But when a state passes a law that “regulat[es] even-handedly [across all in-state and out-of-state businesses] to effectuate a legitimate local public interest,” that law “will be upheld unless the burden imposed upon such commerce is clearly excessive in relation to the putative local benefits.”<sup>6</sup>

The United States Supreme Court recently affirmed in *National Pork Producers Council v. Ross* (2023) 143 S.Ct. 1142, that the dormant Commerce Clause generally does not prohibit a state from regulating commerce within its borders, even if the prohibition affects out-of-state sellers, unless the prohibition acts to discriminate against out-of-state interests for the benefit of in-state commerce.<sup>7</sup> However, the Court also reasserted that even nondiscriminatory laws can violate the dormant Commerce Clause when they “substantially burden” interstate commerce.<sup>8</sup>

There is no facial dormant Commerce Clause issue here. This bill grants no favoritism for in-state accommodations – all companies accepting reservations for properties advertised in California are subject to the bill’s cancellation-window requirement. As to whether the bill’s mandate serves a legitimate local interest, and whether the burden imposed by the reporting requirement is clearly excessive in relation to the benefits conferred, there is clearly a legitimate local interest in protecting consumers from draconian cancellation policies that is served by the regulation at issue. The question is whether the burden imposed by the reporting requirement is clearly excessive in relation to the benefit.

Pointing to the recent Supreme Court jurisprudence in *National Pork Producers*, the author argues that the law allows for such regulation:

The Supreme Court of the United States recently reduced the commerce clause’s strength significantly. California is now more able to extend protections to its consumers booking hotel and short-term rental stays out of state. This bill will improve SB 644 by creating consistent protections

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<sup>3</sup> U.S. Const., art. I, § 8, cl. 3.

<sup>4</sup> See *Gibbons v. Ogden* (1824) 22 U.S. 1.

<sup>5</sup> E.g., *Dean Milk Co. v. Madison* (1951) 340 U.S. 349, 354.

<sup>6</sup> *South Dakota v. Wayfair, Inc.* (2018) 138 S.Ct. 2080, 2091.

<sup>7</sup> *National Pork Producers Council v. Ross* (2023) 143 S.Ct. 1142, 1152-1153 (internal quotation marks and alterations omitted).

<sup>8</sup> *Id.* at pp.1162-1163.

consumers can rely on whenever they are booking a hotel or short-term rental.

The author has committed to working with stakeholders to make the implementation more feasible, but argues that hotels, short-term rentals, and third-party websites have many methods to tell where a consumer is booking, such as IP addresses, billing addresses, and mailing addresses. Therefore, he argues implementation is not impossible.

A coalition of lodging associations and industry members, including the American Hotel and Lodging Association, argue in opposition that the bill violates the Dormant Commerce Clause because it directly regulates interstate commerce:

SB 1424 is distinct from many cases that uphold certain regulations despite their extraterritorial effects of out-of-state businesses—including the U.S. Supreme Court’s decision in *Ross*. In that case, the state laws did not directly regulate interstate commerce. Rather, they indirectly and incidentally dictated out-of-state business’ conduct if and only if those businesses wanted to participate in the California market and transact in California. In those cases (unlike here), the transactions occurred in-state, and the goods and services were delivered in-state. SB 1424 addresses commercial transactions for lodging-related goods and services outside California, and therefore, California has no authority to govern that transaction.

The bill does not make clear that reservations for properties advertised in California are only subject to the law when reserved here. To ensure sufficient connection to California, the author has agreed to an amendment that extends the existing law to cover “a reservation made in California for a hotel accommodation or a short-term rental advertised in California.” Therefore, the transaction inherently occurs here because the consumer is reserving the room within California.

Another issue that has been raised about regulating businesses outside of the state concerns whether there is a sufficient basis for exercising jurisdiction in California courts over entities who may operate properties solely outside of the state and simply advertise to Californians.

The relevant issue is whether a party bringing an action for a violation of this law against such an out-of-state defendant could establish the personal jurisdiction of the court over that defendant.

The Fourteenth Amendment to the United States Constitution limits the personal jurisdiction of state courts.<sup>9</sup> The primary focus of the determination of personal jurisdiction is the defendant's relationship to the forum State.<sup>10</sup> There are two types of personal jurisdiction: general jurisdiction, which asserts all-purpose jurisdiction over the defendant, and specific jurisdiction, which is determined by the particular circumstances of the case at hand. For these purposes, the latter is the relevant inquiry.

As the United States Supreme Court details:

In order for a state court to exercise specific jurisdiction, the suit must arise out of or relate to the defendant's contacts with the forum. In other words, there must be an affiliation between the forum and the underlying controversy, principally, an activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation. For this reason, specific jurisdiction is confined to adjudication of issues deriving from, or connected with, the very controversy that establishes jurisdiction.

