

114TH CONGRESS
2D SESSION

S. _____

To prohibit unfair and deceptive advertising of hotel room rates, and for
other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. DURBIN (for Mrs. McCASKILL) introduced the following bill; which was
read twice and referred to the Committee on _____

A BILL

To prohibit unfair and deceptive advertising of hotel room
rates, 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 “Truth in Hotel Adver-
5 tising Act of 2016”.

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 are often advertised at
10 a rate and later in the buying process mandatory

1 fees are disclosed that were not included in the ad-
2 vertised room rate.

3 (2) The mandatory fees described in paragraph
4 (1) are sometimes called by names such as “resort
5 fees” or “facility fees” and they are all mandatory
6 and charged by the hotel in addition to advertised
7 room rates.

8 (3) The number of hotels that charged a man-
9 datory resort fees is growing as of the day before the
10 date of the enactment of this Act.

11 (4) Advertising that does not reflect the true
12 mandatory cost of a hotel stay 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, the Federal Trade Commission ex-
19 ercised its authority under Section 5 to issue warn-
20 ing letters to 22 hotel operators. In that letter, the
21 Commission cautioned hotel operators that manda-
22 tory resort fees could confuse consumers in violation
23 of section 5(a)(2) of the Federal Trade Commission
24 Act (15 U.S.C. 45(a)(2)).

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

3 (a) PROHIBITION.—No person with respect to whom
4 the Federal Trade Commission is empowered under sec-
5 tion 5(a)(2) of the Federal Trade Commission Act (15
6 U.S.C. 45(a)(2)) may advertise in interstate commerce a
7 rate for a hotel room that does not include all required
8 fees other than taxes and fees imposed by a government.

9 (b) ENFORCEMENT BY FEDERAL TRADE COMMIS-
10 SION.—

11 (1) UNFAIR OR DECEPTIVE ACTS OR PRAC-
12 TICES.—A violation of subsection (a) by a person
13 subject to such subsection shall be treated as a viola-
14 tion of a rule defining an unfair or deceptive act or
15 practice prescribed under section 18(a)(1)(B) of the
16 Federal Trade Commission Act (15 U.S.C.
17 57a(a)(1)(B)).

18 (2) POWERS OF COMMISSION.—

19 (A) IN GENERAL.—The Federal Trade
20 Commission shall enforce this section in the
21 same manner, by the same means, and with the
22 same jurisdiction, powers, and duties as though
23 all applicable terms and provisions of the Fed-
24 eral Trade Commission Act (15 U.S.C. 41 et
25 seq.) were incorporated into and made a part of
26 this Act.

1 (B) PRIVILEGES AND IMMUNITIES.—Any
2 person who violates this section shall be subject
3 to the penalties and entitled to the privileges
4 and immunities provided in the Federal Trade
5 Commission Act (15 U.S.C. 41 et seq.).

6 (C) RULEMAKING.—

7 (i) IN GENERAL.—The Commission
8 may promulgate such rules as the Commis-
9 sion considers appropriate to enforce this
10 section.

11 (ii) PROCEDURES.—The Commission
12 shall carry out any rulemaking under
13 clause (i) in accordance with section 553 of
14 title 5, United States Code.

15 (c) ENFORCEMENT BY STATES.—

16 (1) IN GENERAL.—In any case in which the at-
17 torney general of a State has reason to believe that
18 an interest of the residents of the State has been or
19 is threatened or adversely affected by the engage-
20 ment of any person subject to subsection (a) in a
21 practice that violates such subsection, the attorney
22 general of the State may, as *parens patriae*, bring
23 a civil action on behalf of the residents of the State
24 in an appropriate district court of the United States
25 to obtain appropriate relief.

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

3 (A) NOTICE TO FEDERAL TRADE COMMIS-
4 SION.—

5 (i) IN GENERAL.—Except as provided
6 in clause (iii), the attorney general of a
7 State shall notify the Commission in writ-
8 ing that the attorney general intends to
9 bring a civil action under paragraph (1)
10 before initiating the civil action against a
11 person subject to subsection (a).

12 (ii) CONTENTS.—The notification re-
13 quired by clause (i) with respect to a civil
14 action shall include a copy of the complaint
15 to be filed to initiate the civil action.

16 (iii) EXCEPTION.—If it is not feasible
17 for the attorney general of a State to pro-
18 vide the notification required by clause (i)
19 before initiating a civil action under para-
20 graph (1), the attorney general shall notify
21 the Commission immediately upon insti-
22 tuting the civil action.

23 (B) INTERVENTION BY FEDERAL TRADE
24 COMMISSION.—The Commission may—

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

5 (ii) upon intervening—

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

8 (II) file petitions for appeal of a
9 decision in the civil action.

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

18 (4) PREEMPTIVE ACTION BY FEDERAL TRADE
19 COMMISSION.—If the Federal Trade Commission in-
20 stitutes a civil action or an administrative action
21 with respect to a violation of subsection (c), the at-
22 torney general of a State may not, during the pend-
23 ency of such action, bring a civil action under para-
24 graph (1) against any defendant named in the com-
25 plaint of the Commission for the violation with re-

1 spect to which the Commission instituted such ac-
2 tion.

3 (5) VENUE; SERVICE OF PROCESS.—

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

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

10 (ii) another court of competent juris-
11 diction.

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

15 (i) is an inhabitant; or

16 (ii) may be found.

17 (6) ACTIONS BY OTHER STATE OFFICIALS.—

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

1 (B) SAVINGS PROVISION.—Nothing in this
2 subsection may be construed to prohibit an au-
3 thorized official of a State from initiating or
4 continuing any proceeding in a court of the
5 State for a violation of any civil or criminal law
6 of the State.

7 (d) EFFECTIVE DATE.—Subsection (a) shall take ef-
8 fect on the date that is 30 days after the date of the enact-
9 ment of this Act.