

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

AB 2202 (Rendon)
Version: March 21, 2024
Hearing Date: June 18, 2024
Fiscal: Yes
Urgency: No
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SUBJECT

Short-term rentals: disclosure: cleaning tasks

DIGEST

This bill requires a place of short-term lodging or an internet website, application, or other similar centralized online platform to include specified disclosures in a notice to be affirmatively acknowledged by the consumer about additional fees and charges that will be added if a consumer fails to complete certain cleaning tasks and a description of those tasks, as provided.

EXECUTIVE SUMMARY

The issue of “junk” fees and other pricing schemes gained more prominence nationally when President Joe Biden took aim at them in his State of the Union address in February 2023. There are various types of pricing and charging schemes generally deemed unfair or unlawful business practices. One growing industry for price opacity is in the short-term lodging industry with the most infamous hidden charge being the “resort fee.”

This bill requires a place of short-term lodging or an internet website, application, or other similar centralized online platform to include specified disclosures in a notice to be affirmatively acknowledged by the consumer about additional fees, charges, or other penalties that will be added if a consumer fails to complete certain cleaning tasks. The notice must also include a description of those tasks and be provided before the consumer reserves the stay. The bill subjects violations to public enforcement and civil penalties of up to \$10,000 per violation.

The bill is author-sponsored. It is supported by the Consumer Federation of California and Consumer Watchdog. No timely opposition was received by the Committee.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Defines “short-term lodging” as any hotel, motel, bed and breakfast inn, or other transient lodging. It also includes a short-term rental, or a residential property that is rented to a visitor for 30 consecutive days or less through a centralized platform whereby the rental is advertised, displayed, or offered and payments for the rental are processed. (Bus. & Prof. Code § 17568.6(b).)
- 2) Prohibits a place of short-term lodging, an internet website, application, or other similar centralized platform, or any other person from advertising, displaying, or offering a room rate, as defined, 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. This applies to any advertising, display, or offer before the public in this state, or from this state before the public in any state. (Bus. & Prof. Code § 17568.6(a)(1).)
- 3) Requires a place of short-term lodging, an internet website, application, or other similar centralized platform, or any other person to 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. (Bus. & Prof. Code § 17568.6(a)(2).)
- 4) Provides that a person that knew or should have known that it has advertised, displayed, or offered a room rate in violation of the above shall be subject to a civil penalty not exceeding \$10,000 for each violation. An action to enforce this section may be brought by a city attorney, district attorney, county counsel, or the Attorney General. (Bus. & Prof. Code § 17568.6(e).)

This bill:

- 1) Requires a place of short-term lodging, an internet website, application, or other similar centralized platform, or any other person to include both of the following in a notice that is affirmatively acknowledged by the consumer, before the consumer reserves the stay:
 - a) A disclosure of any additional fees or charges that will be added to the total price to be paid to stay at the short-term lodging, or other penalty that will be imposed, if the consumer fails to perform certain cleaning tasks at the end of the stay.
 - b) An explicit description of the cleaning tasks subject to the additional fees, charges, or penalties described above.

- 2) Defines the following terms:
 - a) “Notice” means a written or electronic statement that is presented to the consumer in a font size that is at least as large as the standard or default font size of the other text in the advertisement or that is displayed on the internet website, platform, application, or other centralized platform and requires that the consumer interact with the internet website, application, or platform to affirmatively acknowledge that they have read the notice. Affirmative acknowledgment may be accomplished by including a statement in the notice that the consumer acknowledges having read the notice before the internet website, application, or platform functions to allow the consumer to reserve the stay.
 - b) “Penalty” means subjecting a consumer to inferior terms, privileges, or conditions in comparison to other consumers including, but not limited to, designating or threatening to designate the consumer as a less favorable guest, decreasing or threatening to decrease the consumer’s status with or on the short-term lodging, internet website, application, or other similar centralized platform, or hindering or barring the consumer from reserving a stay at a place of short-term lodging that would otherwise be advertised or available to the consumer to view and reserve on the internet website, application, or platform.

