

Date of Hearing: April 2, 2024

ASSEMBLY COMMITTEE ON ARTS, ENTERTAINMENT, SPORTS, AND TOURISM

Mike Gipson, Chair

AB 2203 (McCarty) – As Amended March 14, 2024

SUBJECT: Ticket sellers: electronic tickets

SUMMARY: This bill would make it unlawful to sell the same ticket to an entertainment event to more than one person.

Specifically, **this bill:**

- 1) Prohibits, notwithstanding Section 22504 of the Business and Professions Code (BPC), a ticket seller from selling the same ticket to more than one person on the secondary market, with the intent to cancel all but one sale before the date of the event.

EXISTING LAW:

- 1) Defines a ticket seller as any person who for compensation, commission, or otherwise sells admission tickets to sporting, musical, theatre, or any other entertainment event. (BPC Division 8, Chapter 21. Ticket Sellers, Section 22503). Clarifies that the following are not ticket sellers subject to the various sections BPC Chapter 21:
 - a) Any primary contractor or seller of tickets for the primary contractor operating under a written contract with the primary contractor. “Primary contractor” means the person or organization responsible for the event for which tickets are being sold. (BPC 22503.5)
 - b) An officially appointed agent of an air carrier, ocean carrier or motor coach carrier who purchases or sells tickets in conjunction with a tour package accomplished through the primary event promoter or their agent by written agreement. (BPC 22503.6)
 - c) Any person who sells six tickets or less to any one single event, provided the tickets are sold off the premises where the event is to take place, including, but not limited to, designated parking areas and points of entry to the event. (BPC 22504)
 - d) Any nonprofit charitable tax-exempt organization selling tickets to an event sponsored by the organization. (BPC 22511)
- 2) Imposes various requirements on ticket sellers. A violation of any of these provisions constitutes a misdemeanor and may subject the ticket seller to civil liability. These requirements include that tickets sellers:
 - a) Have a permanent business address from which tickets may only be sold and that the address be included in any advertisement or solicitation, a violation of which constitutes a misdemeanor punishable by imprisonment or a fine not exceeding \$2,500 or by both. Provides that a person who engages, has engaged, or proposes to engage in a violation of this specific requirement is liable for a civil penalty not to exceed \$2,500 for each violation. (BPC 22500 (a)(b)&(c))

- b) Maintain records of ticket sales, deposits, and refunds. (BPC 22501)
 - c) Prior to sale, disclose to the purchaser by means of description or a map the location of the seat or seats represented by the ticket or tickets. (BPC 22502)
 - d) Make any partial or full deposit received on a future event for which tickets are not available refundable, except for a service charge of not more than 10 percent until tickets for the event are actually available. (BPC 22506)
 - e) Provide a full refund if an event is canceled to the purchaser within 30 days of the cancellation. If an event is postponed, rescheduled, or replaced with another event at the same date and time, a refund must be provided within 30 days upon the request of the purchaser. (BPC 22507 (a)&(b))
 - f) Disclose that a service charge is imposed by the ticket seller and is added to the actual ticket price by the seller in any advertisement or promotion for any event by the ticket seller. (BPC 22508)
- 3) Prohibits a ticket seller from contracting to sell or accepting payment for tickets unless the ticket seller meets one of more of the following requirements:
- a) The ticket seller has the ticket in their possession. (BPC 22502.1 (a))
 - b) The ticket seller has a written contract to obtain the offered ticket at a certain price from a person in possession of the ticket or from a person who has a contractual right to obtain the ticket from the primary contractor. (BPC 22502.1 (b))
 - c) The ticket seller informs the purchaser orally at the time of the contract or receipt of consideration, whichever is earlier, and in writing within two business days, that the seller does not have possession of the tickets, has no contract to obtain the offered ticket at a certain price from a person in possession of the ticket or from a person who has a contractual right to obtain the ticket from the primary contractor, and may not be able to supply the ticket at the contracted price or range of prices. (BPC 22502.1 (c))
- 4) Prohibits a ticket seller from representing that they can deliver or cause to be delivered a ticket at a specific price or within a specific price range and fail to deliver within a reasonable time at or below or within the price and range of prices stated. (BPC 22502.2)
- 5) Specifies that a ticket seller who violated this prohibition and violates 3) or 4) above is civilly liable to the ticket purchaser for two times the contracted price of the ticket, in addition to any sum expended in trying to attend the event, and reasonable attorney's fees and court costs. (BPC 22502.3.)

