

Date of Hearing: June 13, 2023

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION

Jesse Gabriel, Chair

SB 644 (Glazer) – As Amended April 13, 2023

AS PROPOSED TO BE AMENDED

SENATE VOTE: 33-6

SUBJECT: Hotel and private residence rental reservations: cancellation: refunds

SYNOPSIS

In recent years, the hotel industry has moved away from its long-standing policy of allowing people to easily cancel their reservations without paying a financial penalty. According to information provided by the author, bookings for some hosting platforms, third-party reservation sites, hotels, and short-term rentals are often irreversible and non-refundable. Unfortunately, no state or federal law protects consumers under these circumstances. Consumers are then left vulnerable to losing their money on a reservation that cannot be canceled even one minute after booking.

This bill is intended to start to reverse this trend by requiring that hosting platforms, third-party reservation sites, hotels, and short-term rentals allow consumers to cancel their reservations and receive a full refund if they cancel during the first 24 hours after the booking is made.

As the bill's opponents note, the current language allows cancellations up until the time of check in, in the event someone makes a reservation 24 hours before arrival. However, this appears to be a case of potential harms caused by a few obscuring the very real benefits for the public overall. Most people make travel reservations in good faith, cancel only if something unexpected happens, and would benefit greatly from this bill. A traveler who seeks to book a room less than 24 hours in advance of when they need it is the exception, not the norm (since they run the risk of not finding a place to stay); and a room that is vacant 24 hours in advance is one that runs a risk of not being rented (in which case it would provide zero revenue regardless of cancellation).

Ultimately, given the fact that up until the last decade, travelers were generally able to cancel lodging reservations up until the time of check in and were not necessarily required to provide credit card information or put down a deposit in order to hold a room, it is reasonable to assume that returning to something that approximates that business model would not significantly impact the lodging industry.

This bill is supported by the Consumer Attorneys of California and is opposed by a number of trade associations, including the California Attractions and Parks Association, the California Chamber of Commerce, the California Travel Association, and National Federation of Independent Businesses.

If passed by this Committee, the bill will next be heard by the Assembly Judiciary Committee.

SUMMARY: Requires a hosting platform, hotel, third-party booking service, or short-term rental to allow a consumer to cancel a reservation within 24 hours of making the reservation

without penalty and to have the funds refunded to the original form of payment, as specified. Specifically, **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 refund to be issued in 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) Exempts from 1) reservations made under a negotiated rate that was not advertised, or otherwise made available, for booking by the general public.
- 4) Authorizes the Attorney General, district attorneys, city attorneys of cities with populations in excess of 750,000, county counsels of counties with populations in excess of 750,000, and full-time city prosecutors (with the consent of the district attorney) to bring an enforcement action against those in violation.
- 5) Deems each day in violation to constitute a separate violation. Requires courts to assess a civil penalty of up to \$10,000 for each violation based on various factors, including but not limited to:
 - 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.
 - f) The defendant's assets, liabilities, and net worth.
- 6) Defines the relevant terms, as follows:
 - a) "Hotel" means any hotel, motel, bed and breakfast inn, or other similar transient lodging establishment in the state, but it does not include a residential hotel, which is defined, in part, as a hotel primarily used by guests as their primary residence.
 - 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 in the state, that is rented to a person or persons for 30 consecutive days or less.
 - d) "Hosting platform" has the same meaning as that term is defined in Section 22590 of the Business and Professions Code.

EXISTING LAW:

- 1) Defines a “hosting platform” as a marketplace that is created for the primary purpose of facilitating the rental of a residential unit offered for occupancy for tourist or transient use for compensation and the operator of the platform derives revenue, including booking fees or advertising revenue, from providing or maintaining the marketplace. (Bus. & Prof. Code § 22590.)
- 2) Defines a “residential hotel” as any building containing six or more guestrooms or efficiency units which can be rented out for sleeping purposes by guests and is also the primary residence of those guests. The definition excludes any building containing six or more guestrooms or efficiency units which is primarily used by transient guests who do not occupy that building as their primary residence. (Health and Saf. Code § 50519.)

FISCAL EFFECT: As currently in print this bill is keyed fiscal.

