

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

SB 611 (Menjivar)
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Fiscal: No
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SUBJECT

Advertisement of residential rental properties

DIGEST

This bill requires certain disclosures in the advertised rates for rental properties and prohibits certain fees from being charged by landlords.

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. When merchants include hidden or “junk” fees in the purchase price of goods and services, their customers are not able to make fully informed decisions. There are various types of pricing schemes generally deemed unfair or unlawful business practices, but this bill specifically targets transparency in the rental housing context.

Just as with consumers, renters can be hit hard by hidden fees and other unknown costs related to rental housing contracts. In addition to traditional upfront costs such as first and last months’ rents and security deposits, renters are often charged application fees, “convenience” fees, pet fees or deposits, and guest-related fees. Given the scope of the housing affordability crisis already, these additional burdens on renters, especially when not expected or understood, only exacerbate the problem.

This bill seeks to address the problem by prohibiting certain add-on fees from being charged and imposes transparency requirements on advertisements for rental properties. This bill is sponsored by the Consumer Federation of California. It is supported by the California Association of MicroEnterprise Opportunity and Consumer Watchdog. It is opposed by the California Apartment Association and the California Association of Realtors who assert concerns about the practicability of the provisions.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Provides that if a lessee of real property remains in possession thereof after the expiration of the hiring, and the lessor accepts rent from the lessee, the parties are presumed to have renewed the hiring on the same terms and for the same time, not exceeding one month when the rent is payable monthly, nor in any case one year. (Civ. Code § 1945.)
- 2) Provides guidelines for lawful notice to terminate tenancies after initial term specified by the parties. (Civ. Code §§ 1946, 1946.1.)
- 3) Requires a landlord to allow a tenant, except as provided, to pay rent and any security deposit by at least one form of payment that is neither cash nor electronic funds transfer. (Civ. Code § 1947.3.)
- 4) Makes a tenant of real property guilty of unlawful detainer if, among other things, the tenant continues in possession of the real property after giving notice of termination of a hiring of residential property for an unspecified term. (Code Civ. Proc. § 1161.)

This bill:

- 1) Provides that every landlord or its agent who advertises or provides a quote for a residential property for rent and who includes a specific or range of monthly rent rates shall include in the monthly rate any and all payments, fees, deposits, or charges required to be paid monthly. If a payment, fee, deposit, or charge is required to be paid prior to, or at the beginning of, the tenancy, then the advertisement shall include the total amount of the first month of paid rent and any and all payments, fees, deposits, or charges, including, but not limited to, an application fee, processing fee, and security deposit, required to be paid by the tenant.
- 2) Provides that in addition to the rate required to be stated above, an advertisement or quote may state separately the ongoing monthly rate after the tenant pays all one-time payments, fees, deposits, and charges.
- 3) Prohibits a landlord from charging a fee in connection with notices provided pursuant to Sections 1946 and 1946.1 of the Civil Code and Section 1161 of the Code of Civil Procedure. A landlord is also prohibited from charging tenants a fee for paying for rent or a security deposit by check.

- 4) Requires a landlord that charges a higher security deposit on a service member tenant based on the service member's history of poor credit or of causing damage to the rental property to clearly disclose the amount and the reasoning in the lease agreement. The landlord is required to refund the additional amount within six months if the tenant is not in arrears for any rent due, and that date shall also be set forth in the lease agreement.

COMMENTS

1. 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

As part of its rulemaking, the Federal Trade Commission (FTC) has made the case for why government action in response to these widespread and growing practices is

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 April 26, 2023.

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 impose substantial economic harms on consumers and impede the dissemination of important market information.”²

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 fees that face renters.

2. Addressing junk fees in the rental housing context

California is grappling with a housing affordability crisis that has left many tenant households “rent-burdened,” meaning that 30 percent or more of their income goes to the rent, and over a quarter of tenant households “severely rent-burdened” meaning that they spent over half their income on rent alone. These issues are only exacerbated when landlords tack onto already high rents, hidden or surprise fees that can push tenants over the brink.

