

Date of Hearing: July 11, 2023

ASSEMBLY COMMITTEE ON ARTS, ENTERTAINMENT, SPORTS, AND TOURISM
Sharon Quirk-Silva, Chair
SB 785 (Caballero) – As Amended June 28, 2023

SENATE VOTE: 34-0

SUBJECT: Consumer protection: ticket sellers

SUMMARY: SB 785 updates laws regulating ticket sellers and establishes various requirements on certain types of information that must be disclosed to the purchasers of tickets to events.

Specifically, **this bill:**

- 1) Defines the following terms:
 - a) “Event presenter” means the person or organization that is responsible for a sporting, musical, theatre, or other entertainment event for which tickets are sold, including the holder of the rights to the sporting, musical, theatre, or other entertainment event, or their authorized agent.
 - b) “Original seller ” mean a person who, for compensation, commission, or otherwise, advertises, lists, markets for sale, or sells an admission ticket to a sporting, musical, theatre, or other entertainment event for original sale as instructed by an event presenter.
 - c) “Ticket marketplace” means an entity who, for compensation, commission, or otherwise, advertises, lists, markets for sale, processes payments for, facilitates the sale or exchange of, or sells an admission ticket for, a sporting, musical, theatre, or other entertainment event, whether original sale or resale.
 - d) A “ticket reseller” means a person who for compensation, commission, or otherwise, advertises, lists, markets for sale, or sells an admission ticket to a sporting, musical, theatre, or other entertainment event other than a ticket for original sale sold by an original seller.
- 2) Requires original sellers, ticket resellers, and ticket marketplaces to be registered with the Secretary of State and be duly licensed, as may be required by any local jurisdiction.
- 3) Specifies that each ticket sold or offered for sale in violation of this chapter will constitute a separate violation which may be brought only by the Attorney General, a district attorney, a city attorney of a city that has a population greater than 750,000, a county council of a county within which any city has a population greater than 750,000, or a city prosecutor in a city that has a full-time city prosecutor, with the consent of the district attorney, and requires the court to impose a civil penalty of not more than \$10,000 for each violation of the law and circumstances that may inform the penalty.
- 4) Prohibits event presenters, original sellers, ticket marketplaces, and ticket resellers from advertising, displaying, or offering a price for a ticket that does not include all fees or charges

that are required to be paid in order to purchase the ticket, other than taxes or fees imposed by a government on the transaction. The total cost of the ticket must be clearly and conspicuously disclosed, from the first time pricing is displayed and anytime thereafter, except that a reasonable fee may be charged for the delivery of a non-electronic ticket if multiple delivery options are presented to the purchaser for selection and the delivery fee is disclosed to the purchaser before payment is accepted.

- 5) Prohibits original sellers and ticket resellers from advertise, offer for sale, or contract for the sale of a ticket, or accept consideration for payment in full or for a deposit for the sale of a ticket, unless the ticket has been made available for sale on the internet to the public by the event presenter, including, without limitation, through a presale, fan club presale, or any other promotional presale event, or the event presenter or its authorized agent has otherwise provided permission to the original seller or ticket reseller to do so.
- 6) Requires ticket resellers and ticket marketplaces to disclose in the description of the price of a ticket that the ticket is a resale ticket that may be offered at a price that is more than the price of a ticket offered or sold by the event presenter. Ticket resellers and ticket marketplaces must include in any listing for a resale ticket the face price of the original ticket.
- 7) Requires original sellers and ticket resellers to own, possess, or have the contractual right to sell a ticket, before listing, marketing, or selling a ticket. They must also disclose to the purchaser, by means of a description or map, the location within the venue that the ticket will entitle the purchaser to occupy, including the section, row, and seat number represented by each ticket, and the face price printed or displayed on the ticket that they are listing for resale.
- 8) Requires a ticket marketplace, before accepting a listing to market or sell a ticket, to require that the person listing the ticket own, possess, or have the contractual right to sell the ticket, and be able to deliver the ticket to the buyer. A ticket marketplace, on its internet website in each ticket listing, must disclose to the purchaser, by means of a description or a map, the location within the venue that the ticket will entitle the purchaser to occupy, including the section, row, and seat number represented by each ticket.
- 9) States that nothing in this chapter shall infringe upon the right of an event presenter to impose terms and conditions on the sale, pricing, transfer, or resale of tickets to their events, or on the technologies that an event presenter uses in the sale of those tickets.
- 10) Repeals a provision of existing law which states that this chapter does not apply to any primary contractor or seller of tickets for the primary contractor operating under a written contract with the primary contractor, with "primary contractor" being defined as the person or organization who is responsible for the event for which tickets are being sold.
- 11) Prohibits a person from using an internet website, or causing an internet website to be used, that displays a trademarked or copyrighted URL, title, designation, image, mark, or other symbol without the written consent of the trademark or copyright holder, or any combination of text, images, web designs, or internet addresses that is substantially similar to the internet website of an event presenter or original seller, or any of their authorized agents, without the written consent of the event presenter or original seller.