COMMENTS:

1) **Purpose of the bill.** In recent years, the hotel industry has moved away from its long-standing policy of allowing people to easily cancel their hotel reservations without paying a financial penalty. A 2018 study published in the *Journal of Revenue and Pricing Management* noted:

Hotel cancellation policies are an integral part of the hotel revenue management policies and practices, and as such, play a crucial role in determining various aspects of the hotel business, including the ultimate goal of revenues and profits optimisation.

[. . .]

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. 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. 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 4PM, or 6 PM, on their check-in day. However, many hotel chains are now experimenting with more restrictive cancellation policies. Despite negative reactions from both leisure and business travelers, it appears that stricter cancellation policies are now becoming an industry standard without no sign of cancellation leniency in the foreseeable future. (Riasi, et al, *A paradigm shift in revenue management? The new landscape of hotel cancellation policies*, *Journal of Revenue and Pricing Management*, (Mar. 5, 2019) (citations omitted), available at <https://link.springer.com/article/10.1057/s41272-019-00189-3>.)

This bill is an attempt to address that new practice by providing a minimum level of consumer protection by allowing customers to cancel lodging reservations in California, whether made directly with the hotel or through a third party, within 24 hours of making them without paying a financial penalty.

2) **Author’s statement.** 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 federal law protects consumers under these unfair circumstances. Consumers are then left vulnerable to losing their money on a reservation that 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.

3) **What this bill does.** In order to protect consumers who are making lodging reservations in California, this bill does three things:

1. Requires hosting platforms, 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, as long as the reservation was made at least 24 hours prior to check-in.
2. Requires that the business provide a full refund issued in the original form of payment within 30 days.
3. Establishes a civil penalty that can be brought by designated public attorneys if a business fails to comply with the provisions of the bill.

4) **Author's amendments.** The author has offered amendments that endeavor to do three things:

1. Exempt non-public rates pursuant to a contract. This is meant to exclude bookings associated with a large corporate meeting or other event that was negotiated beforehand.
2. Start the 24-hour period after the reservation is confirmed more generally, rather than when the confirmation email is received. The current language does not take into consideration short-term rentals, third parties, or hotels that do not confirm via email.
3. Clarify that the bill only applies to California properties.

Specifically, the amendments make the following changes:

Amends Gov. Code § 1748.80 as follows –

(b) *(1)* “Hotel” means any a 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.~~ *establishment in this state.*

(2) “Hotel” does not include a residential hotel, as defined in Section 50519 of the Health and Safety Code.

(d) “Short-term rental” means a residential dwelling, or any portion of a residential dwelling, that is rented *in this state* to a person or persons for 30 or fewer consecutive days.

These changes clarify that this statute only applies to establishments in California.

Amends Gov. Code § 1748.81 as follows –

~~(a) A hosting platform, hotel, third-party booking service, or short-term rental shall 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.~~

~~(b) (1) If a reservation is made directly with a hosting platform, hotel, or short-term rental, the reservation shall be deemed to be confirmed when the consumer receives a confirmation email from the hosting platform, hotel, or short-term rental.~~

~~(2) If a reservation is made with a third-party booking service, the reservation shall be deemed to be confirmed when the consumer receives a confirmation email from the third-party booking service and, as applicable, from the hosting platform, hotel, or short-term rental.~~

This amendment removes the requirement that the reservation confirmation must be made through email.

Amends Gov. Code § 1747.84 as follows –

~~1748.84. This chapter 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.~~

1748.84. This chapter does not apply to a reservation made under a negotiated rate that was not advertised, or otherwise made available, for booking by the general public.

This final amendment is intended to clarify that special negotiated non-public rates, such as for large conferences, are exempt from the 24-hour requirement.

5) **Analysis.** Given the historic leniency in the lodging industry 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 cancellation window after booking. In addition, ensuring that 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 within 30 days of cancellation.

While ensuring that consumers have a 24-hour grace period when booking lodging reservations is an important and reasonable policy, often striking the right balance between consumer protections, allowing consumers to receive the best rate possible, and developing a workable policy for the lodging industry is a little more complicated. As the bill’s opponents note, the current language allows cancellations up until the time of check in, in the event someone makes a reservation 24 hours before arrival. As an example, a customer could make a reservation at

2:59 pm on a Thursday for a check in time of 3:00 on Friday and receive a full refund as long as they cancel by 2:59 pm on Friday, potentially making it difficult for a hotel or short-term rental to re-book the accommodation for that day.

