

Date of Hearing: April 23, 2013

ASSEMBLY COMMITTEE ON ARTS, ENTERTAINMENT, SPORTS, TOURISM, AND
INTERNET MEDIA
Ian C. Calderon, Chair

AB 329 (Pan) – As Amended: April 18, 2013

SUBJECT: Ticket issuers and resellers

SUMMARY: This bill would revise existing provisions in law which regulate ticket issuers, and in addition would also regulate ticket resellers, as defined, regarding, among other things, restrictions placed on the resale of event tickets and consumer protection requirements. This bill would further provide that a person who intentionally uses software to circumvent a measure on a ticket issuer's or ticket reseller's website that is used to ensure an equitable ticket buying process is guilty of a misdemeanor. Specifically, this bill:

1) Provides the following definitions:

- a) "Event" means any concert, theatrical performance, sporting event, exhibition, show, or similar scheduled activity taking place in the state that is open to the general public, for which an admission fee is charged, and that is held in a venue accommodating more than 1,000 people, including, but not limited to, venues for which public funding has been provided for the construction, maintenance, or operation of the venue or any infrastructure related thereto or that are located on property owned by a municipality or other government entity.
- b) "Event ticket" means any physical, electronic, or other form of a certificate, document, voucher, token, or other evidence indicating that the bearer, possessor, or person entitled to possession through purchase or otherwise has either a revocable or irrevocable right, privilege, or license to enter an event venue or occupy a particular seat or area in a venue with respect to one or more events or an entitlement to purchase that right, privilege, or license with respect to one or more future events.
- c) "Online marketplace" means an Internet Web site that provides a forum for the resale of event tickets. "Online marketplace" does not include the Internet Web site of a reseller or ticket issuer, unless that reseller or ticket issuer provides a forum for the resale of event tickets on its Internet Web site.
- d) "Person" means any natural person, partnership, corporation, association, or other legal entity.
- e) "Public funding" means the provision by the state, any county, city and county, municipality, or other subdivision of the state, or by any local development corporation or similar instrumentality whose creation was authorized by the state or by any county, city and county, municipality, or other subdivision of the state, of funding, grants, payments, or financial support, including the use of public funds through or from the use of the issuance

of tax-exempt bonds, payments in lieu of taxes, property tax abatements, lotteries, sales taxes, or levies on parking, hotels, alcohol, car rentals, cigarettes, or other goods or services.

- f) "Resale" includes any form of transfer or alienation, or offering for transfer or alienation, of possession or entitlement to possession of an event ticket from one person to another, with or without consideration, whether in person or by means of telephone, mail, delivery service, facsimile, internet, e-mail, or other electronic means. "Resale" shall not include the initial sale of an event ticket by a ticket issuer.
 - g) "Ticket issuer" means any person that makes event tickets available, directly or indirectly for initial sale, to the general public, and may include the operator of a venue, the sponsor or promoter of an event, a sports team participating in an event or a league whose teams are participating in an event, a theater company, musical group, or similar participant in an event, or an agent of any such person. "Ticket issuer" shall not include a person involved in, or facilitating, event ticket resale, 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 a primary event promoter or his or her agent by written agreement, or a nonprofit charitable organization that is exempt from tax under Internal Revenue Code Section 501(c)(3).
 - h) "Ticket reseller" means any person engaging in the resale of event tickets. A "ticket reseller" shall not include a person who resells no more than 80 event tickets in any 12-month period
 - i) "Venue" means the theater, stadium, field, hall, or other facility where an event takes place.
- 2) Except as otherwise provided in this chapter, this bill would provide that ticket issuers would be subject to misdemeanor penalties if they did any of the following:
- a) Impose any terms or conditions on the event ticket transferability or otherwise prohibit a person from reselling the event ticket on an online marketplace not owned or operated by the ticket issuer or its authorized agent.
 - b) Impose any terms or conditions restricting the printing or forwarding of the event ticket, or impose any other pickup or transfer restrictions, for the purpose or with the foreseeable effect of, prohibiting the resale or gratuitous transfer of an event ticket.
 - c) Employ technological means for the purpose, or with the foreseeable effect of, prohibiting or restricting the resale of event tickets, including, but not limited to, issuing event tickets in an electronic form that is not readily transferrable to a subsequent purchaser or conditioning entry into the venue on presentation of a token, like the original purchaser's credit card or state-issued identification card, that cannot be readily transferred to a subsequent purchaser.
 - d) Seek to limit or restrict the price, or to impose a minimum or maximum price, at which an event ticket may be resold.
- 3) Provides that a person who intentionally uses or sells software to circumvent a security measure, an access control system, or other control or measure on a ticket issuer's or ticket reseller's

Internet Web site that is used to ensure an equitable ticket buying process is guilty of misdemeanor.