- 12) Prohibits a person from intentionally using, causing to be used, or selling software or services that do any of the following:
- a) Purchase tickets in excess of posted limits for an online event ticket sale.
 - b) Circumvent or disable an electronic queue, waiting period, presale code, or other sales volume limitation system associated with an online event ticket sale.
 - c) Circumvent or disable a security measure, access control system, or other control or measure that is used to facilitate authorized entry into an event.
 - d) Purchase tickets in violation of the event presenter's posted terms and conditions.
 - e) Utilize multiple Internet Protocol addresses, multiple purchaser accounts, or multiple email addresses to purchase tickets in excess of posted ticket limits.

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. Clarifies that the following are not ticket sellers subject to various sections of the bill:
 - a) 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.
 - b) 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.
 - c) Any primary contractor (defines as the person or organization responsible for the event for which tickets are being sold) or seller of tickets for the primary contractor operating under a written contract with the primary contractor.
 - d) Any nonprofit charitable tax-exempt organization selling tickets to an event sponsored by the organization. (Bus. & Prof. Code §§ 22503.6, 22504, 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;

- b) Maintain records of ticket sales, deposits, and refunds;
 - 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;
 - 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;
 - e) 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;
 - f) Provide a refund within 30 days for the ticket price of an event which is canceled;
 - g) Provide a refund, upon request, within 30 days, for the ticket price of an event which is postponed, rescheduled, or replaced with another event at the same date and time;
 - h) provide a bond of not more \$50,000 to provide for any refunds in a local jurisdiction that requires this; and
 - i) Disclose in any advertisement or promotion for any event that a service charge is imposed and added to the actual ticket price. (Bus. & Prof. Code §§ 22500-22511.)
- 3) Prohibits a ticket seller from contracting to sell or accepting payment for tickets unless the ticket seller has lawful possession of the ticket; has a contractual right to obtain the ticket; or informs the purchaser the seller does not have possession of the tickets, has no contract to obtain the offered ticket, and may not be able to supply the ticket at the contracted price, as specified. Authorizes a ticket seller to accept 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, provided that 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 days, of the terms of the deposit agreement, and includes in the oral and written notice other required disclosures. (Bus. & Prof. Code § 22502.1.)
- 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. (Bus. & Prof. Code § 22502.2.)
- 5) Specifies that a ticket seller who violated this prohibition and violates 3) 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. (Bus. & Prof. Code § 22502.3.)

FISCAL EFFECT: According to the Senate Appropriations Committee, the Department of Justice reports costs of \$225,000 in Fiscal Year (FY) 2023-24 and \$395,000 in FY 2024-25 and ongoing for increased enforcement workload and this bill will result in unknown court workload

cost pressures to adjudicate additional misdemeanor offenses for violations of the requirements and prohibitions established by this bill (Trial Court Trust Fund, General Fund).

COMMENTS:

- 1) Author's statement. According to the author, "This bill will modernize California ticket purchasing laws to apply to all ticketing platforms, both original sale and resale, in order to provide comprehensive and uniform protections for fans, artists, teams, and venues... This bill puts fans and live entertainment creators, rather than scalpers who prey on fans, first. In addition to protecting consumers, this bill will not impinge upon the rights of the artists, entertainers, and teams to choose how their tickets may be priced, sold, transferred or resold, or what technologies they deploy in the sale of their tickets, including the tools they use to ensure the availability of face values tickets to fans, prevent fraud and deter organized scalping."
- 1) Background. On October 21, 2022, singer and songwriter Taylor Swift released a new album called "Midnights." The album was an overnight success, and Taylor Swift, at 32, became the first artist ever to simultaneously capture all Top 10 spots with songs from the "Midnights" album. Days after releasing the album, Swift announced her Eras Tour, the first of her musical tours since 2018 due to the COVID-19 pandemic.

Tickets were set to go on sale on November 18, 2022. Pre-sale for tickets for select fans with certain corporate partnerships began as early as November 1, 2022. Ticketmaster and at least one tour date in Nashville noted that ticket prices could fluctuate based on demand at any given time. On November 15, during presale, Ticketmaster's website crashed following millions showing up to buy Swift's concert tickets. After Ticketmaster determined there were at least questions as to whether there were enough tickets to meet buyer demand, Ticketmaster also cancelled its general ticket sale that was supposed to open on November 18, 2022. This meant that fans who otherwise would have paid hundreds of dollars to see Swift in concert were left to purchase them off of resale websites, where they were going for thousands of dollars (some even around \$20,000).

