

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

SB 644 (Glazer)  
Version: March 30, 2023  
Hearing Date: April 11, 2023  
Fiscal: Yes  
Urgency: No  
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**SUBJECT**

Business practices: hotel and private residence rental reservations: refunds

**DIGEST**

This bill requires a hosting platform, hotel, third-party booking service, or short-term rental to allow a consumer to cancel a reservation within 24 hours without penalty and to have the funds refunded to the original form of payment, as specified.

**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.

This bill sets 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 24 hours before the time of check-in. Any attendant refunds must be returned to the original form of payment, as specified.

This bill is author sponsored and supported by the Consumer Attorneys of California. The bill is opposed by a host of industry groups, including the California Travel Association and the California Chamber of Commerce.

**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 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.)
- 3) 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 the CLRA may bring an action against that person to recover or obtain specified remedies. (Civ. Code § 1780.)

This bill:

- 1) Requires every hosting platform, hotel, third-party booking service, and short-term rental to allow a reservation to be canceled without penalty for at least 24 hours after the reservation is confirmed if the reservation is made 24 hours or more before the time of check-in. The 24-hour window starts from the moment the reservation is confirmed.
- 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.
- 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.
- 4) Defines the relevant terms, as follows:
  - a) "hotel" means any hotel, motel, bed and breakfast inn, or other similar transient lodging establishment, 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 less; and
  - d) “hosting platform” has the same meaning as that term is defined in Section 22590 of the Business and Professions Code.
- 5) Clarifies that it does not apply to a reservation booked by a third party, other than a third-party booking service, on behalf of a consumer pursuant to a contract between the third party and the hosting platform, hotel, third-party booking service, or short-term rental.

### 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. These consumer-protection laws authorize consumers to enforce their own rights and seek remedies to make them whole.

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.)

## 2. Providing a floor for lodging cancellation

This bill addresses 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 travellers, 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. This bill seeks to create a cancellation floor for hotels, short-term rentals, other lodging establishments, and booking platforms. 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. Unfortunately, no state or

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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].

federal law protects consumers under these unfair circumstances. Consumers are then left vulnerable to losing their money on a reservation cannot be canceled even one minute after booking.

This bill would provide greater protections for consumers in case they inadvertently made a mistake while booking, or change their minds about where to stay. This bill would require hotels, short-term rentals, and third party booking services to allow consumers to cancel their reservation for free and receive a full refund 24 hours after booking the reservation. This bill would allow consumers to cancel within a 24 hour period as long as the reservation was made at least 24 hours prior to the day of check-in. Finally, this bill would require the refund to be issued to the consumer within at least 30 days of cancellation.

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. To ensure the method of refund does not create additional barriers for consumers, the bill requires the hosting platform, hotel, third-party booking service, or short-term rental to issue the refund to the original form of payment and to do so with 30 days of cancellation.

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. To ensure this modest consumer protection does not interfere with other existing rights, the author has agreed to include the following provision:

#### Amendment

“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.”

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<sup>2</sup> 14 C.F.R. § 259.5.

Writing in opposition, a coalition of industry groups argues:

One of the key concerns for hotels and short-term rentals is their ability to re-rent the room if the booking customer decides to refund their stay. The less time between the expiration of the 24-hour refundable period and the check-in time, the more likely that the room will not be re-rented and will remain empty.

On first glance, SB 644 appears to create a 24-hour cutoff wherein a business might be able to know what rooms are actually rented for the following day - or attempt to fill any reservations that cancelled. However, upon closer examination, the 24-hour pre-check-in period is illusory because it does not allow hotels or short-term rentals any time to actually re-rent the room.

SB 644 provides for a 24-hour refundability period so long as "the reservation is made 24 hours or more before the time of check-in". In other words: if a reservation is made at 11:59 on Thursday, and check-in is noon on Friday, the room could be refunded until Friday at 11:59...one minute before check-in. This leaves negligible time for hotels and short-term rental facilities to re-rent that room, should the potential customer cancel. We hope to discuss lengthening the pre-check-in cutoff time period with the author to return to his original draft of five days, which would effectuate his goal of refundability, while also protecting the ability of hotels and short-term rentals to re-rent rooms in the event of cancellation.

### SUPPORT

Consumer Attorneys of California

### OPPOSITION

Airbnb

Bay Area Council

California Chamber of Commerce

California Hotel & Lodging Association

California Travel Association

National Federation of Independent Business

## 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 this 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 set to be heard in this Committee the same day as this bill.

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 Senate Business, Professions, and Economic Development 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. This bill is currently pending referral in the Assembly.

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. This bill is currently in the Assembly Business and Professions Committee.

### Prior Legislation:

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.

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