- 4) Allows the Department of Consumer Affairs to issue regulations to implement the provisions of this chapter, including, but not limited to, regulations that do both of the following:
 - a) Prescribe allowable methods for marking of public sales tickets, including, but not limited to, the marking of event tickets that are not tangible.
 - b) Define categories of persons otherwise subject to this chapter who are temporarily or indefinitely excluded from the provisions of this chapter, or against whom the Attorney General determines to forbear the enforcement of this chapter in whole or in part, if the Attorney General determines the activities of those persons have a relatively insignificant impact on commerce in event tickets.
- 5) Extends the requirements currently applicable to ticket sellers, as defined, to ticket resellers, as this bill would define them.
- 6) Makes additional technical and conforming changes.

EXISTING LAW:

- 1) Provides that a "ticket seller" means any person who for compensation, commission, or otherwise sells admission tickets to sporting, musical, theatre, or any other entertainment event. (Business & Professions Code Section 22503.)
- 2) Provides that a "Primary contractor" means the person or organization that is responsible for the event for which tickets are being sold. (Business & Professions Code Section 22503.5.)
- 3) Requires that a ticket seller shall have a permanent business address and shall be duly licensed as may be required by any local jurisdiction. (Business & Professions Code Section 22500.)
- 4) Further requires that a ticket seller shall maintain records of ticket sales, deposits, and refunds. (Business & Professions Code Section 22501.)
- 5) Requires that a ticket seller must, 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. (Business & Professions Code Section 22502.)
- 6) Declares that it shall be unlawful for a ticket seller to contract for the sale of tickets or accept consideration for the sale of tickets unless the ticket seller meets one or more of the following requirements:
 - a) The ticket seller has the ticket in his or her possession. [Business & Professions Code Section 22502.1(a).]
 - b) The ticket seller has a written contract to obtain the offered ticket, as specified. [Business & Professions Code Section 22502.1(b).]

- c) The ticket seller informs the purchaser that the seller may not be able to supply the ticket at the contracted price or range of prices, as specified. [Business & Professions Code Section 22502.1(c).]
- 7) Allows acceptance of a deposit from a prospective purchaser as part of an agreement that the ticket seller will make best efforts to obtain a ticket at a specified price or price range and within a specified time. (Business & Professions Code Section 22502.1.)
- 8) Makes failure to deliver the tickets within a reasonable time or by a contracted time, at or below the price stated or within the range of prices stated, punishable as a misdemeanor. (Business & Professions Code Section 22505.)
- 9) Provides that in addition to other remedies, a ticket seller who fails to supply a ticket at or below a contracted price or within a contracted price range shall be civilly liable to the ticket purchaser for two times the contracted price of the ticket, in addition to any sum expended by the purchaser in nonrefundable expenses for attending or attempting to attend the event in good faith reliance on seat or space availability, and reasonable attorney's fees and court costs. (Business & Professions Code Section 22502.3.)
- 10) Provides that ticket price of any event which is canceled, postponed, or rescheduled shall be fully refunded to the purchaser by the ticket seller upon request. (Business & Professions Code Section 22507.)
- 11) Declares that any deposit on a future event for which tickets are not available shall be refundable. (Business & Professions Code Section 22506.)
- 12) Allows any local jurisdiction to require a bond of not more than fifty thousand dollars (\$50,000) to provide for any necessary refunds. (Business & Professions Code Section 22507.)
- 13) Requires that a ticket seller shall disclose any service charges assessed, as provided. (Business & Professions Code Section 22508.)
- 14) Requires that any ticket seller who includes tickets to an event in conjunction with the sale of a tour or event package, as defined, shall disclose in any advertisements or promotional materials the price charged or allotted for the tickets. (Business & Professions Code Section 22509.)
- 15) Allows local agencies to impose local fees or taxes. (Business & Professions Code Section 22510.)
- 16) Exempts from its provisions the following persons:
 - a) Any primary contractor or seller of tickets for the primary contractor, as specified (Business & Professions Code Section 22503.5.);
 - b) Officially appointed agents of an air carrier, ocean carrier or motor coach carrier who purchases or sells tickets in conjunction with a tour package, as specified (Business & Professions Code Section 22503.6.);