According to Forbes, Ticketmaster's failure was caused in large part due to bot attacks, but also due to the failure of leadership to engage in meaningful practices and philosophies among employees to help them respond in a crisis.

On Tuesday, January 24, 2023, the US Senate Judiciary Committee had a hearing on the issue, focusing specifically on the Live Nation and Ticketmaster's 2010 merger. Leading up to the hearing, Senator Klobuchar told Rolling Stone that she believed Live Nation Entertainment was a monopoly because, as a company, it has 70% of tickets for major concern venues; venue operators said that they were concerned about not getting Live Nation's shows at their venues if they don't use Ticketmaster; the company utilized exclusivity deals that can last three to seven years; hidden fees, some costing up to 75% of a ticket's face value; and Live Nation is owning more and more venues, which was not the case in 2010 when the merger occurred. In the January 2023 hearing, Senators questioned Live Nation and raised potential solutions to the problems above, including non-exclusivity of contracts between venues and ticketing agents, placing price caps on tickets, and working more closely with the FTC to stop speculative ticket sales. National media has been following the story since October and November of 2022.

- 2) The Ticket Buyer Bill of Rights. Among other steps taken to drive more consumer-centric responses to the experiences highlighted above, consumer advocacy groups launched a campaign culminating in The Ticket Buyer Bill of Rights. According to its website, The Ticket Buyer Bill of Rights “is a set of principles the nation’s leading consumer advocacy groups and others believe should serve as a framework for ticketing legislation that can improve the live events ticketing market that serves millions of fans each year. The Bill of Rights features four pillars: The Right to Transferability, where ticketholders decide how to use, sell or give away their tickets if they wish and not the entity that previously sold the tickets; The Right to Transparency, which includes all-in pricing and disclosures of relevant information for the purchasing decision; The Right to Set the Price, so that companies who originally sold the tickets cannot dictate to fans for what price they can or cannot resell their purchased tickets, and, lastly; The Right to a Fair Marketplace, where fans compete with actual humans, not illegal software bots, for tickets.”

Specifically, The Ticket Buyer Bill of Rights includes:

- All-in, upfront pricing – no surprise fees at checkout
- Mandating primary ticket-selling companies to report all ticket bot activity to the appropriate authorities
- Disclosure of how many tickets are available to the general public at the time of “on sale”
- Clear and conspicuous disclosure when a ticket seller does not have a ticket in their possession or contractual right
- The guarantee of unrestricted transfer of all tickets
- A prohibition on deceptive URLs and other fraudulent reseller practices

This framework is meant to provide guidance for legislative action to ensure consumer protection in ticketing sales. At the state level, legislatures have been taking action to ensure consumer protection with respect to ticket sellers, particularly Live Nation entertainment.

- 3) President Biden and Ticketmaster. On June 15, 2023, President Biden hosted a roundtable discussion with representative from Live Nation, Ticketmaster, SeatGeek, TickPick, and others, where they pledged to give consumers the ability to see the full price of tickets up front, minimizing the frequently frustrating experience of watching additional fees add up late in the checkout process when buying online. The president has urged Congress to pass legislation targeting other hidden costs paid by consumers throughout the economy. Some of the commitments include Live Nation’s pledge that, in September, all tickets sold for its shows through Ticketmaster automatically will list all the prices up front, for all tickets to events.
- 4) Arguments in support. According to a coalition of organizations representing musicians and recording artists, including the Screen Actors Guild - American Federation of Television and Radio Artists (SAG-AFTRA), the Recording Industry Association of America (RIAA), the Black Music Action Coalition, the Music Artists Coalition, and more:

“We represent music creators, the venues where artists play, the labels for whom they record, and labor organizations – those who create, invest in and deliver live entertainment events to our fans. No one cares more about music fans and creating a great live experience for those fans than our members. Our members are the ones who work every day to make concerts great... Simply put, artists and performers support SB 785 because it would bring existing ticket purchasing law into the digital age, applying reforms to all ticketing platforms – at source or resale. SB 785’s protections would be a boon to fans, artists, and venues alike. The undersigned organizations believe fans are best served when artists are in control, not industrial resellers.”

