

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

SB 683 (Glazer)
Version: March 30, 2023
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Fiscal: Yes
Urgency: No
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SUBJECT

Hotels and short-term rentals: advertised rates: mandatory fees

DIGEST

This bill 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.

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 much 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 hotel and short-term rental industry with the most infamous hidden charge being the “resort fee.” This bill requires advertised rates for hotel rooms and short-term rentals to include all mandatory fees, including taxes. Hotels and short-term rentals are further required to provide specified pricing disclosures. The bill subjects violations to public enforcement.

The bill is author-sponsored. It is supported by CALPIRG. The bill is opposed by 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.)

This bill:

- 1) Requires a person that publicly advertises a rate for a hotel room or short-term rental in or from this state to do both of the following:
 - a) include in the advertised rate all mandatory fees; and

- b) clearly and conspicuously disclose any credit card surcharge that will be applied in the advertised rate and in the total price displayed at the time of booking.
- 2) Requires a hotel or short-term rental to clearly and conspicuously disclose on its internet website a list of all mandatory fees and credit card surcharges imposed on consumers.
- 3) Defines the following relevant terms:
 - a) "hotel" means any hotel, motel, bed and breakfast inn, or other similar transient lodging establishment, except as provided;
 - b) "mandatory fees" means any fees, taxes, costs, or other charges that a consumer is required to pay in order to stay in a hotel or short-term rental. This does not include charges for optional services or amenities that a consumer elects to pay; and
 - c) "short-term rental" means a residential dwelling, or any portion of a residential dwelling, that is rented to a person for 30 or fewer consecutive days.
- 4) Authorizes the Attorney General, district attorneys, and specified city attorneys and county counsel to bring a civil action against any person who violates these provisions.
- 5) Requires the court to impose a civil penalty of not more than \$10,000 for each violation. In determining the amount of the civil penalty, the court shall consider all of the relevant circumstances presented by any of the parties to the case, including all of the following:
 - a) the nature and seriousness of the misconduct;
 - b) the number of violations;
 - c) the persistence of the misconduct;
 - d) the length of time over which the misconduct occurred;
 - e) the willfulness of the misconduct; and
 - f) the assets, liabilities, and net worth of the defendant.
- 6) Provides that each day that a defendant remains in violation constitutes a single violation.
- 7) Provides that violations are predicate violations for purposes of the FAL. The bill states that the penalties provided are in addition to any other civil, criminal, and administrative penalties or sanctions provided by law, and do not supplant, but are cumulative to, other penalties or sanctions.

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.) Additionally, the statute authorizes courts to award attorney's fees to prevailing plaintiffs and contains mechanisms for securing remedies on a class wide basis. (Civ. Code §§ 1780, 1781.) Consumers who are over the age of 65 are eligible to additionally seek and be awarded, in addition to the above remedies, up to \$5,000 where the trier of fact finds certain circumstances are met.

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.

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 March 13, 2023.

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” 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

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

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

According to the author:

Many industries engage in drip pricing practices that mislead consumers about the total cost of a product or service. Unfortunately, lodging has become an all-too-common industry where consumers believe they are receiving a good deal based on the “nightly” rate, and then realize at the end of the transaction, or even at check-in, that the total cost is much more expensive. Current California law already prohibits false advertising and misleading advertising practices, yet this problem persists in many industries.

There is a host of studies and evidence showing that current practices of advertising a cheaper rate, only to reveal a more expensive total rate, mislead consumers. In fact, one study from the Federal Trade Commission (FTC) found resort fees that are undisclosed in the posted room rate “artificially increase the search costs and the cognitive costs” for consumers. Other studies show that misleading pricing practices cause consumers to select more expensive products and services in general. This bill would require all lodging services, including hotels, short-term rentals, and third party booking services, to display the total cost of the stay inclusive of all extra fees, such as taxes, credit card fees, and resort fees in the advertised rate. This bill would improve consumer protections and prevent confusion by prohibiting intentionally misleading prices.

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.*

This bill requires rates for hotel rooms and short-term rentals to be transparent and requires certain clear disclosures from hotels and short-term rentals. First, any publicly advertised rate must include all mandatory fees, defined as any fees, taxes, costs, or other charges that a consumer is required to pay in order to check in to a hotel or short-term rental. Charges for additional services or amenities that are optional are not included in the definition.

Writing in opposition, the California Chamber of Commerce takes issue with the inclusion of taxes within the definition of mandatory fees:

For virtually every product that a consumer buys – from appetizers at a restaurant to groceries in the supermarket to even buying a property – taxes are not included in the initial advertised price. As a result, it is common practice in booking to display the room’s rate in initial advertisements (as set by the hotel or short-term rental, “STR”), and then to calculate taxes once the reservation’s details have been entered. This is common practice in all transactions – from restaurants to groceries to a kitchen remodel – and is not deceptive. For hotels and STRs, there are a range of governmental taxes, fees, and assessments that are industry-wide and consumers should be aware are that these additions are not necessarily the choice of the individual hotel or STR. For example, these include assessments related to improvement districts under Str & Hwy Code 36500 et seq or 36615.5, or an assessment under Government code 13995. However, SB 683 appears to outlaw this commonplace method of displaying the price as set by the hotel or STR, then adding taxes/fees once the details of the booking are selected.

The bill authorizes the Attorney General, district attorneys, and specified city attorneys and county counsel to prosecute such actions, enabling them to seek up to a \$10,000 civil penalty for each 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.”

Writing in support, CALPIRG states the need for the bill:

Consumers deserve to know what they are paying for, and how much, up front. It’s that simple. Unfortunately, many companies, including hotels, are blindsiding us with hidden fees.

More and more hotels are unbundling the cost of your stay, advertising the room price upfront and then separate, often compulsory fees at check-in for things like wifi, parking, use of the pool and health clubs, in-room safe, and the phone in your room. These additional fees, commonly called “resort fees” are often not disclosed upfront and rather charged at check-in or when you pay for your stay.

SUPPORT

CALPIRG

Consumer Attorneys of California

OPPOSITION

California Chamber of Commerce

California Hotel and Lodging 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 this 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 set to be heard in this Committee on 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. This bill 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 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.
