

115TH CONGRESS
1ST SESSION

S. 1164

To protect consumers from deceptive practices with respect to online booking
of hotel reservations, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 17, 2017

Mr. DAINES (for himself, Mr. NELSON, Mrs. FISCHER, and Ms. KLOBUCHAR)
introduced the following bill; which was read twice and referred to the
Committee on Commerce, Science, and Transportation

A BILL

To protect consumers from deceptive practices with respect
to online booking of hotel reservations, and for other
purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Stop Online Booking
5 Scams Act of 2017”.

6 **SEC. 2. FINDINGS; SENSE OF CONGRESS.**

7 (a) FINDINGS.—Congress finds the following:

1 (1) The Internet has become an important
2 channel of commerce in the United States, account-
3 ing for billions of dollars in retail sales every year.

4 (2) Hotel reservation transactions can be easily
5 made online and online commerce has created a
6 marketplace where consumers can shop for hotels,
7 flights, car rentals, and other travel-related services
8 and products across thousands of brands on a single
9 platform.

10 (3) Consumers should be able to clearly identify
11 the company with which they are transacting busi-
12 ness online.

13 (4) Actions by third-party sellers that mis-
14 appropriate brand identity, trademark, or other mar-
15 keting content are harmful to consumers.

16 (5) Platforms offered by online travel agencies
17 provide consumers with a valuable tool for compara-
18 tive shopping for hotels and should not be mistaken
19 for the unlawful third-party actors that commit such
20 misappropriation.

21 (6) The misleading and deceptive sales tactics
22 companies use against consumers booking hotel
23 rooms online have resulted in the loss of sensitive fi-
24 nancial and personal information, financial harm,
25 and other damages for consumers.

1 (b) SENSE OF CONGRESS.—It is the sense of Con-
2 gress that—

3 (1) consumers benefit from the ability to shop
4 for travel-related services and products on the inno-
5 vative platforms offered by online travel agencies;

6 (2) sellers on the Internet should—

7 (A) provide consumers with clear, accurate
8 information; and

9 (B) have an opportunity to compete fairly
10 with one another; and

11 (3) the Federal Trade Commission should re-
12 vise the Commission’s Internet site to make it easier
13 for consumers and businesses to report complaints
14 of deceptive practices with respect to online booking
15 of hotel reservations.

16 **SEC. 3. DEFINITIONS.**

17 In this Act:

18 (1) AFFILIATION CONTRACT.—The term “affili-
19 ation contract” means, with respect to a hotel, a
20 contract with the owner of the hotel, the entity that
21 manages the hotel, or the franchisor of the hotel to
22 provide online hotel reservation services for the
23 hotel.

24 (2) COMMISSION.—The term “Commission”
25 means the Federal Trade Commission.

1 (3) EXHIBITION ORGANIZER OR MEETING PLAN-
 2 NER.—The term “exhibition organizer or meeting
 3 planner” means the person responsible for all as-
 4 pects of planning, promoting, and producing a meet-
 5 ing, conference, event, or exhibition, including over-
 6 seeing and arranging all hotel reservation plans and
 7 contracts for the meeting, conference, event, or exhi-
 8 bition.

9 (4) OFFICIAL HOUSING BUREAU.—The term
 10 “official housing bureau” means the organization
 11 designated by an exhibition organizer or meeting
 12 planner to provide hotel reservation services for
 13 meetings, conferences, events, or exhibitions.

14 (5) PARTY DIRECTLY AFFILIATED.—The term
 15 “party directly affiliated” means, with respect to a
 16 hotel, a person who has entered into an affiliation
 17 contract with the hotel.

18 (6) THIRD-PARTY ONLINE HOTEL RESERVATION
 19 SELLER.—The term “third-party online hotel res-
 20 ervation seller” means any person that—

21 (A) sells any good or service with respect
 22 to a hotel in a transaction effected on the Inter-
 23 net; and

24 (B) is not—

- 1 (i) a party directly affiliated with the
 2 hotel; or
- 3 (ii) an exhibition organizer or meeting
 4 planner or the official housing bureau for
 5 a meeting, conference, event, or exhibition
 6 held at the hotel.

7 **SEC. 4. REQUIREMENTS FOR THIRD-PARTY ONLINE HOTEL**
 8 **RESERVATION SELLERS.**

9 (a) IN GENERAL.—It shall be unlawful for a third-
 10 party online hotel reservation seller to charge or attempt
 11 to charge any consumer’s credit card, debit card, bank ac-
 12 count, or other financial account for any good or service
 13 sold in a transaction effected on the Internet with respect
 14 to a hotel unless the third-party online hotel reservation
 15 seller—

16 (1) clearly and conspicuously discloses to the
 17 consumer all material terms of the transaction, in-
 18 cluding—

19 (A) before the conclusion of the trans-
 20 action—

- 21 (i) a description of the good or service
 22 being offered; and
- 23 (ii) the cost of such good or service;
 24 and

1 (B) in a manner that is continuously visi-
 2 ble to the consumer throughout the transaction
 3 process, that the person—

4 (i) is a third-party online hotel res-
 5 ervation seller; and

6 (ii) is not—

7 (I) affiliated with the owner of
 8 the hotel or the entity that provides
 9 the hotel services or accommodations;
 10 or

11 (II) an exhibition organizer or
 12 meeting planner or the official hous-
 13 ing bureau for a meeting, conference,
 14 event, or exhibition held at the hotel;
 15 or

16 (2) includes prominent and continuous disclo-
 17 sure of the brand identity of the third-party online
 18 hotel reservation seller throughout the transaction
 19 process, whether online or over the phone.