- c) Persons who sell six tickets or less to any one single event, provided the tickets are sold off the premises (Business & Professions Code Section 22504.);
 - d) Any nonprofit charitable tax-exempt organization selling tickets to an event sponsored by the organization. (Business & Professions Code Section 22511.)
- 17) Provides that a violation of any of these provisions constitutes a misdemeanor, and in addition authorizes a civil penalty not to exceed two thousand five hundred dollars (\$2,500) for each violation, which may be assessed and recovered in a civil action brought in the name of the people, as specified. [Business & Professions Code Section 22500(c).]
- 18) Provides that any person who, without the written permission of the owner or operator of the property on which an entertainment event is to be held or is being held, sells a ticket of admission to the entertainment event, which was obtained for the purpose of resale, at any price which is in excess of the price that is printed or endorsed upon the ticket, while on the grounds of or in the stadium, arena, theater, or other place where an event for which admission tickets are sold is to be held or is being held, is guilty of a misdemeanor. (Penal Code Section 346.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) Stated Need for Legislation: According to the author, "There is a growing trend among ticket sellers, to assert that ticketholders should not have full possession of their tickets. Instead, ticket sellers only sell restricted tickets that cannot be sold or given away or can only be transferred, often for a fee, through a website that the ticket seller controls to ensure a monopoly on the tickets. As an example he points out that, "Fans of the Los Angeles Angels now can only transfer their tickets through such a website, and many consumer advocates, such as Consumer Action, fear that the opportunity to charge for these kinds of ticket transfers will drain the pockets of more and more fans.

"To further burden fans, restricted tickets are tied to the original purchaser's credit card and photo ID. If you give or sell your tickets to a family member or friend or to a charity, you will have to obtain their credit card number, or give yours to them, to make the transfer. Some people generously donate tickets for a particular game from their season tickets to help local charities or volunteer organizations, and these burdens are likely to inhibit these contributions.

"This bill also prohibits the use of robotic ticket-buying software designed to bombard online box offices with thousands of simultaneous purchase requests, thereby gobbling up the best seats and preventing the average fan from obtaining ticket, and recognizes that there is a secondary market for event tickets, and provides regulation of that market, in order to further protect consumers."

- 2) Recent Amendments: Major Provisions:

Prior to hearing in the committee, this bill was substantially amended. The original substantive version of the bill, dated March 21, 2013, would have deleted the existing law for ticket sellers contained in the Business and Professions Code in its entirety, and replaced it with a new

scheme of regulation. That version drew many complaints, and according to the author did not reflect the strong consumer protection measure he intended this bill to represent.

Therefore, this bill was, again, substantially rewritten, to become a modification of the existing law which is designed to accomplish three major changes; to establish a new scheme of regulation for event ticket resellers; to allow for transferability of event tickets, and; to prohibit the use robotic or automated systems to circumvent fair access of all to purchase an event ticket upon its release to the public. The April 18, 2013 version, which this analysis reflects, contains these changes. The major provisions are as follows:

a) Definitions:

This bill would add a definition of "ticket reseller" where one does not currently exist. It would also change the definition of "ticket seller" to "ticket issuer" and restructure the existing law to encompass the various authorized sellers to be identified in one section, such as tour operators and charities, which heretofore were defined in separate sections of the Chapter. Please see above for full detailed definition section.

b) Regulation of Event Ticket Resellers - Excludes Online Marketplace Sites Such as Stubhub:

This bill provides that "online marketplace" means an Internet Web site that provides a forum for the resale of event tickets. "Online marketplace" does not include the Internet Web site of a reseller or ticket issuer, unless that reseller or ticket issuer provides a forum for the resale of event tickets on its Internet Web site.

