

116TH CONGRESS
1ST SESSION

H. R. 4489

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

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 25, 2019

Ms. JOHNSON of Texas (for herself, Mr. FORTENBERRY, and Ms. BASS) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

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

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 “Hotel Advertising
5 Transparency Act of 2019”.

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

8 (1) As of the day before the date of the enact-
9 ment of this Act, hotel rooms and other places of
10 lodging are often advertised at a rate and later in

1 the buying process mandatory fees are disclosed that
2 were not included in the advertised room rate.

3 (2) The mandatory fees described in paragraph
4 (1) are sometimes called by names such as “resort
5 fees”, “cleaning fees”, or “facility fees” and they are
6 all mandatory and charged by a place of short-term
7 lodging in addition to advertised room rates.

8 (3) The number of short-term lodging facilities
9 that charged mandatory resort fees is growing.

10 (4) Advertising that does not reflect the true
11 mandatory cost of a stay at a place of short-term
12 lodging is deceptive.

13 (5) The Federal Trade Commission has author-
14 ity under section 5 of the Federal Trade Commis-
15 sion Act (15 U.S.C. 45) to regulate and prohibit un-
16 fair or deceptive acts or practices in or affecting
17 commerce.

18 (6) In 2012 and 2013, the Federal Trade Com-
19 mission exercised its authority under that section 5
20 to issue warning letters to 35 hotel operators and 11
21 online travel agents. In those letters, the Commis-
22 sion cautioned hotel operators and online travel
23 agents that mandatory resort fees could confuse con-
24 sumers in violation of section 5(a)(2) of such Act
25 (15 U.S.C. 45(a)(2)).

1 (7) In 2017, an economist at the Federal Trade
2 Commission published an issue paper that found
3 that forcing consumers to click through additional
4 webpages to see a hotel’s resort fee increases the
5 time spent searching and learning the hotel’s price,
6 and went on to state the following: “Separating the
7 room rate from the resort fee increases the cognitive
8 costs of remembering the hotel’s price. When it be-
9 comes more costly to search and evaluate an addi-
10 tional hotel, a consumer’s choice is either to incur
11 higher total search and cognitive costs or to make an
12 incomplete, less informed decision that may result in
13 a more costly room, or both.”

14 **SEC. 3. PROHIBITION ON UNFAIR AND DECEPTIVE ADVER-**
15 **TISING OF HOTEL ROOM RATES.**

16 (a) PROHIBITION.—No person with respect to whom
17 the Federal Trade Commission is empowered under sec-
18 tion 5(a)(2) of the Federal Trade Commission Act (15
19 U.S.C. 45(a)(2)) may advertise in interstate commerce a
20 rate for a place of short-term lodging that does not include
21 all required fees, excluding taxes and fees imposed by a
22 government.

23 (b) ENFORCEMENT BY FEDERAL TRADE COMMIS-
24 SION.—

1 (1) UNFAIR OR DECEPTIVE ACTS OR PRAC-
2 TICES.—A violation of subsection (a) by a person
3 subject to such subsection shall be treated as a viola-
4 tion of a rule defining an unfair or deceptive act or
5 practice prescribed under section 18(a)(1)(B) of the
6 Federal Trade Commission Act (15 U.S.C.
7 57a(a)(1)(B)).

8 (2) POWERS OF COMMISSION.—

9 (A) IN GENERAL.—The Federal Trade
10 Commission shall enforce this section in the
11 same manner, by the same means, and with the
12 same jurisdiction, powers, and duties as though
13 all applicable terms and provisions of the Fed-
14 eral Trade Commission Act (15 U.S.C. 41 et
15 seq.) were incorporated into and made a part of
16 this Act. Any person who violates this section
17 shall be subject to the penalties and entitled to
18 the privileges and immunities provided in the
19 Federal Trade Commission Act (15 U.S.C. 41
20 et seq.).

21 (B) RULEMAKING.—

22 (i) IN GENERAL.—The Commission
23 may promulgate such rules as the Commis-
24 sion considers appropriate to enforce this
25 section.

1 (ii) PROCEDURES.—The Commission
2 shall carry out any rulemaking under
3 clause (i) in accordance with section 553 of
4 title 5, United States Code.