COMMENTS

1. Pricing transparency

In his prepared speech for his 2023 State of the Union address, President Biden took aim at so-called “junk fees”:

My administration is also taking on “junk” fees, those hidden surcharges too many businesses use to make you pay more. For example, we’re making airlines show you the full ticket price upfront and refund your money if your flight is cancelled or delayed. We’ve reduced exorbitant bank overdraft fees, saving consumers more than \$1 billion a year. We’re cutting credit card late fees by 75%, from \$30 to \$8. Junk fees may not matter to the very wealthy, but they matter to most folks in homes like the one I grew up in. They add up to hundreds of dollars a month. They make it harder for you to pay the bills or afford that family trip.

I know how unfair it feels when a company overcharges you and gets away with it. Not anymore. We’ve written a bill to stop all that. It’s called the Junk Fee Prevention Act. We’ll ban surprise “resort fees” that hotels tack on to your bill. These fees can cost you up to \$90 a night at hotels that aren’t even resorts. We’ll make cable internet and cellphone companies stop charging you up to \$200 or more when you decide to switch to

another provider. We'll cap service fees on tickets to concerts and sporting events and make companies disclose all fees upfront. And we'll prohibit airlines from charging up to \$50 roundtrip for families just to sit together. Baggage fees are bad enough – they can't just treat your child like a piece of luggage.

Americans are tired of being played for suckers.¹

As part of its rulemaking, the FTC has made the case for why government action in response to these practices is critical to protecting consumers:

Junk fees impose substantial economic harms on consumers and impede the dissemination of important market information. A Commission analysis of hotel “resort fees” that were mandatory and undisclosed in the posted room rates concluded that such fees “artificially increas[e] the search costs and the cognitive costs” for consumers carrying out the transaction. Junk fees force consumers either to accept a higher actual price for a service or product after beginning the transaction or to spend more time searching for lower actual prices elsewhere. Consumers faced with such fees pay upward of twenty percent more than when the actual price was disclosed upfront. These fee practices can be found throughout the economy but appear to be particularly widespread in markets for travel such as hotels, room-sharing, car rentals, and cruises. Tickets for live events appear to be another market with widespread junk fees.²

These fees artificially disrupt the balance of the market, resulting in “significant market misallocations.” “Because in a price-obscuring transaction consumers initiate purchasing decisions without knowing the actual cost, [t]ickets will not necessarily go to the consumers who value them the most.”³

This troubling practice is particularly well-suited for government regulation as market participants are not best situated to refrain from such pricing practices if competitors are not held to account. The FTC conducted a workshop that “highlighted the inability of market participants to correct this course without intervention.” Case in point: “After a market leader took unilateral action to phase out hidden fees, the platform ‘lost significant market share and abandoned the policy after a year because consumers

¹ *Remarks of President Joe Biden – State of the Union Address as Prepared for Delivery* (February 7, 2023) The White House Briefing Room, <https://www.whitehouse.gov/briefing-room/speeches-remarks/2023/02/07/remarks-of-president-joe-biden-state-of-the-union-address-as-prepared-for-delivery/>. All internet citations are current as of June 12, 2024.

² Federal Register, *Unfair or Deceptive Fees Trade Regulation Rule Commission Matter No. R207011* (November 8, 2022) FTC, <https://www.govinfo.gov/content/pkg/FR-2022-11-08/pdf/2022-24326.pdf>.

³ *Ibid.*

perceived the platform's advertised prices to be higher than its competitors' displayed prices.'"⁴

2. Bringing pricing transparency to the short-term lodging industry

While the Biden Administration has clearly declared war with hidden fees at the federal level, a host of bills have been introduced, with some signed into law, in the California Legislature this session to combat these deceptive practices at the state level.

One bill, SB 425 (Dodd, Ch. 400, Stats. 2023) made it an unlawful business practice to advertise, display, or offer a price for a good or service that does not include all mandatory fees or charges, except as provided or exempted.

