

NetChoice *Promoting Convenience, Choice, and Commerce on The Net*

Carl Szabo, Vice President and General Counsel
1401 K St NW, Suite 502
Washington, DC 20005
202-420-7485
www.netchoice.org



Rep. Tim Brown, Chair
Ways and Means Committee
Indiana House of Representatives
200 W. Washington Street
Indianapolis, IN 46204

February 20, 2018

RE: Include in SB 242's language to repeal forced disclosure of private contracts related to Hotels

Dear Chairman Brown and members of the committee:

We ask that you include in SB 242 language to repeal the sections of 2017's SB 309 that force disclosure of proprietary information about agreements between hotels and online travel agents (OTAs). Such suggested amendment language is attached to this letter.

2017's SB309 created a radical new definition treating OTAs as facilitators:

(b) A facilitator is a retail merchant making a retail transaction when the facilitator accepts payment from the consumer for a room, lodging, or accommodation rented or furnished in Indiana.

And Section 4.2 of SB 309 went further to force OTAs to disclose proprietary business information – potentially in violation of contract terms. Moreover, Section 4.2 forces businesses to disclose private terms and trade secrets. Often times such disclosures are prohibited by hotel operators since the hotels do not want competitors to know underlying costs and terms agreements with an OTA. Nonetheless, this information is often available to state revenue collectors during normal auditing processes.

Indiana is known as the business-friendly alternative to states like Illinois. Much of this stems from Indiana's laws that create legal certainty for businesses.

To that end, rather than extend the date of enforcement of SB 309, we suggest removing the offending sections of SB 309 entirely. We suggest adding to SB 242 language that would repeal these provisions of SB 309.

Businesses seek legal certainty, especially for the next several years. Consider a business looking to contract with hotels for the 2019 Indianapolis 500 or 2019 Notre Dame football home game. The lack of legal certainty created by SB 309 creates dire difficulty for these agreements.

Finally, unlike several of the provisions of SB 242 that could be discussed at a summer study committee, deletion of these sections of SB 309 is a non-controversial provision that benefits businesses and removes the state from contract interference.

We ask that you amend SB 242 to include language that repeals the offending sections of 2017's SB 309 from the Indiana code.

Sincerely,

A handwritten signature in black ink, appearing to read "Carl Szabo".

Carl Szabo

Vice President and General Counsel, NetChoice

NetChoice is a trade association of e-Commerce and online businesses. www.netchoice.org

A BILL FOR AN ACT to amend the Indiana Code concerning
taxation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 6-2.5-1-19.5 IS REPEALED [EFFECTIVE JULY
2 1, 2017]. Sec. ~~19.5~~: "Facilitator" means a person who:

3 (1) contracts or otherwise enters into an agreement:

4 (A) with a person who rents or furnishes rooms, lodgings, or
5 accommodations for consideration; and

6 (B) to market the rooms, lodgings, or accommodations through
7 the Internet; and

8 (2) accepts payment from the consumer for the room, lodging, or
9 accommodation.

10 The term does not include a licensee (as defined in IC 25-34.1-1-2(6))
11 under the real estate broker licensing act (IC 25-34.1) or the owner of
12 the room, lodging, or accommodation.

13 SECTION 2. IC 6-2.5-4-4, AS AMENDED BY P.L.181-2016,
14 SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

15 JULY 1, 2017]: Sec. 4. (a) A person is a retail merchant making a retail
16 transaction when the person rents or furnishes rooms, lodgings, or other
17 accommodations, such as booths, display spaces, banquet facilities, and
18 cubicles or spaces used for adult relaxation, massage, modeling,
19 dancing, or other entertainment to another person:

20 (1) if those rooms, lodgings, or accommodations are rented or
21 furnished for periods of less than thirty (30) days; and

22 (2) if the rooms, lodgings, and accommodations are located in

23 (A) a hotel, motel, inn, tourist camp, tourist cabin, gymnasium,
24 hall, coliseum, or other place, where rooms, lodgings, or
25 accommodations are regularly furnished for consideration. or

26 (B) a house, condominium, or apartment in which rooms,
27 lodgings, or accommodations are rented or furnished for
28 transient residential housing for consideration.

29 (b) A facilitator is a retail merchant making a retail transaction when
30 the facilitator accepts payment from the consumer for a room, lodging,
31 or accommodation rented or furnished in Indiana.



1 ~~(e)~~ **(b)** Except as provided in section 4.2 of this chapter, Each rental
 2 or furnishing by a retail merchant under subsection (a) ~~or (b)~~ is a
 3 separate unitary transaction regardless of whether consideration is paid
 4 to an independent contractor or directly to the retail merchant.

5 ~~(d)~~ **(c)** For purposes of this section, "consideration" includes a
 6 membership fee charged to a customer.

7 ~~(e)~~ **(d)** Notwithstanding subsection (a), a person is not a retail
 8 merchant making a retail transaction if:

9 (1) the person is a promoter that rents a booth or display space to
 10 an exhibitor; and

11 (2) the booth or display space is located in a facility that:

12 (A) is described in subsection (a)(2); and

13 (B) is operated by a political subdivision (including a capital
 14 improvement board established under IC 36-10-8 or
 15 IC 36-10-9) or the state fair commission.

16 This subsection does not exempt from the state gross retail tax the
 17 renting of accommodations by a political subdivision or the state fair
 18 commission to a promoter or an exhibitor.

19 SECTION 3. IC 6-2.5-4-4.2 IS REPEALED [EFFECTIVE JULY 1,
 20 2017]. Sec. 4.2: (a) A person or a facilitator who is a retail merchant
 21 making a retail transaction described in section 4 of this chapter shall
 22 give to the consumer of the room, lodging, or accommodation an
 23 itemized statement separately stating all the following:

24 (1) The part of the gross retail income that is charged by the
 25 person for renting or furnishing the room, lodging, or
 26 accommodation;

27 (2) Any amount collected by the person renting or furnishing the
 28 room, lodging, or accommodation for:

29 (A) the state gross retail or use tax; and

30 (B) any innkeeper's tax due under IC 6-9;

31 (3) Any part of the gross retail income that is a fee, commission,
 32 or other charge of a facilitator.

33 (b) A penalty of twenty-five dollars (\$25) is imposed for each
 34 transaction described in subsection (a) in which a facilitator fails to
 35 separately state the information required to be separately stated by
 36 subsection (a):

37 SECTION 4. [EFFECTIVE JULY 1, 2017] (a) In repealing
 38 IC 6-2.5-1-19.5 by this act, the general assembly recognizes that
 39 IC 6-2.5-1-19.5 was added by P.L.181-2016, SECTION 16. The
 40 general assembly intends to repeal that provision.

41 (b) In repealing IC 6-2.5-4-4.2 by this act, the general assembly
 42 recognizes that IC 6-2.5-4-4.2 was added by P.L.181-2016,
 43 SECTION 20. The general assembly intends to repeal that
 44 provision.

45 (c) This SECTION expires December 31, 2017.