It should be noted that while "online marketplace" is excluded from the provisions of this bill, existing laws against fraud and unfair business practices will still apply to their activities. (See Civil Code Sections 1572-3; Penal Code Section 532, et seq.; Business and Professions Code Section 17200, et seq.)

c) New Regulation of Event Ticket Sellers: No Limitation on Transferability or Price of Event Tickets Offered by Resellers:

Except as otherwise provided in this chapter, this bill would provide that ticket issuers would be subject to misdemeanor penalties if they did any of the following:

- i) Impose any terms or conditions on the event ticket transferability or otherwise prohibit a person from reselling the event ticket on an online marketplace not owned or operated by the ticket issuer or its authorized agent.
- ii) Impose any terms or conditions restricting the printing or forwarding of the event ticket, or impose any other pickup or transfer restrictions, for the purpose or with the foreseeable effect of, prohibiting the resale or gratuitous transfer of an event ticket.
- iii) Employ technological means for the purpose, or with the foreseeable effect of, prohibiting or restricting the resale of event tickets, including, but not limited to, issuing event tickets in an electronic form that is not readily transferrable to a subsequent purchaser or conditioning entry into the venue on presentation of a token, like the original purchaser's credit card or state-issued identification card, that cannot be readily

transferred to a subsequent purchaser.

- iv) Seek to limit or restrict the price, or to impose a minimum or maximum price, at which an event ticket may be resold.

d) No Use of Computerized Software Known as "Bots" to Circumvent Equitable Ticket Buying:

This bill would declare that anyone who intentionally uses or sells software to circumvent a security measure, an access control system, or other control or measure on a ticket issuer's or ticket reseller's Internet Web site that is used to ensure an equitable ticket buying process, is guilty of a misdemeanor.

e) Allow Department of Consumer Affairs to Promulgate Regulations:

The Department of Consumer Affairs may issue regulations to implement the provisions of this chapter, including, but not limited to, regulations that do both of the following:

- i) Prescribe allowable methods for marking of public sales tickets, including, but not limited to, the marking of event tickets that are not tangible.
- ii) Define categories of persons otherwise subject to this chapter who are temporarily or indefinitely excluded from the provisions of this chapter, or against whom the Attorney General determines to forbear the enforcement of this chapter in whole or in part, if the Attorney General determines the activities of those persons have a relatively insignificant impact on commerce in event tickets.

3) Support:

a) Transferability and a Regulated Secondary Market for Event Tickets:

eBay writes in support on behalf of Stubhub, "The growing implementation of restrictive ticketing regimes for events is threatening the rights of individual consumers across the United States. Restricted paperless tickets are tied to the original purchaser's credit card and photo ID and often non-transferable or only transferable on the original seller's preferred website. With passage of this bill, California will preserve consumer and individual rights to freely transfer concert and sporting event tickets by making it unlawful for a ticket issuer to prohibit or restrict the resale or offering for resale of an event ticket by a lawful possessor of the ticket."

According to Fan Freedom, "This bill is necessary because ticket sellers such as Ticketmaster, and the artists, sports teams and venues they do business with, use restricted tickets to limit what fans can and cannot do with our tickets. Restricted tickets are tied to the original purchaser's credit card and photo ID and are often non-transferable, or only transferable through an artist's, team's, or venue's preferred resale website. If fans do not have the choice of how a ticket is used, who uses it, how it is transferred or at what price it can be resold, fans do not really own those tickets.

"For example, the Los Angeles Angels of Anaheim launched their own resale site in partnership with Ticketmaster that would implement minimum prices for resale tickets and restrict season ticket holders from emailing tickets to any other person until 48 hours before a game. A ticket holder can also only transfer tickets to 10 games over the course of the season. The terms and conditions also stipulate that transfer of a ticket is prohibited without the consent of the team unless fans use the Angels/Ticketmaster resale website."

