STATE OF NEW YORK

5926--A

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 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

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

§ 209-h. Deceptive advertising. 1. Every advertisement or solicitation communicating a rate or rates for an accommodation in this state made by an operator of an accommodation or marketer shall be deemed deceptive if such rate or rates are not inclusive of all taxes and automatic fees. This section shall be construed as applying to all instances and mediums where the rate or rates are communicated.

2. For purposes of this section, the following terms shall have the following meanings:

(a) "Rate" shall mean the costs associated with staying at an accommodation, whether displayed as a nightly, daily, or aggregate price and whether represented in currency, points, credits, or a similar representation, paid by a guest to stay at the accommodation.

(b) "Accommodation" shall mean a hotel, motel, inn or short-term rental. "Short-term rental" shall be defined as an entire dwelling unit, or a room, group of rooms, other living or sleeping space, or any other space, made available for rent by guests for less than thirty consecutive days.

(c) "Automatic fees" shall include all such fees that are charged to a guest without respect for such guest's right or ability to be reimbursed for or refuse to pay the fee or any part thereof. Automatic fees shall include, but shall not be limited to, service fees, resort fees, desti-

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

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nation fees, amenity fees, facility fees, housekeeping or cleaning fees, mandatory gratuities, and any fee for a good or service due at the accommodation or elsewhere, before, during, or after the guest concludes his or her stay, that is automatically charged in full absent notification to the accommodation by the guest that the good or service being charged for was not utilized. A guest's right to refuse or be reimbursed for an automatic payment shall have no effect on the fee's classification. Taxes shall include all applicable federal, state, and local taxes.

(d) "Inclusive rate" shall mean the total cost amount the consumer is expected to pay, including any additional taxes or fees.

(e) "Non-inclusive rate" shall mean the cost amount for only the services being provided, which does not include additional taxes and fees which may be imposed.

(f) "Marketer" shall mean any person or entity who, in the normal course of business, displays, advertises or solicits rates for accommodations.

(g) "Points" and "credits" shall include all incentives offered by an issuing entity that can be redeemed at an accommodation, irrespective of the issuer. Points and credits shall include, but shall not be limited to, points issued by credit card issuers, operators of accommodations, rewards programs, loyalty programs, and any combination thereof.

3. Upon request by a consumer, the operator of an accommodation or marketer shall be required to provide the consumer with the non-inclusive rate, and an itemized list of taxes and automatic fees prior to a person finalizing his or her purchase. Absent of such request, the operator of an accommodation or marketer shall be permitted to provide the consumer with the inclusive rate.

4. Where a rate is payable in points or credits, irrespective of the issuing entity, every instance of the rate shall be conspicuously accompanied by the sum of taxes and automatic fees, including all taxes and automatic fees charged by the issuing entity where the entity is not the operator of the accommodation.

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

6. Any operator of an accommodation or marketer who violates the provisions of this section shall be liable for a civil penalty of not less than one thousand dollars, but not more than three thousand dollars, per violation.

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

8. This section shall not be construed as having any effect on advertisements or solicitations for accommodations located outside the state of New York.

§ 2. This act shall take effect on the one hundred eightieth day after it shall have become a law.