Another bill, AB 537 (Berman, Ch. 805, Stats. 2023), targeted short-term lodging. It specifically addressed the practice of offering certain rates that do not include all attendant fees and charges, commonly referred to as *drip pricing*. The Federal Trade Commission (FTC) defines drip pricing as a "pricing technique in which firms advertise only part of a product's price and reveal other charges later as the customer goes through the buying process. The additional charges can be mandatory charges, such as hotel resort fees, or fees for optional upgrades and add-ons."⁵

This bill builds off of this law and targets the sometimes hidden cleaning fees associated with short-term rentals.

According to the author:

Transparency helps California's consumers make informed choices when it comes to short-term vacation rentals. Current California law requires that taxes and fees need to be outlined in advance to consumers. But cleaning requirements, meaning tasks they are asked to complete before they checkout, remain unclear and unregulated. By requiring that short-term vacation rentals disclose requested cleaning duties in advance, as opposed to upon arrival at the vacation home, we can ensure consumers have the information they need to make a truly informed choice about their short-term vacation rentals.

This bill requires a place of short-term lodging or an internet website, application, or other similar centralized online platform to provide consumers a clear notice before the consumer reserves the stay. The notice must disclose any additional fees, charges, or penalties that will be added or imposed if the consumer does not complete certain

⁴ *Ibid.*

⁵ *The Economics of Drip Pricing*, FTC, <https://www.ftc.gov/news-events/events/2012/05/economics-drip-pricing>.

cleaning tasks at the end of the stay. The notice must also include an explicit description of what those cleaning tasks are. To ensure the consumer is adequately warned of the cleaning requirements, and the attendant consequences for failing to perform them, the consumer must affirmatively acknowledge having received and read the notice.

As it adds to the statute established by AB 537, persons who knew or should have known their advertisement, display, or offer of a room rate was in violation of the law are subject to a civil penalty of up to \$10,000. The Attorney General, district attorneys, city attorneys, and county counsel are authorized to prosecute such actions.

The Consumer Federation of California and Consumer Watchdog write in support:

Current legislation mandates the upfront disclosure of all taxes and fees associated with short-term vacation rentals once dates are selected. However, cleaning requirements, meaning the tasks consumers are often required to complete during their stay at a short-term vacation rental, remain largely unregulated. Many consumers have complained about booking vacation rentals, paying the required cleaning fees (which are often outrageous), and arriving at the rental only to find a laundry list of additional cleaning duties they must complete - duties not disclosed to them in advance. This system unduly burdens consumers and reeks of "double paying," which appears to be an unfair business practice under California law.

California's consumers deserve greater transparency when it comes to what duties they are being asked to complete at short-term vacation rentals. AB 2202 will solve this issue by increasing transparency for consumers and requiring that all cleaning tasks that a renter is asked to complete before leaving a short-term vacation rental property be prominently disclosed prior to rental. It also will require that any penalty for not completing these tasks, including a drop in your guest review, be disclosed prior to booking.

SUPPORT

Consumer Federation of California
Consumer Watchdog

OPPOSITION

Airbnb
Booking Holdings
Expedia Group
Travel Technology Association

RELATED LEGISLATION

Pending Legislation: SB 683 (Glazer, 2023) requires advertised rates for hotel rooms and short-term rentals to include all mandatory fees in their advertising and that hotels and short-term rentals provide clear pricing disclosures, all subject to public enforcement. SB 683 is currently on the Assembly Floor.

Prior Legislation:

SB 425 (Dodd, Ch. 400, Stats. 2023) *See Comment 2.*

AB 537 (Berman, Ch. 805, Stats. 2023) *See Comment 2.*

PRIOR VOTES:

Assembly Floor (Ayes 65, Noes 0)
Assembly Appropriations Committee (Ayes 13, Noes 1)
Assembly Business and Professions Committee (Ayes 16, Noes 1)