Additionally, according to primary market ticketing company AXS:

SB 785 will, “end the outrageous practice of speculative ticketing by imposing easily enforceable rules to reduce price gouging of our fans and penalizing ticket sellers and platforms who list speculative tickets, establish serious penalties for employing BOTS that deprive consumers of access to face value tickets, and allow professional scalpers to hoard tickets and engage in large scale scalping, and establish meaningful penalties for selling tickets by engaging in the fraudulent practice of using deceptive URLs to lure consumers into buying tickets at inflated prices.”

- 5) Arguments in opposition. According to the Consumer Federation of California (CFC) and the Sports Fans Coalition:

“We believe that when a consumer buys a ticket the ticket is theirs. As the saying goes, ‘life happens,’ and when a consumer can’t attend a concert or sporting event for any of a myriad of reasons then they should be able to dispose of their tickets. Under the current version of SB 785 this is not the case, so consumers will be left holding the bag. This is why, especially given the monopolistic nature of the ticketing industry, transferability is an important consumer protection that currently serves as an important check against monopoly power. Artist groups that sponsor SB 785 have said that their objective is to eliminate the secondary ticket market altogether. As the market currently stands that would put even more power in the hands of the monopoly. History has shown that monopoly power harms consumers.”

Additionally, according to ticket exchange and resale companies StubHub and Vivid Seats:

“We believe that a competitive, transparent, and secure ticket marketplace unequivocally supports fans. Competition can drive affordability and an overall better consumer experience. As leading ticket resale marketplaces that provide fans with a secure, safe, and convenient place to buy and sell tickets to a wide variety of events, we are concerned that SB 785 would harm competition and extend the already immense control of one entity over the live event industry... In the U.S., primary ticket sales for an event are typically exclusive to one original ticket seller. Consumers are subject to the terms and conditions, technology, fee structure, and service provided by that original ticket seller. Due to their exclusive distribution agreements, original ticket sellers, many of which also have secondary ticketing marketplaces, are uniquely positioned to utilize technology or restrictive terms and conditions placed on the initial sale of the ticket to control consumer behavior, limit consumer choice, and thwart competition.”

6) Committee comments. The following amendments were processed by the committee prior to the bill being presented in committee.

- Language proposed by the California Department of Justice on all-in-pricing
- A requirement that original sellers, ticket resellers, and ticket marketplaces be registered with the Secretary of State
- Striking Business and Profession Code Section 22503.5, that excludes primary contractors from the provisions of this chapter.

The committee has additionally requested that the author commit to removing the section of the bill which would codify the right of an event presenter to impose terms and conditions on the transfer and resale of tickets to their events, for reasons outlined in The Ticket Buyer Bill of Rights above. Due to legislative deadlines and the timing of negotiations, the proposed amendment was unable to be taken in this committee.

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

8) Prior and related legislation:

- a) AB 8 (Friedman), of 2023, would require a ticket seller to disclose to a purchaser the total price of the ticket and the portion of that price that represents any fees or surcharges. The seller must also provide a link to an internet webpage that includes certain refund requirements, as specified. (Status: The bill is currently in the Senate Committee on Business, Professions, and Economic Development)
- b) SB 478 (Dodd), of 2023, would make it an unlawful business practice, pursuant to the Consumer Legal Remedies Act, to advertise, display, or offer a price for a good or service that does not include all mandatory fees or charges other than taxes imposed by a government. (Status: The bill is currently in the Assembly Committee on Judiciary)
- c) SB 644 (Glazer), of 2023, would require a hotel, third-party booking service, hosting platform, or short-term rental to allow a reservation to be canceled without penalty if the cancellation is commenced within 24 hours of the reservation being finalized so long as the reservation is made 24 hours or more prior to the day of check-in. (Status: The bill is currently in the Assembly Committee on Judiciary)
- d) SB 829 (Wilk, 2023) prohibits the operator of an entertainment facility and a primary ticket seller from entering into a contract that provides for the primary ticket seller to be the exclusive ticket seller for the operator of the entertainment facility. (Status: The bill is currently in the Assembly Committee on Arts, Entertainment, Sports, and Tourism)
- e) 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.

- f) 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.
- g) 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

American Association of Independent Music
Axs
Black Music Action Coalition
City of Thousand Oaks
Future of Music Coalition
International Association of Venue Managers
Music Artists Coalition
Music Workers Alliance
Orange County Business Council
Ovg360
Recording Academy
Recording Industry Association of America
SAG-AFTRA
Songwriters of North America
Union of Musicians and Allied Workers

Opposition

Chamber of Progress (Unless Amended)
Consumer Federation of California
National Consumers League
NetChoice
Protect Ticket Rights
Sports Fans Coalition
Stubhub, INC. (Unless Amended)
Vivid Seats LLC (Unless Amended)

Analysis Prepared by: Brian Anderson / A.,E.,S., & T. / (916) 319-3450