

SENATE THIRD READING
 SB 1092 (Monning)
 As Amended June 8, 2016
 Majority vote

SENATE VOTE: 36-0

Committee	Votes	Ayes	Noes
Judiciary	10-0	Mark Stone, Wagner, Alejo, Chau, Chiu, Gallagher, Cristina Garcia, Holden, Maienschein, Ting	

SUMMARY: Requires the operator of a hosting platform, as defined, to provide a specified notice recommending that a person check their homeowners' or renters' insurance policies for appropriate coverage before listing their residence for short-term rental on the platform Web site. Specifically, **this bill:**

- 1) Requires a hosting platform to provide the following notice to offerors listing a residence for short-term rental on the platform:

You should review any restrictions on coverage under your homeowners' or renters' insurance policy related to short-term rental activities to ensure that there is appropriate insurance coverage in the event that a person sustains an injury or loss for which you are responsible, a person damages or causes loss to your personal or real property, or a claim or lawsuit is made against you or otherwise arises out of activities related to this hosting platform.

- 2) Clarifies the existing notice directed at tenants listing a residence for short-term rental on the platform to include a mobilehome (in addition to a room, home, condominium or apartment) within the meaning of "residence."
- 3) Makes other technical changes.

FISCAL EFFECT: None.

COMMENTS: This bill, sponsored by the Association of California Insurance Companies (ACIC), seeks to require internet hosting platform companies to provide a specified notice recommending individuals to check their homeowners' or renters' insurance policies before listing their properties on the platform to ensure they have insurance coverage for potential loss or damages that may arise out of renting the properties to paying guests. The simple premise behind the bill is that users of these hosting platforms should be notified, prior to offering their properties for short-term rental, that their homeowners' or renters' insurance policies may not cover any damages or liability that might unfortunately arise if an accident, injury, or other incident occurs on their property during the rental period.

Background on short-term rentals of residences through hosting platform companies. In recent years, there has been an explosion in popularity of Internet-based companies that allow people to list a room or their entire residence for rent on a short-term basis. These companies, such as AirBnb, VRBO, and Homeaway, have created online marketplaces to allow travelers and tourists

to peruse listings for properties in a destination city, and then contact the listing party to make arrangements for short-term rental of the property. Typically, the companies hosting these online platforms make money through advertising and by charging a fee on each listing (in the case of Airbnb, typically a fee of 9% to 15% of the total amount paid for the rental). These companies generally make no distinction with respect to who may list a property on the platform, allowing not only property owners, but also tenants, to list properties for short-term rental. Under Airbnb's terms of service, for example, the "Host" of the property is required to be someone registered with Airbnb who owns or legally controls the residence during the period of the guest's stay.

Last year the Legislature enacted SB 761 (Hall), Chapter 239, Statutes of 2015, which required internet hosting platform companies to provide a specified notice to renters that they should check their lease to see if listing their residence for rent on the hosting platform is permitted, or instead may even violate the terms of the lease. According to the author, this bill simply proposes a similar disclosure with respect to insurance coverage when a person is considering listing his or her residence for rental. The author explains:

Unfortunately, many (individuals) are unaware of the insurance ramifications, if damage to property or injury at the property occurs during the rental period. It is important for homeowners and renters who make their properties available through internet hosting platforms to understand their insurance coverage and whether it will protect them. SB 1092 simply requires these websites to provide a notice to the homeowner or renter to review their insurance coverage before listing their property.

A precautionary notice is appropriate because damage to residential property during a short-term rental is typically not covered by homeowners' insurance policies. Proponents of the bill, primarily members of the insurance industry, contend that residential insurance policies often don't cover commercial activities such as short-term rental of a residence through a hosting platform, and thus, as a precaution, individuals seeking to list their residences for rent should be directed to check their insurance policies before doing so, as established by this bill.

