

115TH CONGRESS  
1ST SESSION

# S. 1164

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

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## 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

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

11          (2) RIGHTS OF FEDERAL TRADE COMMIS-  
12          SION.—

13                (A) NOTICE TO FEDERAL TRADE COMMIS-  
14                SION.—

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

22                   (ii) CONTENTS.—The notification re-  
23                   quired under clause (i) with respect to a  
24                   civil action shall include a copy of the com-  
25                   plaint 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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