

Date of Hearing: March 25, 2014

ASSEMBLY COMMITTEE ON ARTS, ENTERTAINMENT, SPORTS, TOURISM, AND
INTERNET MEDIA

Ian C. Calderon, Chair

AB 1832 (Ian Calderon) – As Introduced: February 18, 2014

SUBJECT: Ticket sellers: equitable online ticket buying process: sale or use of circumventing software.

SUMMARY: This bill would remove the limitation that software be used to circumvent a security control or measure only on a ticket seller's Internet Web site from the provisions in law intended to ensure an equitable ticket buying process. Specifically, this bill strikes the words, "on a ticket seller's Internet Web site" from the provision in law which prohibits circumvention of a Ticket Seller's measures designed to ensure fair access to tickets.

EXISTING LAW:

- 1) Provides a broad regulatory scheme in the Business and Professions Code for the conduct of the business of "Ticket Seller."
- 2) Prohibits the using or selling of 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, as specified.

FISCAL EFFECT: Unknown

COMMENTS:

- 1) Author's Statement: According to the author, this is a technical clean-up bill to AB 329 (Pan) Chapter 325 Statutes of 2013. He writes the committee to say, "Last year the Legislature adopted and the Governor signed AB 329 (Pan), which a 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.

AB 329 was primarily targeted at "Bots", robotic ticket buying software programs that allow users to quickly buy tickets online or multi-line auto dialers, which flood box offices with purchase requests. Typically, these devices are used by unscrupulous individuals like ticket scalpers to buy tickets, then turn around and sell the same tickets at much higher prices.

When drafting the language of AB 329, Legislative Counsel limited the application of the consumer protection language to Bots targeting a seller's Internet Web site; however this drafting could be read to limit the application of the consumer protection fairness principles of the law to only apply to transactions conducted online, and unintentionally omits other media, such as mobile applications, smart TVs and telecommunication devices. AB 1832 is

a technical clean-up bill which simply strikes the limitation in current law to measures used to circumvent equitable ticket buying process targeting Internet Web sites."

According to the author's office, there have been several notable cases where laws or legislation design to protect consumers have been found limited in application to the forum or modality expressly stated in the statutes. "This requires the Legislature to be hyper-vigilant when it comes to drafting language covering new and emerging technologies. Simply saying a bill applies to 'The Internet' can no longer be trusted to ensure application software designed for mobile telecommunications devices, or cloud programs designed for laptops, smart TVs, or even gas pump charging stations are encompassed by the law," the author claims.

He points to the *Apple* decision, where the California Supreme Court considered whether the provisions of the Song-Beverly Act applied to online businesses. [*Apple v. Superior Court of Los Angeles (Krescent)*.] A majority of justices held that it did not. The majority opinion conceded that the statute does not make any express exception for online business transactions – applying as it does to *any* person, firm, etc. that accepts credit cards. However, the court concluded that both the legislative history and the overall statutory framework strongly suggest that the statute was only meant to apply to in-person transactions at 'brick and mortar' businesses; online purchasers were not contemplated by the Act.

The author further notes that Attorney General Kamala D. Harris had to forge an agreement committing the leading operators of mobile application platforms to improve privacy protections for consumers who use applications ("apps") on their smartphones, tablets and other mobile devices, when many consumer advocates thought that apps were already covered under the California Online Privacy Protection Act (Cal OPPA, Business & Professions Code Section 22575 *et seq.*), Cal OPPA expressly regulates commercial websites and online services but many app developers have stated that they do not believe the mobile platforms falls under its provisions.

- 2) Statement in Support: According to a coalition of supporters, "BOTs are an industry-wide problem that were created to bypass ticketing security systems and create a substantial advantage for unscrupulous ticket scalpers who grab countless numbers of tickets as soon as the tickets hit the market during an onsale. Then, once those tickets are procured by the ticket scalpers, the tickets are often sold on ticket resale websites at many times the face values. BOTs put undue pressure on ticketing systems, substantially increase technology costs in the fight against them, and anger consumers because the BOTs impair the ability of real fans to get great seats at face value. The impact BOTs have on fans is serious.

"It is important that the use of BOTs be prohibited by law, that those laws are enforced rigorously, and that those who use and profit from BOTs be held accountable. AB 1832 is another step forward in the effort to protect fans."

- 3) Prior Related Legislation: AB 329 (Pan): Last year this committee heard and passed out AB 329 (Pan), Chapter 325, Statutes of 2013, which in part 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. This provision of the bill was designed to prevent the use of Bots from denying the general public access to the first release of tickets, which generally are

sold at a much lower price than the same tickets yield on the secondary market. At the time of hearing committee staff recommended and the author agreed to amend the bill, deleting the limitation of the provision to the Internet Web sites of sellers, but due to an oversight that change was not made prior to the bill becoming law. AB 1832 corrects this oversight.

- 4) Double referral: Should this bill pass out of this committee, it will be re-referred to the Assembly Committee on Business, Professions and Consumer Protection.

REGISTERED SUPPORT / OPPOSITION:

Support

Broadway Across America
Broadway Sacramento
Fans First Coalition
Feld Entertainment, Inc.
Feld Motor Sports
International Association of Venue Managers
Jonathan Reinis Productions
Live Nation Entertainment, Inc.
Red Light Management
Ringling Brothers and Barnum & Bailey
Shorenstein Hays-Nederlander Theatres
The Broadway League

Opposition

None on file

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