

STATE OF NEW YORK

5926

2023-2024 Regular Sessions

IN ASSEMBLY

March 24, 2023

Introduced by M. of A. VANEL -- read once and referred to the Committee on Consumer Affairs and Protection

AN ACT to amend the general business law, in relation to prohibiting deceptive rate advertising for certain accommodations

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The general business law is amended by adding a new section
2 209-h to read as follows:

3 § 209-h. Deceptive advertising. 1. (a) Every advertisement or solic-
4 itation communicating a rate or rates for an accommodation in this state
5 subject to the provisions of this article shall be deemed deceptive if
6 such rate or rates are not inclusive of all taxes and automatic fees.
7 This section shall be construed as applying to all instances and mediums
8 where the rate or rates are communicated.

9 (b) For purposes of this section, the term "rate" shall mean the
10 nightly and aggregate price, whether represented in currency, points,
11 credits, or a similar representation, paid by a guest to stay at the
12 accommodation.

13 (c) For purposes of this section, the term "accommodation" shall mean
14 a hotel, motel or inn.

15 (d) Automatic fees shall include all such fees that are charged to a
16 guest without respect for such guest's right or ability to be reimbursed
17 for or refuse to pay the fee or any part thereof. Automatic fees shall
18 include, but shall not be limited to, service fees, resort fees, desti-
19 nation fees, amenity fees, facility fees, housekeeping or cleaning fees,
20 mandatory gratuities, and any fee for a good or service due at the
21 accommodation or elsewhere, before, during, or after the guest concludes
22 his or her stay, that is automatically charged in full absent notifica-
23 tion to the accommodation by the guest that the good or service being
24 charged for was not utilized. A guest's right to refuse or be reimbursed
25 for an automatic payment shall have no effect on the fee's classifica-

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 tion. Taxes shall include all applicable federal, state, and local
2 taxes.

3 2. This section shall apply to accommodation operators and remarket-
4 ers. For purposes of this section, remarketers shall be deemed accommo-
5 dation operators. A remarketer is an individual or entity, who reserves,
6 arranges for, conveys, or furnishes occupancy, whether directly or indi-
7 rectly, to a guest for a rate determined by the remarketer, directly or
8 indirectly, whether pursuant to a written or other agreement.

9 3. An operator of an accommodation shall be permitted to provide the
10 guest the option to view the non-inclusive rate provided however that
11 such a rate shall not be communicated in absence of the request.

12 4. The operator of an accommodation shall not be required to state
13 that the advertised rate is inclusive of all taxes and automatic fees
14 but shall be required to make available an itemized list of the taxes
15 and automatic fees prior to a person finalizing his or her purchase.

16 5. (a) Where a rate is payable in points or credits, irrespective of
17 the issuing entity, every instance of the rate shall be conspicuously
18 accompanied by the sum of taxes and automatic fees, including all taxes
19 and automatic fees charged by the issuing entity where the entity is not
20 the operator of the accommodation.

21 (b) For purposes of this section, "points" and "credits" shall include
22 all incentives offered by an issuing entity that can be redeemed at an
23 accommodation, irrespective of the issuer. Points and credits shall
24 include, but shall not be limited to, points issued by credit card
25 issuers, operators of accommodations, rewards programs, loyalty
26 programs, and any combination thereof.

27 6. No operator of an accommodation shall be liable under this section
28 for any unforeseeable acts or circumstances which cause the inadvertent
29 communication of a non-inclusive rate provided that the operator, upon
30 being notified of the existence of such an error, promptly notify any
31 guest who has reserved the rate and provide them with the option to
32 refund their reservation without penalty in the same amount and type of
33 consideration paid.

34 7. Any operator of an accommodation who violates the provisions of
35 this section shall be liable for a civil penalty of not less than one
36 thousand dollars, but not more than three thousand dollars, per
37 violation.

38 8. Any person who is injured by an operator who makes an advertisement
39 or solicitation outside the state for an accommodation within the state
40 that violates the provisions of this section shall be entitled to main-
41 tain an action to enforce the provisions of this section in the courts
42 of this state for treble damages in the entire amount of the guest's
43 visit. Where the visit was paid for in points, the penalty shall be
44 treble damages of the cash value of the points at the time of redemption
45 provided however that where the points have no redemption value in cash,
46 treble damages of the advertised rate in cash at the time of redemption
47 shall be used. Where the visit was paid for in credit, the penalty
48 shall be treble damages of the equivalent amount in cash provided howev-
49 er that where the credits have no equivalent value in cash, treble
50 damages of the advertised rate in cash at the time of redemption shall
51 be used. Where the visit was paid for in other consideration, the penal-
52 ty shall be treble damages of the equivalent amount in cash at the time
53 of redemption. Where the visit was paid for in a combination of any of
54 the foregoing, the penalty shall be treble damages in accordance with
55 the foregoing penalties.

1 9. No agreement relating to the determination of choice of law, venue,
2 personal jurisdiction, mandatory arbitration or the waiver of a class
3 action made pursuant to the reservation, visit to the accommodation, or
4 another agreement between the operator and guest, whether or not sepa-
5 rate from the reservation or visit, shall be binding in any action
6 brought under subdivision eight of this section where an operator
7 violates the provisions of this section.

8 10. Any agreement relating to the waiver of any provision within this
9 section shall be void.

10 11. This section shall not be construed as having any effect on adver-
11 tisements or solicitations for accommodations located outside the state
12 of New York.

13 § 2. This act shall take effect on the ninetieth day after it shall
14 have become a law.