

114TH CONGRESS
2D SESSION

S. 3402

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

SEPTEMBER 27, 2016

Mr. DAINES (for himself, Mr. NELSON, 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 2016”.

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 have the utmost clarity
11 as to the company with which such consumers are
12 transacting business online.

13 (4) Actions by third-party sellers that misap-
14 propriate 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 customers booking hotel
23 rooms online have resulted in the loss of sensitive fi-
24 nancial and personal information, financial harm,
25 and headache 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 provide con-
7 sumers with clear, accurate information and such
8 sellers should have an opportunity to compete fairly
9 with one another; and

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

15 **SEC. 3. DEFINITIONS.**

16 In this Act:

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

23 (2) COMMISSION.—The term “Commission”
24 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

(B) in a manner that is continuously visible to the consumer throughout the transaction process, the fact that the person is a third party online hotel reservation seller and is not—

(i) affiliated with the person who owns the hotel or provides the hotel services or accommodations; or

(ii) an exhibition organizer or meeting planner or the official housing bureau for a meeting, conference, event, or exhibition held at the hotel; or

(2) includes prominent and continuous disclosure of the brand identity of the third party online hotel reservation seller throughout the transaction process, both online and over the phone.

(b) ENFORCEMENT BY COMMISSION.—

(1) UNFAIR OR DECEPTIVE ACTS OR PRACTICES.—A violation of subsection (a) by a person subject to such subsection shall be treated as a violation of a rule defining an unfair or deceptive act or practice prescribed under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

(2) POWERS OF COMMISSION.—

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

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

13 (C) RULEMAKING.—

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

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

22 (c) ENFORCEMENT BY STATES.—

23 (1) IN GENERAL.—In any case in which the at-
24 torney general of a State has reason to believe that
25 an interest of the residents of the State has been or

1 is threatened or adversely affected by the engage-
 2 ment of any person subject to subsection (a) in a
 3 practice that violates such subsection, the attorney
 4 general of the State may, as *parens patriae*, bring
 5 a civil action on behalf of the residents of the State
 6 in an appropriate district court of the United States
 7 to obtain appropriate relief.

8 (2) RIGHTS OF FEDERAL TRADE COMMIS-
 9 SION.—

10 (A) NOTICE TO FEDERAL TRADE COMMIS-
 11 SION.—

12 (i) IN GENERAL.—Except as provided
 13 in clause (iii), the attorney general of a
 14 State shall notify the Commission in writ-
 15 ing that the attorney general intends to
 16 bring a civil action under paragraph (1)
 17 before initiating the civil action against a
 18 person subject to subsection (a).

19 (ii) CONTENTS.—The notification re-
 20 quired by clause (i) with respect to a civil
 21 action shall include a copy of the complaint
 22 to be filed to initiate the civil action.

23 (iii) EXCEPTION.—If it is not feasible
 24 for the attorney general of a State to pro-
 25 vide the notification required by clause (i)

1 before initiating a civil action under para-
 2 graph (1), the attorney general shall notify
 3 the Commission immediately upon insti-
 4 tuting the civil action.

5 (B) INTERVENTION BY FEDERAL TRADE
 6 COMMISSION.—The Commission may—

7 (i) intervene in any civil action
 8 brought by the attorney general of a State
 9 under paragraph (1) against a person de-
 10 scribed in subsection (d)(1); and

11 (ii) upon intervening—

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

14 (II) file petitions for appeal of a
 15 decision in the civil action.

16 (3) INVESTIGATORY POWERS.—Nothing in this
 17 subsection may be construed to prevent the attorney
 18 general of a State from exercising the powers con-
 19 ferred on the attorney general by the laws of the
 20 State to conduct investigations, to administer oaths
 21 or affirmations, or to compel the attendance of wit-
 22 nesses or the production of documentary or other
 23 evidence.

24 (4) STATE COORDINATION WITH FEDERAL
 25 TRADE COMMISSION.—If the Commission institutes a

1 civil action or an administrative action with respect
 2 to a violation of subsection (a), the attorney general
 3 of a State shall coordinate with the Commission be-
 4 fore bringing a civil action under paragraph (1)
 5 against any defendant named in the complaint of the
 6 Commission for the violation with respect to which
 7 the Commission instituted such action.

8 (5) VENUE; SERVICE OF PROCESS.—

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

11 (i) the district court of the United
 12 States that meets applicable requirements
 13 relating to venue under section 1391 of
 14 title 28, United States Code; or

15 (ii) another court of competent juris-
 16 diction.

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

20 (i) is an inhabitant; or

21 (ii) may be found.

22 (6) ACTIONS BY OTHER STATE OFFICIALS.—

23 (A) IN GENERAL.—In addition to civil ac-
 24 tions brought by attorneys general under para-
 25 graph (1), any other officer of a State who is

1 authorized by the State to do so may bring a
2 civil action under paragraph (1), subject to the
3 same requirements and limitations that apply
4 under this subsection to civil actions brought by
5 attorneys general.

6 (B) SAVINGS PROVISION.—Nothing in this
7 subsection may be construed to prohibit an au-
8 thorized official of a State from initiating or
9 continuing any proceeding in a court of the
10 State for a violation of any civil or criminal law
11 of the State.

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