

[DISCUSSION DRAFT]

118TH CONGRESS
1ST SESSION

H. R. ____

To prohibit unfair and deceptive advertising of prices for hotel rooms and other places of short-term lodging, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mrs. KIM of California introduced the following bill; which was referred to the Committee on

A BILL

To prohibit unfair and deceptive advertising of prices for hotel rooms and other places of short-term lodging, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the [“_____ Act of 2023”].

SEC. 2. PROHIBITION ON UNFAIR AND DECEPTIVE ADVERTISING OF HOTEL ROOM AND OTHER SHORT-TERM LODGING PRICES.

(a) IN GENERAL.—A covered provider may not advertise, display, market, or otherwise offer for sale in interstate commerce, including through a direct offering, third-party distribution, or metasearch referral, a price of a reservation for a place of short-term lodging that does not include each mandatory fee.

(b) EXCLUSION.—Subsection (a) does not prohibit a covered provider from displaying any individual component, including any fee or tax, that is part of the total price, if such total price is transparent to and easily understood by the consumer.

(c) SAFE HARBOR.—A covered provider may not be considered to be in violation of subsection (a) to the extent that the provider is unable to comply with such subsection due to a lack of information or data from the party electing to impose a mandatory fee, following reasonable efforts to obtain the information or data.

SEC. 3. ENFORCEMENT.

(a) ENFORCEMENT BY FEDERAL TRADE COMMISSION.—

(1) UNFAIR OR DECEPTIVE ACTS OR PRACTICES.—A violation of section 2(a) shall be treated as a violation of a regulation under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)) regarding unfair or deceptive acts or practices.

(2) POWERS OF COMMISSION.—Except as provided in paragraph (3)—

(A) the Commission shall enforce this Act in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this Act; and

(B) any covered provider who violates section 2(a) shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act.

(3) PENALTIES.—

(A) ADDITIONAL CIVIL PENALTY.—In addition to any penalty applicable under the Federal Trade Commission Act, any covered provider who violates section 2(a) shall be liable for a civil penalty of not more than \$1,000,000.

(B) METHOD.—Any civil penalty described in subparagraph (A) shall be obtained in the same manner as a civil penalty for a violation of a regulation under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

(4) AUTHORITY PRESERVED.—Nothing in this section may be construed to limit the authority of the Commission under any other provision of law.

(b) ENFORCEMENT BY STATES.—

(1) IN GENERAL.—If the attorney general of a State, or an official or agency of a State, has reason to believe that an interest of the residents of the State has been or is being threatened or adversely affected by a practice that violates section 2(a), the State may bring a civil action on behalf of the residents of the State in an appropriate district court of the United States to obtain appropriate relief.

(2) RIGHTS OF COMMISSION.—

(A) NOTICE TO COMMISSION.—

(i) IN GENERAL.—Except as provided in clause (iii), an attorney general, official, or agency of a State, before initiating a civil action under paragraph (1), shall provide written notification to the Commission that the attorney general, official, or agency intends to bring such civil action.

(ii) CONTENTS.—The notification required under clause (i) shall include a copy of the complaint to be filed to initiate the civil action.

(iii) EXCEPTION.—If it is not feasible for an attorney general, official, or agency of a State to provide the notification required under clause (i) before initiating a civil action under paragraph (1), the attorney general, official, or agency shall notify the Commission immediately upon instituting the civil action.

(B) INTERVENTION BY COMMISSION.—The Commission may—

(i) intervene in any civil action brought by an attorney general, official, or agency of a State under paragraph (1); and

(ii) upon intervening—

(I) be heard on all matters arising in the civil action; and

(II) appeal a decision in the civil action.

(C) LIMITATION ON STATE ACTION WHILE FEDERAL ACTION IS PENDING.—If the Commission or the Attorney General of the United States has instituted a civil action for violation of section 2(a) (referred to in this subparagraph as the “Federal action”), no State attorney general, official, or agency may bring an action under paragraph (1) during the pendency of the Federal action against any defendant named in the complaint in the Federal action for any violation of such section alleged in such complaint.

(3) RULE OF CONSTRUCTION.—Nothing in this subsection may be construed to prevent an attorney general, official, or agency of a State from exercising the powers conferred on the attorney general, official, or agency by the laws of the State to conduct investigations, to administer oaths or affirmations, or to compel the attendance of witnesses or the production of documentary or other evidence.

SEC. 4. ONE NATIONAL STANDARD.

(a) IN GENERAL.—A State, or political subdivision of a State, may not maintain, enforce, prescribe, or continue in effect any law, rule, regulation, requirement, standard, or other provision having the force and effect of law of the State, or political subdivision of the State, that prohibits a covered provider from advertising, displaying, marketing, or otherwise offering for sale in interstate commerce, including through a direct offering, third-party distribution, or metasearch referral, a price of a reservation for a place of short-term lodging that does not include each mandatory fee.

(b) **RULE OF CONSTRUCTION.**—This section may not be construed to—

(1) preempt any law of a State or political subdivision of a State relating to contracts or torts; or

(2) preempt any law of a State or political subdivision of a State to the extent that such law relates to an act of fraud, unauthorized access to personal information, or notification of unauthorized access to personal information.

SEC. 5. DEFINITIONS.

In this Act:

(1) **COMMISSION.**—The term “Commission” means the Federal Trade Commission.

(2) **COVERED PROVIDER.**—The term “covered provider” means a provider of a place of short-term lodging, an online travel agency, or a metasearch website.

(3) **MANDATORY FEE.**—The term “mandatory fee”—

(A) means each mandatory fee that is assessed by the covered provider and paid directly by the consumer; and

(B) does not include any tax or fee imposed by a governmental or quasi-governmental entity or assessment fees of a government-created special district or program.

(4) **PLACE OF SHORT-TERM LODGING.**—The term “place of short-term lodging” means a hotel, motel, inn, short-term rental, or other place of lodging that advertises at a price that is a nightly, hourly, or weekly rate.

(5) **STATE.**—The term “State” means each of the several States, the District of Columbia, and each territory or possession of the United States.

SEC. 6. APPLICATION TO PRIOR BOOKINGS.

Section 2(a) shall apply only to a reservation for a place of short-term lodging made on or after the effective date of this Act.

SEC. 7. EFFECTIVE DATE.

This Act shall take effect on the date that is 450 days after the date of the enactment of this Act.