

SENATE THIRD READING
SB 761 (Hall)
As Amended May 19, 2015
Majority vote

SENATE VOTE: 35-3

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

SUMMARY: Requires the operator of a hosting platform, as defined, to provide a specified notice to tenants using the platform that listing their residence for short-term rental may be a violation of their lease. Specifically, **this bill:**

- 1) Defines a "hosting platform" to mean a marketplace that is created for the primary purpose of facilitating the rental of a residential unit offered for occupancy for tourist or transient use for compensation to the offeror of that unit, and the operator of the hosting platform derives revenues, including booking fees or advertising revenues, from providing or maintaining that marketplace. Provides that the act of "facilitating" includes, but is not limited to, allowing the offeror of the residential unit to offer or advertise the residential unit on the Internet Web site provided or maintained by the operator.
- 2) Requires a hosting platform to provide any person listing a residence for short-term rental on a hosting platform with the following notice:

"If you are a tenant who is listing a room, home, condominium, or apartment, please refer to your rental contract or lease, or contact your landlord, prior to listing the property to determine whether your lease of contract contains restrictions that would limit your ability to list your room, home, condominium, or apartment. Listing your home may be a violation of your lease or contract, and could result in legal action against you by your landlord, including possible eviction."
- 3) Requires the above notice to appear in a font size that is equal to or greater than 100% of the standard font size of the other paragraphs on the hosting platform's Internet Web site or equal to the default font size on the hosting platform's Internet Web site.
- 4) Requires the above notice to be provided immediately before the occupant lists each real property on the online platform or Internet Web site, and that the occupant interacts with the online platform Internet Web site to affirmatively acknowledge that he or she has read the notice.

FISCAL EFFECT: None

COMMENTS: 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 rental on a short-term basis. These companies, such as Airbnb, Vacation Rentals by Owner (VRBO), and Homeaway, have created online marketplaces which 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 their residences for rent.

As the popularity of short-term rentals listed through Airbnb and similar marketplaces has increased, so has the concern of many landlords and property owners about safety and liability issues associated with unauthorized use of rental property by guests. According to the sponsor of this bill, the California Apartment Association (CAA), "Tenants in apartments who list with short-term rental Web sites can create significant safety issues for their neighbors and the community. Short-term guests have had no screening or background checks, and keys or gate codes are given by the listing tenant to the short term guests. The risk of liability is significant for both tenants and owners."

Accordingly, this bill seeks to require that operators of such Web sites ("hosting platforms") provide a specified notice to tenants who use the platform, informing them that listing their residences for short-term rental may be a violation of their leases, and recommending that they check their leases before listing their residences for rent.

Short-term rental of property to visitors by the tenant of the property typically violates the rental contract or lease between the tenant and landlord/owner. A "sublease" is a rental agreement between the original tenant and a subtenant to whom the original tenant rents all or part of the rental unit. Many rental agreements, however, specifically forbid the tenant from subletting all or any part of the premises without landlord approval, or using the premises for any commercial purpose. According to CAA, the majority of rental leases in California contain a prohibition against subletting. Under current law, landlords have the right to evict tenants for subletting in violation of the lease agreement. Despite these prohibitions, many tenants are apparently still incentivized to rent out their homes to short-term guests because of the potential windfall involved, particularly in rent-controlled jurisdictions. (See "Airbnb sublets in S.F. land some renters in the doghouse," S.F. Chronicle (March 18, 2014).)

The author contends that many tenants are unaware of these prohibitions on subletting and using rental property for commercial purposes, or have not reviewed their leases in detail because of their length and complexity. While the Assembly Judiciary Committee does not have statewide data about the prevalence of eviction actions for illegal subletting associated with short-term rentals on sites like Airbnb, there is some evidence that the number of such evictions is on the rise, particularly in San Francisco. (See, e.g., "Airbnb-related Violations Cited More and More in SF Evictions," S.F. Examiner (April 23, 2015).)

In light of reports that Airbnb-related evictions are on the rise, the author states the need for the bill as follows: "By providing no information to prospective tenants, short-term rental websites are putting unsuspecting tenants in a position where they can face eviction. SB 761 is intended to protect and educate tenants about the risks of listing their room or unit on short-term rental Web sites. It will simply require short-term rental companies to disclose very clearly and openly that listing a room or unit may be a violation of the lease and may subject the tenant to eviction."

Factual notice warning of possible lease violations for listing property. This bill requires a specified notice to be provided by the hosting platform (as defined) to tenants seeking to list their

residences on the platform for short-term rental. The notice reads as follows: *"If you are a tenant who is listing a room, home, condominium, or apartment, please refer to your rental contract or lease, or contact your landlord, prior to listing the property to determine whether your lease of contract contains restrictions that would limit your ability to list your room, home, condominium, or apartment. Listing your home may be a violation of your lease or contract, and could result in legal action against you by your landlord, including possible eviction."*

Importantly, the notice does not presume that every rental contract prohibits subletting, nor that the response of every landlord to instances of unauthorized subletting would be to file for eviction. Instead, the required notice simply provides factually accurate information to the tenant and warns of potential consequences.

The bill requires that the notice is provided immediately before the person lists the property on the hosting platform's Web site, and also requires the person to interact with the Web site to affirmatively acknowledge reading the notice. According to the author, this interaction is intended to be accomplished by having the Web site ask the user to check a box before proceeding further, similar to what many Web sites already do when they require users to check a box acknowledging having read and agreed to the terms of service for using the Web site or opening an account with the company.

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FN: 0001109