According to a 2014 New York Times article, an informal survey of major insurance companies concluded that most homeowner's and renter's insurance policies do not cover regular commercial activity in the home. According to Rebecca Hirsch, a representative of the insurer United Services Automobile Association (USAA) quoted in the article, "If you're conducting a business, on a full- or part-time basis, by renting out your home or apartment (or a room in your home or apartment) as a way to earn money, your homeowner's or renter's insurance policy probably would not provide liability coverage." (*A Liability Risk for Airbnb Hosts.* (Dec. 5, 2014); New York Times.)

Furthermore, failure to inform one's insurer of commercial activity such as renting out residential property could jeopardize the homeowner's insurance policy going forward. According to Laura Stryoski, a representative of Allstate Insurance quoted in the article, "An insured has the obligation to be forthcoming about all facts relating to his/her insured property. Not doing so could impact coverage and jeopardize the continuation of insurance." (*Id.*)

Uncertainty about what is and is not covered under homeowners' insurance policies is the result, not surprisingly, of the fact that rules and terms of coverage vary from insurer to insurer. According to the same New York Times article, for example, Allstate allows people to rent out

their residences for a week or two while still maintaining liability coverage for guests; Chubb Insurance offers liability coverage for guests as long as the host's annual rental income does not exceed \$15,000. (*Id.*) On the other hand, USAA allows very limited exceptions, only for occasional short-term rentals, and some insurers do not allow liability coverage for guests at all.

Recently some hosting platforms, including Airbnb and Homeaway, have started to offer their own liability coverage to persons seeking to list residences for rent. For example, Airbnb's Host Protection Insurance program, designed to protect hosts against third party claims of bodily injury or property damage, automatically provides up to \$1 million in liability coverage to most people listing properties, subject to certain terms. ("Airbnb beefs up liability insurance offering for hosts" (October 22, 2015); available at: www.cnet.com/news/Airbnb-beefs-up-liability-insurance-offering-for-hosts.) By contrast, to protect hosts against damage to their own possessions or to the residence caused by guests, Airbnb runs a Host Guarantee program which is not insurance coverage, but rather a reimbursement fund from which a host can be compensated for damages caused by the guest—but only for any leftover amount that a host is unable to collect through an insurance policy, a security deposit, or a direct payment from the guest. (Available at www.airbnb.com/terms/host_guarantee.) Some hosting platforms, however, do not provide any liability insurance protections to hosts or homeowners. VRBO, for example, informs its users that they are solely responsible for obtaining insurance coverage sufficient to protect their properties, and that they have or will obtain the appropriate insurance coverage sufficient to cover the entire duration of any property rental hosted on its platform. (See <https://www.vrbo.com/info/termsandconditions> (as of June 15, 2016).)

Because not all hosting platforms or insurance companies provide liability coverage for damages or losses associated with short-term rentals, in order to alert and protect consumers, it is reasonable and prudent for the hosting platform to provide a short notice simply recommending that individuals check their appropriate insurance policies before they list a residence.

Affirmative acknowledgement of the notice required by the user of the platform who lists the property. This bill requires that the notice is provided immediately before the person lists the property on the hosting platform's website and also requires the person to interact with the website to affirmatively acknowledge reading the notice. Under this bill, this affirmative acknowledgment may be accomplished by the inclusion of a statement in the notice that the person acknowledges reading this notice before proceeding to list the property with the hosting platform.

Recent amendments clarify that a residence expressly includes mobilehomes as one of the types of residences covered by the notice. At the request of the Western Manufactured Housing Communities Association (WMA), representing managers and owners of mobilehome parks, the author has recently amended the notice directed to tenants, enacted last year by SB 761, to expressly reference "mobilehomes" in addition to rooms, homes, condominiums, and apartments. As a result of this technical amendment, the SB 761 notice now cautions a tenant who is listing a mobilehome for rent to check the lease for restrictions that would limit his or her ability to list the mobile home for rent on the hosting platform.