20 (b) ENFORCEMENT BY COMMISSION.—

21 (1) UNFAIR OR DECEPTIVE ACTS OR PRAC-
 22 TICES.—A violation of subsection (a) by a person
 23 subject to such subsection shall be treated as a viola-
 24 tion of a rule defining an unfair or deceptive act or
 25 practice prescribed under section 18(a)(1)(B) of the

1 Federal Trade Commission Act (15 U.S.C.
2 57a(a)(1)(B)).

3 (2) POWERS OF COMMISSION.—

4 (A) IN GENERAL.—The Commission shall
5 enforce this section in the same manner, by the
6 same means, and with the same jurisdiction,
7 powers, and duties as though all applicable
8 terms and provisions of the Federal Trade
9 Commission Act (15 U.S.C. 41 et seq.) were in-
10 corporated into and made a part of this Act.

11 (B) PRIVILEGES AND IMMUNITIES.—Any
12 person who violates this section shall be subject
13 to the penalties and entitled to the privileges
14 and immunities provided in the Federal Trade
15 Commission Act (15 U.S.C. 41 et seq.).

16 (C) RULEMAKING.—

17 (i) IN GENERAL.—The Commission
18 may promulgate such rules as the Commis-
19 sion considers appropriate to enforce this
20 section.

21 (ii) PROCEDURES.—The Commission
22 shall carry out any rulemaking under
23 clause (i) in accordance with section 553 of
24 title 5, United States Code.

25 (c) ENFORCEMENT BY STATES.—

(1) IN GENERAL.—In any case in which the attorney general 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 the engagement of any person subject to subsection (a) in a practice that violates such subsection, the attorney general of the State may, as *parens patriae*, 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 FEDERAL TRADE COMMISSION.—

(A) NOTICE TO FEDERAL TRADE COMMISSION.—

(i) IN GENERAL.—Except as provided in clause (iii), the attorney general of a State shall notify the Commission in writing that the attorney general intends to bring a civil action under paragraph (1) before initiating any civil action against a person subject to subsection (a).

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

1 (iii) EXCEPTION.—If it is not feasible
 2 for the attorney general of a State to pro-
 3 vide the notification required by clause (i)
 4 before initiating a civil action under para-
 5 graph (1), the attorney general shall notify
 6 the Commission immediately upon insti-
 7 tuting the civil action.

8 (B) INTERVENTION BY FEDERAL TRADE
 9 COMMISSION.—The Commission may—

10 (i) intervene in any civil action
 11 brought by the attorney general of a State
 12 under paragraph (1); and

13 (ii) upon intervening—

14 (I) be heard on all matters aris-
 15 ing in the civil action; and

16 (II) file petitions for appeal of a
 17 decision in the civil action.

18 (3) INVESTIGATORY POWERS.—Nothing in this
 19 subsection may be construed to prevent the attorney
 20 general of a State from exercising the powers con-
 21 ferred on the attorney general by the laws of the
 22 State—

23 (A) to conduct investigations;

24 (B) to administer oaths or affirmations; or

1 (C) to compel the attendance of witnesses
2 or the production of documentary or other evi-
3 dence.

4 (4) STATE COORDINATION WITH FEDERAL
5 TRADE COMMISSION.—If the Commission institutes a
6 civil action or an administrative action with respect
7 to a violation of subsection (a), the attorney general
8 of a State shall coordinate with the Commission be-
9 fore bringing a civil action under paragraph (1)
10 against any defendant named in the complaint of the
11 Commission for the violation with respect to which
12 the Commission instituted such action.

13 (5) VENUE; SERVICE OF PROCESS.—

14 (A) VENUE.—Any action brought under
15 paragraph (1) may be brought in—

16 (i) the district court of the United
17 States that meets applicable requirements
18 relating to venue under section 1391 of
19 title 28, United States Code; or

20 (ii) another court of competent juris-
21 diction.

22 (B) SERVICE OF PROCESS.—In an action
23 brought under paragraph (1), process may be
24 served in any district in which the defendant—

25 (i) is an inhabitant; or

1 (ii) may be found.

2 (6) ACTIONS BY OTHER STATE OFFICIALS.—

3 (A) IN GENERAL.—In addition to civil ac-
4 tions brought by attorneys general under para-
5 graph (1), any other officer of a State who is
6 authorized by the State to do so may bring a
7 civil action under paragraph (1), subject to the
8 same requirements and limitations that apply
9 under this subsection to civil actions brought by
10 attorneys general.

11 (B) SAVINGS PROVISION.—Nothing in this
12 subsection may be construed to prohibit an au-
13 thorized official of a State from initiating or
14 continuing any proceeding in a court of the
15 State for a violation of any civil or criminal law
16 of the State.

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