As part of the Biden Administration’s effort to combat junk fees, the FTC solicited written comment, data, and argument concerning the need for rulemaking to prevent the imposition of certain fees on consumers. Writing in response, the National Consumer Law Center, on behalf of its low-income clients and the National Housing Law Project highlighted the need for regulation of these fees in the rental housing market:

Even before the COVID-19 pandemic, many renters struggled to find safe and stable housing, in part because of the severe affordable housing shortage. Pre-pandemic, over 20 million renter households were burdened with housing costs that threatened their financial security.³ The COVID-19 economic crisis has only exacerbated this crisis.⁴

Renters now face not only an affordable housing shortage and rising rent prices,⁵ but also a number of junk fees that they must pay to secure and

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

³ Joint Ctr. for Hous. Studies of Harvard Univ., *America’s Rental Housing* (2020), <https://www.cbpp.org/research/poverty-and-inequality/tracking-the-covid-19-economys-effects-on-foodhousing-and>.

⁴ See Andrew Aurand, et al., *The Gap: A Shortage of Affordable Homes* (2021) Nat’l Low Income Housing Coalition, https://reports.nlihc.org/sites/default/files/gap/Gap-Report_2021.pdf; see also *Tracking the COVID-19 Economy’s Effects on Food, Housing, and Employment Hardships* (2021) Center on Budget & Policy Priorities, <https://www.cbpp.org/research/poverty-and-inequality/tracking-the-covid-19-economyeffects-on-food-housing-and>.

⁵ Abha Bhattarai, *Rents are up more than 30 percent in some cities, forcing millions to find another place*

maintain housing. If a tenant ultimately cannot afford to pay these unavoidable junk fees (described in detail below), the fees may become an alleged rental debt that a housing provider seeks to collect through a third-party debt collector who reports the debt to the Big Three credit bureaus.⁶

The detailed and research-driven letter concluded with the following call to regulators:

Junk fees charged to tenants and rental housing applicants make securing and maintaining rental housing even more difficult for rent-burdened households. To help ensure renters' future ability to secure safe and affordable housing by keeping unfair debt collection off of their credit reports, we urge the CFPB to work with the FTC to investigate and prevent the imposition of unavoidable and exploitative junk fees. The CFPB and the FTC should also work together to study and address the disproportionate impact of these practices on renters and renter applicants of color.

This bill seeks to respond to this call. First, the bill requires clear transparency in connection with the advertised rates for rental properties. Specifically, landlords are required to include in advertised monthly rates any and all payments, fees, deposits, or charges required to be paid monthly. Where the payment, fee, deposit, or charge is required to be paid at the outset of the tenancy, then the advertisement must include the total amount of the first month of paid rent and any and all payments, fees, deposits, or charges, including an application fee, processing fee, and security deposit, required to be paid by the tenant. This ensures potential renters are able to understand the real costs of housing when evaluating their options. However, to ensure clarity and to reduce the amount of information required to be included, the author has agreed to an amendment that makes clear that a landlord need not itemize each fee or charge, but rather, must simply include the total maximum amount that will be charged a renter.

In addition, this bill prohibits certain fees from being charged by landlords or requires transparency when they are charged. This includes fees in connection with notices required to be provided pursuant to Civil Code sections 1946 and 1946.1, and Code of Civil Procedure 1121. These notices are in regard to the termination of a tenancy upon the expiration of an unspecified lease term and in regard to the unlawful detainer statute. The bill prohibits fees being charged in connection with the landlord providing these notices.

to live (Jan. 30, 2022) Washington Post,

<https://www.washingtonpost.com/business/2022/01/30/rentinflation-housing/>.

⁶ *Comments to CFPB on Junk Fees Charged to Tenants & Rental Housing Applicants* (Apr. 11, 2022) National Consumer Law Center & National Housing Law Project, <https://www.nclc.org/resources/comments-to-cfpb-on-junk-fees-charged-to-tenants-rental-housing-applicants/>.