That said, this appears to be a case of potential harms caused by a few obscuring the very real benefits for the public overall. Most travelers make reservations in good faith, and cancel them within 24 hours only if some unexpected event alters their plans. A family on vacation or a businessperson going to another city for work is interested in finding a place to stay that is in their budget; they generally lack the time or the motivation to game the system. A traveler who seeks to book lodging 24 hours in advance of when they need it is the exception, not the norm (since they run the risk of not finding a place to stay); and a room that is vacant 24 hours in advance is one that runs a risk of not being rented (in which case it would provide zero revenue regardless of cancellation). It is not clear that the policy in this bill should be thwarted on the basis of this scenario.

Further, this bill only provides for enforcement by the Attorney General, district attorneys, city attorneys of cities with populations in excess of 750,000, county counsels of counties with populations in excess of 750,000, and full-time city prosecutors (if they have the consent of the district attorney). These public prosecutors all have significant responsibilities. As such, it is reasonable to assume that they are only going to bring enforcement actions against large-scale offenders, such as hotel chains or widely-used internet platforms, that flout the law's protections. As such, this bill seems in keeping with efforts to steer the industry back towards more consumer-friendly practices.

Ultimately, as noted in the Senate Judiciary analysis of this bill, "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."

6) **Related legislation.** AB 537 (Berman, 2023) would prohibit 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 would extend to applications and online platforms through which rental of a place of short-term lodging is advertised or offered. This bill is currently pending referral in the Senate Rules Committee.

SB 478 (Dodd, 2023) would make 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 pending referral in the Assembly Rules Committee.

SB 683 (Glazer, 2023) would require 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 Unfair Competition Law and False Advertising Law. SB 683 is currently pending in the Business and Professions Committee.

AB 1556 (Friedman, Ch. 180, Stats. 2021) required, for cancelled events, that a refund be made within 30 calendar days of the cancellation; and required 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.

ARGUMENTS IN SUPPORT. In support of this bill and SB 683 (Glazer), the Consumer Attorneys of California writes:

These bills are a step in the right direction and will help level the playing field for businesses who are up-front about their prices by demanding transparency and a fair marketplace.

ARGUMENTS IN OPPOSITION. In opposition, a coalition consisting of the California Attractions and Parks Association, the California Chamber of Commerce, the California Travel Association, and National Federation of Independent Businesses argue that:

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.

In addition, as it relates to bundled vacation packages they raise the following concern:

For package deals, some elements of the package serve as the profit to compensate for the elements where there is a loss— as a result, separating these elements and requiring a refund of the hotel room (which may be the profitable piece of the package) poses unique financial issues. Moreover, for third-party-organized packages, the ability to work with multiple vendors to unpackage a package deal is its own issue. As a result, we are concerned that SB 644 fails to consider these difficulties, and loops these special circumstances into its one-size-fits-all provisions.

Also in opposition to the bill, Airbnb, Inc. notes:

While we understand the author's stated goal to accommodate consumers who have made a booking inadvertently, the bill, as currently drafted, would have unintended and costly consequences on short-term rental hosts throughout the state. Because last-minute cancellations impact local hosts much differently than hotels, short-term rentals should be omitted from this bill.

Unlike hotels, short-term rental hosts share their homes and often make unique preparations in advance of a guest's arrival. Hosts may relocate, hire local cleaning services, or make other arrangements to accommodate guests – like heating a pool, purchasing perishable refreshments, or making the space more kid- or pet-friendly. These are significant costs that a host cannot recoup if a listing is canceled the day before check-in is scheduled to begin.

As drafted, the 24-hour period between booking a listing and checking in for that stay does not provide adequate time for a host to rebook a listing if a last-minute cancellation occurs. In this instance, hosts would likely lose the opportunity to book a new guest, having an immediate impact on their earnings.

REGISTERED SUPPORT / OPPOSITION:

Support

Consumer Attorneys of California

Oppose unless Amended

Airbnb, INC

California Hotel & Lodging Association

Opposition

California Attractions and Parks Association

California Chamber of Commerce

California Travel Association

National Federation of Independent Business

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