Another line of support comes from non-profits and charities which use tickets as prizes. Typical of this is the Bonnie J. Addario Lung Cancer Foundation who wrote, "Fundraising is always a challenge for nonprofits. Donations of sports, theatre and concert tickets play a crucial role in nonprofit groups' fundraising efforts. "Tickets make wonderful door prizes, raffle prizes and silent auction items. For this reason, it is critically important to nonprofits that event tickets remain easily transferrable and that sharing, gifting and reselling tickets remain easy for ticket owners and the nonprofits they generously support. We have been fortunate to receive generous ticket donations from many in the entertainment industry, but it is critical that private individuals continue to have the choice of how to use their tickets, including using them as charitable donations. Fundraising is always difficult, and restricted tickets add extra hurdles on donors that we fear will have a chilling effect on these critical donations."

Mr. Steve Barrilleaux states, "I own Safe Harbor Pension and Wealth, a small investment firm located in Roseville. We help people throughout the region with their financial and retirement needs. For the last six years I have bought into a Sacramento Kings season ticket package with five other friends. However I am not the original signed purchaser of the tickets package. My paid share of the ticket package is seven of the games and I use them to entertain clients and prospect new business. This is a substantial investment in my new business marketing, and an invaluable perk that I can offer my clients. If a restrictive policy were put in place that only the original purchaser can use our tickets it would significantly impact my current client relations."

b) Line-Jumping Automated Ticket Systems Which Exclude Consumers From Lower/Originally Priced Event Tickets:

The American Bus Association, National Tour Association and the United Motor Coach Association write in strong support of this provision, saying, "This bill cracks down on unscrupulous online ticket sale 'line jumpers' and affirms consumers' property rights by clarifying that event tickets they purchase are their personal property. We do so on behalf of our more than 3,000 motorcoach and tour packager members nationwide, including more than 259 in California, that rely on their ability to buy and sell event tickets to create tour packages that generate millions of dollars each year for California's economy."

Most opponents to this measure agree that this provision of AB 329 is a good idea. Typical of this line of letters is that from the San Francisco 49ers, who state, "Although we oppose AB 329, we strongly agree that the use of BOTs and other computer hacking programs should be illegal. ..."

4) Opposition:

a) Major League Baseball: No Need for Regulation Which Could Stifle Evolving Consumer Friendly Ticketing Technology:

A group of Major League Baseball entities (MLB Entities) state, "For more than a decade, the MLB Entities have innovated in the secondary ticketing area, with millions of tickets having been resold or transferred through supported programs. In California, these efforts date back to 2000, when the San Francisco Giants pioneered by launching an authorized, consumer-friendly secondary ticket service from its official website.

"In order to provide California fans with the best ticket services and conveniences possible, the MLB Entities invest significantly in and support the advancement of electronic ticket technologies in both the primary and secondary ticket markets. For example, a Giants fan can purchase a game ticket online, download it electronically to his or her smartphone and present the ticket image, as shown on the smartphone screen, for scanning and entry at AT&T Park. In addition, fans can electronically transfer their tickets to other fans, who would be assured by the teams' support of the process that they are legitimate tickets. Despite the many advantages to consumers and efficiencies these technologies provide venue operators, these emerging technologies would be in this bill's cross-hairs. The better course is to continue to let this rapidly-changing area develop on its own, rather than be disrupted through additional and unnecessary regulation.

b) Secondary Market for Event Tickets Could Harm Consumers:

The San Jose Sharks write to express their concerns based upon reasoning shared with other opponents that, "A law banning paperless and will-call ticketing would interfere with a dynamic, competitive marketplace by directly benefiting scalpers and secondary-market ticket brokers. This bill is heavily supported by scalpers and secondary-market ticket brokers because these methods serve to limit the damage they cause to the ticket market. The secondary ticket resale market is big business, and scalpers and ticket brokers make up an increasingly large percent of all ticket resellers. Scalpers and ticket brokers directly hurt the average California consumer by employing schemes and tactics to buy tickets en masse and resell them at prices well above face value. Ultimately, the inflated market created by these scalpers and secondary-market ticket brokers causes increased ticket prices and ancillary costs that are ultimately passed on to your constituents. The ticket methods this bill proposes to ban serve to limit such costs, thus ensuring that the average fan has access to reasonably priced tickets to the Venues and Events in which California state and local governments have a significant investment".