FISCAL EFFECT: Unknown. This measure has been keyed fiscal by the Legislative Counsel.

COMMENTS:

- 1) Author's Statement. According to the author, "AB 2203 ensures consumers who purchase tickets on the secondary market are guaranteed to receive what they purchase by preventing

resellers from selling the same tickets across multiple platforms and canceling on the person whose sale they profit from the least. Consumers deserve some insurance that they will receive what they purchase at all, let alone in a timely manner, including tickets to live events.”

- 2) Background. Tickets purchased online are typically found on either primary ticket seller websites or on the secondary market. Primary ticket sellers, including Ticketmaster and AXS, work with event organizers to control ticket prices, and share revenue between the artists and the venue operators. The prices set in the primary market heavily affect the volume and value of tickets in the secondary market. Although the cost of tickets can fluctuate through dynamic pricing, tickets generally sell on the primary market with a face value that is below their market value. The number of tickets available is of necessity limited to the capacity of the venue, and of course are subject to sell outs.

The secondary market is where tickets purchased on the primary market are resold. Ticket prices are usually significantly higher when purchased from someone in the secondary market, especially for high demand or sold out concerts and sports games, as was seen last year for tickets to see Taylor Swift, Beyoncé, or the Sacramento Kings’ playoff games. Secondary market platforms not only serve as a way for consumers who are unable to use their tickets to have a relatively simple way of recouping their money, and potentially making a profit, by reselling them to someone else, they also are utilized by professional ticket brokers. These brokers operate as a business that purchases event tickets solely for the purpose of reselling them to maximize profit.

The platforms, for a fee, simply provide the infrastructure and technology that make up the marketplace for brokers and individuals to resell their tickets. Professional ticket brokers either enter into agreements with sports teams and promoters to have access to tickets for resale, or they compete with consumers in the primary marketplace, to purchase tickets that they intend to resell at a profit on the platforms. These secondary market platforms include StubHub, Vivid Seats, TickPicks, and SeatGeek, as well as resale platforms run by Ticketmaster and AXS.

According to a 2018 report by the United States Government Accountability Office (GAO), ticket brokers are dominating the resale marketplaces. They have a competitive advantage over individual consumers because they have the technology and resources to purchase large numbers of tickets as soon as they go on sale. Some consumer advocates, state officials, and event organizers believe that brokers unfairly use this advantage to obtain tickets from the primary market, which restricts ordinary consumers from buying tickets at face value. As a result, consumers may pay higher prices than they would if tickets were available on the primary market. In addition, some event organizers and primary ticket sellers have expressed frustration that the profits from the higher resale price are pocketed by brokers who had no role in creating or producing the event.

It is possible that brokers and others reselling tickets could list a ticket on multiple resale platforms at the same time, and choose to complete the transaction with the highest bidder. For digital ticket sales, where a paper ticket is not being mailed or delivered to the purchaser, it is unclear at what stage in the process the reseller can cancel the sale or choose to keep the ticket and offer a refund to the purchaser.

- 3) Arguments in support. According to the National Independent Venue Association of California, “Independent music venues are struggling across California, in large part due to the overwhelming amount of fraud in the secondary ticket seller marketplace. Oftentimes, ticket resellers will sell the same ticket to multiple people, which is not only a fraudulent practice that negatively affects the consumer, but also leaves our venues to deal with the negative impacts. As venues, we are the first responders and also the provider of the benefit of the bargain of the ticket—we sell the tickets, we man the box office, we handle the rope lines, we book and promote the show, and we provide all the logistics necessary for the artists on our stages to put on the show. We are involved in every aspect, including having to speak to guests who unfortunately bought a fake ticket or were sold the same ticket a different individual used to enter the venue. AB 2203 takes important steps towards addressing these issues by making it a crime for a ticket seller to sell the same ticket to more than one person on the secondary market.”
- 4) Double-referral. Should the bill pass out of this committee, it will be re-referred to the Assembly Committee on Privacy and Consumer Protection.
- 5) Amendments and policy considerations. The committee has received an amendment from the author’s office that would remove the line of the bill that states, “with the intent to cancel all but one sale before the date of the event.” Therefore, this bill would simply prohibit a ticket seller from selling the same ticket to more than one person on the secondary market.

