

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

AB 537 (Berman)
Version: June 15, 2023
Hearing Date: June 27, 2023
Fiscal: Yes
Urgency: No
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SUBJECT

Short-term lodging: advertising: rates

DIGEST

This bill 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 or offering a room rate, if specific travel dates are selected, that does not include all required taxes and fees.

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 schemes generally deemed unfair or unlawful business practices, but this bill specifically targets price transparency. When merchants include hidden or “junk” fees in the purchase price of goods and services after putting out a lower advertised price (“the bait”), consumers are often misled and kept from properly assessing the best prices, hindering the market, especially online.

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 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 or offering a room rate, if specific travel dates are selected, that does not include all required taxes and fees. The bill subjects violations to public enforcement.

The bill is sponsored by the Consumer Federation of California. It is supported by various consumer groups and governmental organizations, including the California State Association of Counties. The bill is opposed by various industry organizations, including the California Chamber of Commerce and the California Hotel and Lodging Association.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes the Unfair Competition Law (UCL), which provides a statutory cause of action for any unlawful, unfair, or fraudulent business act or practice and unfair, deceptive, untrue, or misleading advertising, including over the internet. (Bus. & Prof. Code § 17200 et seq.)
- 2) Establishes the False Advertising Law (FAL), which proscribes making or disseminating any statement that is known or should be known to be untrue or misleading with intent to directly or indirectly dispose of real or personal property. (Bus. & Prof. Code § 17500 et seq.)
- 3) Establishes the Consumer Legal Remedies Act (CLRA), which prohibits unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result, or which results in, the sale or lease of goods or services to any consumer. (Civ. Code § 1750 et seq.)
- 4) Provides that any consumer who suffers any damage as a result of the use or employment by any person of a method, act, or practice declared to be unlawful by Section 1770 of the Civil Code may bring an action against that person to recover or obtain any of the following:
 - a) actual damages, but in no case shall the total award of damages in a class action be less than \$1,000;
 - b) an order enjoining the methods, acts, or practices;
 - c) restitution of property;
 - d) punitive damages;
 - e) court costs and attorney's fees to a prevailing plaintiff. However, reasonable attorney's fees may be awarded to a prevailing defendant upon a finding by the court that the plaintiff's prosecution of the action was not in good faith; and
 - f) any other relief that the court deems proper. (Civ. Code § 1780(a), (e).)
- 5) Provides remedies for individuals who have suffered damages as a result of fraud or deceit, including situations involving fraudulent misrepresentations. (See Civil Code §§ 1709-1710, 1572-1573.)
- 6) Defines "room rates" as the rates at which rooms or other accommodations are rented to occupants. (Bus. & Prof. Code § 17561.)

This bill:

- 1) 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 or offering a room rate, as defined in Section 17561, if specific travel dates are selected, that does not include all taxes and fees required to stay at the short-term lodging.
- 2) Defines “short-term lodging” to mean any hotel, motel, bed and breakfast inn, or other similar transient lodging establishment in this state. “Short-term lodging” also includes a short-term rental, or a residential property located in California that is rented to a visitor for 30 consecutive days or less through a centralized online platform whereby the rental is advertised or offered and payments for the rental are securely processed.
- 3) Subjects an entity that knew or should have known that its advertising or offering violates this section 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.
- 4) Becomes operative on July 1, 2024.

COMMENTS

1. California’s consumer protection laws

The Legislature has long considered consumer protection to be a matter of high importance. State law is replete with statutes aimed at protecting California consumers from unfair, dishonest, or harmful market practices.

The UCL (Bus. & Prof. Code § 17200) provides remedies for “anything that can properly be called a business practice and that at the same time is forbidden by law.” (*Cel-Tech Communications, Inc. v. Los Angeles Cellular Telephone Co.* (1999) 20 Cal.4th 163, 180 [citations omitted].) The UCL provides that a court “may make such orders or judgments . . . as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition.” (Bus. & Prof. Code § 17203; *see also Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1146 [“An order for restitution, then, is authorized by the clear language of the [UCL.”].) The law also permits courts to award injunctive relief and, in certain cases, to assess civil penalties against the violator. (Bus. & Prof. Code §§ 17203, 17206.)

The FAL proscribes making or disseminating any statement that is known or should be known to be untrue or misleading with intent to directly or indirectly dispose of real or

personal property. (Bus. & Prof. Code § 17500 et seq.) Violators are subject to a civil penalty not to exceed \$2,500 for each violation in an action brought by the Attorney General or by any district attorney, county counsel, or city attorney. (Bus. & Prof. Code § 17536.) Similar to the UCL, the FAL provides that a person may bring an action for an injunction or restitution if the person has suffered injury in fact and has lost money or property as a result of a violation of the FAL. (Bus. & Prof. Code § 17535.)