According to Shorenstein Hays Nederlander Theatres, LLC, who operate several theaters in San Francisco and do their own event ticketing, "This bill would negatively affect California consumers by banning proven ticketing methods that protect fans. These methods, while used primarily in cases of high-demand events, can ensure a purchased ticket cannot be resold above the face value set by the artist, team, promoter, who want to protect fans from an out-of-control resale market. ID-check at will call and paperless ticketing are options selected by the above stakeholders. In fact, paperless ticketing accounts for less than 0.01% of all ticket sales. These methods benefit your constituents with reasonably-priced tickets, and ensure that they pay only the price set by the artist, team, venue, and promoter - as

opposed to the higher prices set by ticket scalpers, who artificially inflate prices by causing shortages in the market. A law banning paperless and will-call ticketing would not only interfere with a robust and dynamic competitive marketplace, but would put scalpers ahead of your constituents."

c) AB 329 Could Result in Indirect Harm to Local Economies:

The City of Thousand Oaks is typical of opponents who wrote the committee to share their concern that the bill indirectly hurts the economy and fans/patrons. "The sports and entertainment industry are responsible for retaining current jobs and promoting new ones. Many ancillary and local businesses (hotels, restaurants, parking lots, food vendors, union workers, etc.) are positively impacted when a tour comes through a city. Event presenters and artists are less likely to want to host an event in California is new State regulations such as this bill creates an unfair advantage to scalpers creating a disadvantage to their fans."

5) Committee Comment: Small venues are excluded from consumer protections under AB 329:

This bill would limit its provisions to venues which accommodate more than 1,000 people. Current law has no such limitation on the consumer protections afforded to purchasers of event tickets. This limitation upon the size of venues covered by this bill creates a two-tiered system of regulation, whereby small venues and their clientele would be left unprotected against unscrupulous ticketing practices.

Given the popularity of "club" events and the limited nature of available tickets for small venue shows, one could foresee the tickets for all events, but especially major acts in small venues, being a source of potential mischief. If this bill should be approved by the committee and move forward, the author may consider amending the limitation upon venues covered by its consumer protection provisions out of the bill.

6) Prior Related Legislation:

- a) AB 2612 (Plescia), of the 2007-08 Legislative Session, introduced as a spot bill to amend the ticket seller's provisions of the B&P Code. AB 2612 was held in the Assembly Rules Committee without referral.
- b) SB 1022 (Campbell), of the 2005-06 Legislative Session, would have included Licensed Ticket Sellers, and other businesses, eligible to organize as Limited Liability Corporations (LLC). SB 1022 was returned to the Secretary of the Senate by the Senate Judiciary Committee without a hearing pursuant to Joint Rule 56.
- c) SB 1602 (Battin) of the 2005-06 Legislative Session, would have expanded the definition of scalping under the Penal Code, to extend the prohibition against selling event tickets purchased for resale above market value on the event premises, to any purchase of tickets for resale in an amount over the limitation on maximum number of tickets allowed by the original ticket seller and for any amount of profit. The bill also would have criminalized the use of automated computer purchases of event tickets in order to accomplish the purchase above the seller's limit, by defining the practice as "criminal interference" with the seller's Web site. SB 1602 was held on Senate third reading at the request of the author.

REGISTERED SUPPORT / OPPOSITION:

Support

ALS Association, Greater Sacramento Chapter
American Bus Association
Bonnie J. Addario Lung Cancer Foundation
California Consumer Affairs Association
California Senior Advocates League
Consumer Action
Consumer Federation of America
Consumer Federation of California
Fan Freedom
National Consumers League
National Tour Association
Safe Harbor Pension and Wealth
Stubhub
TechAmerica
TechNet
United Motor Coach Association
Five private citizens

Opposition

Broadway Across America
Broadway Sacramento
City of Thousand Oaks
Fans First Coalition
Feld Entertainment
Feld Motor Sports
HP Pavilion at San Jose
International Association of Venue Managers
JAM Productions
Live Nation Entertainment
Los Angeles Angels of Anaheim
Los Angeles Dodgers
Ringling Brothers and Barnum & Bailey
San Francisco 49ers
San Jose Arena Management
San Jose Sharks
Shorenstein Hays-Nederlander Theatres
The Broadway League
University of Southern California
One private citizen

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