This change tightens up the language of the bill in that proving intent to cancel would be difficult; however, there are remaining questions about the overall need for this bill, how it will be enforced, and whether it applies to primary ticket sellers that also operate reselling platforms. In existing law, it is prohibited for a ticket seller to represent that they can deliver a ticket at a specific price or within a specific price range, and then fail to deliver a ticket within a reasonable time. A ticket seller who violated this prohibition is civilly liable to the ticket purchaser for two times the contracted price of the ticket, in addition to any sum expended in trying to attend the event, and reasonable attorney’s fees and court costs.

With the proposed amendment there are no specifications on how the bill will be enforced. Are ticket resale companies able to communicate and flag when the same digital ticket is being listed for sale on multiple resale platforms? If not, how would it be possible to find out if the same ticket was sold to more than one person? Would the burden be on venues to give an official notification when a barcode is scanned that has already been utilized by another attendee?

According to secondary ticket reselling website Stubhub, "By listing a ticket for sale, [a ticket reseller] is making a binding offer to sell that ticket to a buyer who purchases the ticket at the sales price. When a buyer accepts [a ticket reseller’s] offer by purchasing [their] ticket through our site, [they] are contractually bound to deliver that exact ticket for the sales price and within the required delivery timeframe. [They] are obligated to monitor [their] inventory and ensure all listings are accurate. Under no circumstances may sellers cancel orders at one price and repost the same tickets for a higher price. Failure to fulfill [their] orders will lead to charges as stated in the User Agreement and Seller Policies."

- 6) Prior and related legislation:

- a) AB 2808 (Wicks), of 2024, would create an accounting manifest for all tickets that would be generated for an event, and a system that would allow primary and secondary ticket providers to access and operate the manifest in order to work with an entertainment facility to manage box office operations, tickets sales, and ticket distributing. (Status: The bill is currently in the Assembly Committee on Arts, Entertainment, Sports, and Tourism.)
- b) AB 8 (Friedman), of 2023, would prohibit a ticket seller from advertising, displaying, or offering a ticket for sale without including all fees that must be paid in order to purchase the ticket, other than taxes imposed by a government on the transaction, and would prohibit the price of a ticket from increasing during the purchase process at any point after the ticket has been selected by the purchaser. (Status: The bill is currently in the Senate Committee on Appropriations.)
- c) SB 785 (Caballero), of 2023, would update laws regulating ticket sellers by establishing definitions for original sellers and ticket resellers; makes changes to the requirements of listing, marketing, and selling a ticket; and increasing penalties for violations of rules governing ticket seller operations. (Status: The bill is currently in the Assembly Committee on Privacy and Consumer Protection.)
- d) AB 1556 (Friedman), Chapter 180, Statutes of 2021, requires, for cancelled events, that a refund be made within 30 calendar days of the cancellation. Requires a ticket price at any event which is postponed, rescheduled, or replaced with another event at the same date and time be fully refunded to the purchaser by the ticket seller upon request within 30 calendar days of the refund request.
- e) SB 1001 (Hertzberg), Chapter 892, Statutes of 2018, prohibits a person from using of a bot to communicate or interact with another person in California online with intent to mislead the other person about its artificial identity for the purpose of knowingly deceiving the person about the content of the communication in order to incentivize a purchase or sale of goods or services in a commercial transaction or to influence a vote in an election.
- f) AB 329 (Pan), Chapter 325, Statutes of 2013, made it a misdemeanor to intentionally use or sell software to circumvent a security measure, access control system, or other control or measure on a ticket seller's Internet Web site that is used to ensure an equitable ticket buying process.

REGISTERED SUPPORT / OPPOSITION:

Support

National Independent Venue Association of California
Stubhub, INC.

Opposition

None on file.

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