In determining whether personal jurisdiction is present, a court must consider a variety of interests. These include the interests of the forum State and of the plaintiff in proceeding with the cause in the plaintiff's forum of choice. But the primary concern is the burden on the defendant. Assessing this burden obviously requires a court to consider the practical problems resulting from litigating in the forum, but it also encompasses the more abstract matter of submitting to the coercive power of a State that may have little legitimate interest in the claims in question. As we have put it, restrictions on personal jurisdiction are more than a guarantee of immunity from inconvenient or distant litigation. They are a consequence of territorial limitations on the power of the respective States.<sup>11</sup>

In the situations at issue, as the bill is proposed to be amended, a person or entity would be haled into a California court based on a reservation made by a person in California for a property advertised in this state. While the defendant may not have other contacts with the state, the case would certainly arise out of that contact and the reservation at issue would be made within the forum state. While inquiries into the assertion of specific personal jurisdiction are inherently fact specific, there is a strong case that, for instance, the Attorney General, could bring suit against a defendant in California courts for violating the statute at issue.

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<sup>9</sup> See *World-Wide Volkswagen Corp. v. Woodson* (1980) 444 U. S. 286, 291; *International Shoe Co. v. Washington* (1945) 326 U. S. 310, 316-317.

<sup>10</sup> See *Walden v. Fiore* (2014) 571 U. S. 277, 283-286.

<sup>11</sup> *Bristol-Myers Squibb Co. v. Superior Court* (2017) 582 U.S. 255, 261-63 (internal quotations and citations omitted).

Potentially instructive here is an opinion of the California Supreme Court in *Snowney v. Harrah's Entm't, Inc.* (2005) 35 Cal. 4th 1054, 1059. There a California resident filed a class action against a group of Nevada hotels for failing to provide notice of an energy surcharge imposed on hotel guests. The court found that although the hotels conduct no business and have no bank accounts or employees in California, they did advertise heavily in California and obtained a significant percentage of their business from California residents. The hotels also maintained a website and toll-free phone number where visitors or callers may obtain room quotes and make reservations. The court concluded that based on these activities, California courts were authorized to exercise personal jurisdiction over these hotels.

While this may not be dispositive in every potential prosecution of violations of this bill for properties located outside of California, it provides a solid grounding that California has a basis for enforcing this law in many scenarios.

The opposition coalition also argues that the bill opens the potential for fraud:

Basing eligibility on the location of a consumer is prone to fraud, especially for online bookings, where verification of location is difficult to manage at scale. Fraudsters could easily provide unverified California addresses or use California VPN address proxies to obtain a refund where they would otherwise not be entitled to it. SB 644 is less prone to fraud as it is easy to identify eligible bookings (those made at California properties) and process refunds to those entitled to them.

In order to allow sufficient time for the regulated entities to prepare for complying with this new change, the author has agreed to amendments to delay the effective date to July 1, 2026.

### SUPPORT

None received

### OPPOSITION

Airbnb, Inc.  
American Hotel and Lodging Association  
California Association of Boutique and Breakfast Inns  
California Attractions and Parks Association  
California Chamber of Commerce  
California Hospitality United Coalition  
California Hotel & Lodging Association  
California Travel Association  
Expedia Group



Travel Technology Association

### RELATED LEGISLATION

Pending Legislation: SB 683 (Glazer, 2023) requires a person that publicly advertises a rate for a hotel room or short-term rental in or from this state to include in the advertised rate all mandatory fees and to make certain disclosures clearly and conspicuously. It authorizes the Attorney General to bring civil actions seeking civil penalties and makes violations actionable under the UCL and FAL. SB 683 is currently on the Assembly Floor.

Prior Legislation:

SB 644 (Glazer, Ch. 718, Stats. 2023) *See* Comment 1.

AB 537 (Berman, Ch. 805, Stats. 2023) prohibits a place of short-term lodging or an internet website, application, or other similar centralized online platform whereby rental of a place of short-term lodging is advertised or offered from advertising, displaying, or offering a room rate that does not include all required fees or charges, as provided.

AB 3235 (Kansen Chu, 2020) would have prohibited a place of short-term lodging, an internet or mobile website, application, or centralized online platform from advertising a room rate that does not include all of the required fees to be paid in order to stay at the place of lodging, as specified. The bill declared that its provisions regarding fee disclosures were declaratory of existing law. The bill failed passage in the Assembly Business and Professions Committee.

### PRIOR VOTES

Senate Judiciary Committee (11, 0) Reconsideration granted

Senate Judiciary Committee (Ayes 5, Noes 2) Failed passage

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