Currently, landlords must give tenants the option to pay security deposits and rent by some method other than cash or electronic funds transfer. This bill prohibits a landlord from charging a fee for allowing a tenant to pay by check.

Existing law allows for security deposits to be charged at a maximum level of two times the monthly rent, unless furnished, in which case it is three times the monthly rent. Those caps are each one month lower for service members. However, if the service member has a history of poor credit or of causing damage to the rental property or its furnishings, the caps that apply generally control. This bill places an additional protection for service members, requiring clear transparency when landlords rely on this latter provision. In such cases, the lease must state the amount of the higher fee and an explanation for why the higher security deposit amount is being charged. Furthermore, the additional amount of security deposit shall be returned to the service member after no more than six months of residency if the service member is not in arrears for any rent due during that period. The date for return of the additional amount of security deposit must also be included in the lease.

According to the author:

SB 611 will force landlords to clearly state to consumers what their monthly payments will be to stay in an apartment or rental unit. The state of California has some of the most expensive rental housing markets in the United States and this bill provides transparency for consumers to help them make the best-informed decisions that can prevent future financial burdens.

Writing in opposition, the California Apartment Association (CAA) argues:

CAA agrees with the transparency required by SB 611. It is reasonable to expect that advertisements include a notice that some fees and charges are not included in the rent. There are expenses and fees that a tenant pays, however, which cannot be specifically quantified and totaled in an advertisement because those expenses and costs vary and are based on a tenant's use or a choice by the tenant who typically orders the service in their own name such as, electricity and gas, water, WIFI, cable, telephone, satellite charges, parking, and the like. Also, as allowed by law, a security deposit may also vary based on whether the tenant has good credit, poor credit, or a history of eviction, or whether the rental property owner allows pets. There are also charges that a tenant will never see so long as they pay their rent, such as late fees, attorneys' fees for service of notices, or eviction costs. These are not "junk fees" and are commonly understood by applicant-tenants. These are outlined in the lease.

We respectfully request that the bill be limited to an advertisement or quote that includes the price of rent and a statement that provides "Additional fees and charges may apply, including, but not limited to, an application fee, security deposit, utilities, and other services." The owner can then include a website or a phone number to call for more information. Fees that a tenant will never experience so long as they pay the rent, such as a late fee, are included in the lease and need not be required in a quote or advertisement

The Consumer Federation of California, the sponsor of the bill, makes the case for the bill:

As renting becomes the most "affordable" option for consumers unable to afford buying a home, junk and hidden fees have seen a staggering increasing, forcing renters to pay much more than the advertised price per month for a rental unit. From high application fees required at each potential rental location, to excessive fees for processing, convenience, administration, trash, late fees and more, fees are hidden rent increases. These junk fees render safe and decent rental housing out of reach because renters must pay them on top of exorbitant fees, jeopardizing access to future housing and financial stability. For many renters these fees can lead to debt, haunting renters long after they have vacated a housing unit - whether they left because of an eviction case or voluntarily moved out - and continuing the cycle of housing insecurity in the state.

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As these deceptive practices continue to grow across the state and country, California should stand up for consumers by ensuring that the full and true cost of a rental unit is transparently disclosed to prospective tenants prior to the signing of a lease.

SUPPORT

Consumer Federation of California (sponsor)
California Association of MicroEnterprise Opportunity
Consumer Watchdog

OPPOSITION

California Apartment Association
California Association of Realtors

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. SB 683 is currently in the Senate Appropriations 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 the Assembly Appropriations Committee.

AB 537 (Berman, 2023) prohibits a place of “short-term lodging,” which includes short-term rentals and hotels, from advertising or offering a room rate that does not include all taxes and fees required to book or reserve the short-term lodging. This prohibition extends to applications and online platforms whereby rental of a place of short-term lodging is advertised or offered. AB 537 is currently in the Assembly Appropriations 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 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.

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.