The CLRA was enacted “to protect the statute’s beneficiaries from deceptive and unfair business practices,” and to provide aggrieved consumers with “strong remedial provisions for violations of the statute.” (*Am. Online, Inc. v. Superior Court* (2001) 90 Cal.App.4th 1, 11.) The CLRA prohibits “unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer,” (Civ. Code § 1770(a)), and prohibits conduct “likely to mislead a reasonable consumer,” (*Colgan v. Leatherman Tool Grp., Inc.* (2006) 135 Cal. App. 4th 663, 680; internal quotation marks omitted.) Among other things, the CLRA prohibits merchants from “representing that a transaction confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law,” or representing that goods “are of a particular standard, quality, or grade” when they are of another. (Civ. Code § 1770.) Consumers who are harmed by unlawful practices specified in the Act have a right of action under the CLRA to recover damages and other remedies, including actual damages; an order to enjoin the unlawful act; restitution; punitive damages; or any other relief that the court deems proper. (Civ. Code § 1780.)

2. Pricing transparency

In his prepared speech for his 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

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

This bill targets pricing for hotel rooms and short-term rentals. It specifically addresses 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.”²

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 are especially likely to cause consumer harm when they arise “without real notice, unconnected to any additional service, in an industry where advertising is essential.” Junk fees manifest in markets ranging from auto financing to international calling cards and payday loans. A 2019 poll conducted by Consumer Reports found that eighty-two percent of those surveyed had spent money on hidden fees in the previous year. The respondents cited telecommunications and live entertainment as sources of hidden fees more than any other industries.

Junk fees not only are widespread but also are growing. In various industries, fees are increasing at higher rates than the base prices of the goods or services to which they are added. For example, in higher education and hospitality, fees are increasing faster than tuition or posted room rates. After first emerging in the late 1990s, hotel “resort fees”

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 20, 2023.

² *The Economics of Drip Pricing*, FTC, <https://www.ftc.gov/news-events/events/2012/05/economics-drip-pricing>.

accounted for \$2 billion, or one-sixth of total hotel revenue, by 2015. With rising prices, fees are becoming more prevalent, allowing some businesses to raise effective prices without appearing to do so.

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.³

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.”⁴

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 perceived the platform’s advertised prices to be higher than its competitors’ displayed prices.’”⁵

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

According to the author:

Over the last few years, deceptive advertising in the short-term lodging industry has significantly increased with mandatory fees not being disclosed in advance. We have all experienced it. A consumer goes to a website, enters the dates of their stay, picks a room for a certain price, and

³ 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>.

⁴ *Ibid.*

⁵ *Ibid.*

then at the last minute fees are tacked on once most consumers have committed to the property. Worse yet, there are times when the fee is not disclosed until you arrive at your destination or even as you are leaving. It is time to take action on behalf of consumers and crack down on these hidden fees. AB 537 would prohibit hidden fees by ensuring that the advertised or offered cost of the stay be disclosed in the upfront price. Consumers should know what they are getting and the complete price when they decide when and where they want to travel.

This bill requires rates for short-term lodging to be transparent. It 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 or offering a room rate, if specific travel dates are selected, that does not include all required taxes and fees.

The bill authorizes the Attorney General, district attorneys, city attorneys, and county counsel to prosecute such actions, enabling them to seek up to a \$10,000 civil penalty where the entity knew or should have known its advertising or offering was in violation of the law. To ensure this modest consumer protection does not interfere with other existing rights, the author has agreed to include the following provision:

Amendment

Insert: "The duties and obligations imposed by this title 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."

To allow time for the industry to prepare for these requirements, the operative date is pushed out until July 1, 2024.

4. Stakeholder positions

The Consumer Federation of California, the sponsor of the bill, writes:

Deceptive advertising in the lodging industry has increased over the last few years, with many hotels, motels, and short term rentals not disclosing hidden fees up front. Across the U.S., hotels generated approximately \$3 billion from mandatory fees in 2018 alone, an 8.5% increase compared to 2017. Some hotels and alternatives to lodging establishments charge separate mandatory "resort fees" or "cleaning fees" but fail to disclose them until very late in the booking process or at final "as a way to manipulate internet searches by consumers. In some cases a cleaning fee can equal, or even exceed, the nightly rate and is not included in the advertised rate until a consumer goes to book the rental. Multiple states . .

have taken legal action on a bipartisan basis against resort fees. AB 537 will make it illegal for lodging establishment to advertise or offer a room rate that does not include all fees and taxes required to stay in the room. This bill will apply to lodging establishments, so called consolidator sites and alternatives such as Airbnb.

Although some suggest that requiring up front disclosure of taxes places California businesses at a competitive disadvantage, this is not true. Studies reveal that “consumers are not only willing to pay more when pricing is clear and transparent but also likely to accelerate their purchase”. Price transparency increases a consumers trust with the business and decreases their likelihood to search for alternatives, saving time and money. Establishing rules like AB 537 within the market is not only beneficial to the consumer but to businesses in California.

Writing in support, the California Association of County Treasurers and Tax Collectors states the need for the bill:

County Tax Collectors are responsible for collecting transient occupancy taxes (TOT); where approved by voters, those taxes apply to lodging in hotels, motels, and short-term rentals (STRS). Hotels have fixed addresses, signage, and business licenses and are audited regularly by county tax collectors to verify accurate TOT collection and remittance. Short-term rentals continue to operate in California without many statewide standard requirements regarding operations, disclosures, land use planning compliance, and tax collection.