5 (c) ENFORCEMENT BY STATES.—

6 (1) IN GENERAL.—In any case in which the at-
7 torney general of a State has reason to believe that
8 an interest of the residents of the State has been or
9 is threatened or adversely affected by the engage-
10 ment of any person subject to subsection (a) in a
11 practice that violates such subsection, the attorney
12 general of the State may, as *parens patriae*, bring
13 a civil action on behalf of the residents of the State
14 in an appropriate district court of the United States
15 to obtain appropriate relief.

16 (2) RIGHTS OF FEDERAL TRADE COMMIS-
17 SION.—

18 (A) NOTICE TO FEDERAL TRADE COMMIS-
19 SION.—

20 (i) IN GENERAL.—Except as provided
21 in clause (iii), the attorney general of a
22 State shall notify the Commission in writ-
23 ing that the attorney general intends to
24 bring a civil action under paragraph (1)

1 before initiating the civil action against a
2 person subject to subsection (a).

3 (ii) CONTENTS.—The notification re-
4 quired by clause (i) with respect to a civil
5 action shall include a copy of the complaint
6 to be filed to initiate the civil action.

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

14 (B) INTERVENTION BY FEDERAL TRADE
15 COMMISSION.—The Commission may—

16 (i) intervene in any civil action
17 brought by the attorney general of a State
18 under paragraph (1) against a person de-
19 scribed in such paragraph; and

20 (ii) upon intervening—

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

23 (II) file petitions for appeal of a
24 decision in the civil action.

1 (3) INVESTIGATORY POWERS.—Nothing in this
2 subsection may be construed to prevent the attorney
3 general of a State from exercising the powers con-
4 ferred on the attorney general by the laws of the
5 State to conduct investigations, to administer oaths
6 or affirmations, or to compel the attendance of wit-
7 nesses or the production of documentary or other
8 evidence.

9 (4) EFFECT ON STATE COURT PROCEEDINGS.—
10 Nothing in this subsection shall be construed to pro-
11 hibit an authorized State official from proceeding in
12 State court on the basis of an alleged violation of
13 any general civil or criminal statute of such State.

14 (5) COORDINATION WITH FEDERAL TRADE
15 COMMISSION.—If the Federal Trade Commission in-
16 stitutes a civil action or an administrative action
17 with respect to a violation of subsection (a), the at-
18 torney general of a State shall coordinate with the
19 Commission before bringing a civil action under
20 paragraph (1) against any defendant named in the
21 complaint of the Commission for the violation with
22 respect to which the Commission instituted such ac-
23 tion.

24 (6) VENUE; SERVICE OF PROCESS.—

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

3 (i) the district court of the United
4 States that meets applicable requirements
5 relating to venue under section 1391 of
6 title 28, United States Code; or

7 (ii) another court of competent juris-
8 diction.

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

12 (i) is an inhabitant; or

13 (ii) may be found.

14 (7) ACTIONS BY OTHER STATE OFFICIALS.—

15 (A) IN GENERAL.—In addition to civil ac-
16 tions brought by attorneys general under para-
17 graph (1), any other officer of a State who is
18 authorized by the State to do so may bring a
19 civil action under paragraph (1), subject to the
20 same requirements and limitations that apply
21 under this subsection to civil actions brought by
22 attorneys general.

23 (B) SAVINGS PROVISION.—Nothing in this
24 subsection may be construed to prohibit an au-
25 thorized official of a State from initiating or

1 continuing any proceeding in a court of the
2 State for a violation of any civil or criminal law
3 of the State.

4 (d) DEFINITIONS.—As used in this Act—

5 (1) the term “place of short-term lodging”
6 means a hotel, motel, inn, or other place of lodging
7 that advertises at a rate that is a nightly, hourly, or
8 weekly rate; and

9 (2) the term “State” includes any territory of
10 the United States, the District of Columbia, and the
11 Commonwealth of Puerto Rico.

12 (e) EFFECTIVE DATE.—Subsection (a) shall take ef-
13 fect on the date that is 30 days after the date of enact-
14 ment of this Act.

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