STRs need a more transparent and robust framework, particularly in this era of explosive rates of conversion of long-term rental housing stock into short-term rentals, exacerbating our already-acute housing crisis by removing needed housing stock at a rate that is likely faster than new units are being constructed. (Anecdotally, one of the firms specializing in tracking down unregistered STRs in California noted that month over month during the pandemic, the rate of growth in the number of STRS in California was 20% per month).

Writing in opposition, Expedia Group argues:

We agree that price transparency is important for travelers, and over the years have taken a leadership position in hotel price transparency. In fact, in 2020, we started displaying the full price of the trip, including all hotel-imposed fees, so that what the traveler will pay is clearly shown at every step of the booking process, starting with the first time a traveler sees hotel prices in response to their search.

As you know, President Biden and others at the federal level are actively pursuing the issue of price transparency for consumers, including in the travel sector. While we applaud state legislators for their interest in ensuring a fair and transparent experience for travelers, a state-level approach risks creating an unworkable patchwork of differing standards across states. This is not only burdensome for platforms, but more importantly would create a confusing and challenging environment for consumers who, rather than being able to rely on a single standard for price transparency, may encounter differing models based on their location of origin or destination.

Expedia Group connects millions of travelers with hotel rooms, vacation rentals, flights, car rentals, and experiences around the world. We appreciate the intent of this legislation and share the author's interest in making sure travel is a great experience for all travelers, but respectfully urge your opposition to AB 537 in anticipation of a single Federal standard.

SUPPORT

Consumer Federation of California (sponsor)
California Association of County Treasurers and Tax Collectors
California State Association of Counties
CALPIRG
CAMEO - California Association for Micro Enterprise Opportunity
City of Santa Monica
Consumer Attorneys of California
Consumer Reports
Consumer Watchdog
County of Santa Clara
Housing & Economic Right Advocates
Older Women's League
Travelers United
Valley Industry and Commerce Association

OPPOSITION

Airbnb
California Chamber of Commerce
California Hotel & Lodging Association
California Travel Association
Expedia Group
Travel Technology Association

RELATED LEGISLATION

Pending Legislation:

SB 478 (Dodd, 2023) makes it an unlawful business practice pursuant to the Consumer Legal Remedies Act to advertise, display, or offer a price for a good or service that does not include all mandatory fees or charges other than taxes imposed by a government. SB 478 is currently in the Assembly Privacy and Consumer Protection Committee.

SB 644 (Glazer, 2023) requires a hotel, third-party booking service, hosting platform, or short-term rental to allow a reservation to be canceled without penalty if the cancellation is commenced within 24 hours of the reservation being finalized so long as the reservation is made 24 hours or more prior to the day of check-in. The bill prescribes certain procedures for issuing the attendant refunds. It authorizes public prosecutors to bring civil actions seeking civil penalties. SB 644 is currently in the Assembly Judiciary Committee.

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 in the Assembly Judiciary Committee.

SB 829 (Wilk, 2023) prohibits the operator of an entertainment facility and a primary ticket seller from entering into a contract that provides for the primary ticket seller to be the exclusive ticket seller for the operator of the entertainment facility. SB 829 is currently in the Assembly Arts, Entertainment, Sports, and Tourism Committee.

AB 8 (Friedman, 2023) requires a ticket seller to disclose to a purchaser the total price of the ticket and the portion of that price that represents any fees or surcharges. The seller must also provide a link to an internet webpage that includes certain refund requirements, as specified. AB 8 is currently in this Committee.

Prior Legislation:

AB 1904 (Grayson, Ch. 324, Stats. 2022) requires financial service and product providers to clearly disclose in solicitations that the material is an advertisement and to include their name and contact information.

AB 790 (Quirk-Silva, Ch. 589, Stats. 2021) makes clear that the Consumer Legal Remedies Act's prohibition on certain home solicitations of senior citizens applies to Property Assessed Clean Energy (PACE) assessments that are part of a pattern or practice in violation of PACE regulations.

AB 1556 (Friedman, Ch. 180, Stats. 2021) requires for cancelled events, that a refund be made within 30 calendar days of the cancellation; and requires a ticket price at any event which is postponed, rescheduled, or replaced with another event at the same date and time be fully refunded to the purchaser by the ticket seller upon request within 30 calendar days of the refund request.

SB 342 (Hertzberg, Ch. 162, Stats. 2020) makes it unlawful to register, traffic in, or use the name of a professional sports team or the names of professional sports leagues, among others, in a domain or subdomain name of a website to sell tickets in a fraudulent, deceptive, or misleading manner. It provides a private right of action to a person who suffers an economic injury as a result of such misconduct.

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:

Assembly Floor (Ayes 53, Noes 8)

Assembly Appropriations Committee (Ayes 11, Noes 3)

Assembly Judiciary Committee (Ayes 8, Noes 1)

Assembly Business and Professions Committee (Ayes 13, Noes 3)
