

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

SB 785 (Caballero)
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Fiscal: Yes
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SUBJECT

Consumer protection: ticket sellers

DIGEST

This bill reworks the laws governing ticket sellers, including creation of various categories of ticket sellers with different provisions applying to each.

EXECUTIVE SUMMARY

As any self-respecting Swiftie will tell you, there are very real problems in the world of ticket buying, creating more than a little Bad Blood. In addition to more infamous ticket buying debacles such as the roll out of tickets for Taylor Swift's Eras Tour, most consumers have faced the well-documented issues with purchasing tickets to sporting events, concerts, and other live entertainment. This includes exorbitant and hidden fees, nearly instantaneous ticket sellouts followed by price gouging on the secondary market, and websites that attempt to pass themselves off as the primary ticket seller. Fingers are pointed in all different directions as to who or what is responsible.

This bill attempts to address the consumer protection issues in this arena by amending the chapter of law governing ticket sellers. The bill establishes new categories of ticket sellers, establishes various requirements for certain types of ticket sellers, and significantly increases penalties for violations. It prohibits a subset of ticket sellers from certain practices and provides a cause of action to "original ticket sellers" and "event presenters." While some of the provisions provide clear consumer benefits, others, such as this latter one, seem to stack the deck on one side of the industry without benefit, and possibly to the detriment of consumers.

The bill is author sponsored. It is supported by venues and other industry players, including Live Nation/Ticketmaster. It is opposed by ticket resellers and consumer groups, including the Consumer Federation of California. The bill passed out of the Senate Business, Professions, and Economic Development Committee on a 9 to 1 vote.

PROPOSED CHANGES TO THE LAW

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.)

This bill:

- 1) Strikes reference to "ticket seller" throughout the chapter governing ticket sellers and instead defines the following terms:
 - a) "original seller" means a person who, for compensation, commission, or otherwise, on behalf of an event presenter, 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;

- b) "ticket reseller" as 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;
 - c) "ticket marketplace" means a person, except the event presenter or original seller, who advertises lists, markets for sale, processes payments for, facilitates the sale or exchange of, or sells an admission ticket for, or on behalf of, a ticket reseller to a sporting, musical, theatre, or other entertainment event for compensation, commission, or otherwise; and
 - d) "event presenter" means a 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.
- 2) Authorizes 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.
 - 3) Requires original sellers, ticket resellers, and ticket marketplaces to comply with requirements under current law for ticket sellers to have a permanent business address and increases the penalty for a violation of this requirement from \$2,500 to \$25,000 for each violation, and \$250,000 for each continuing violation. Specifies that each ticket sold or offered for sale by an original seller, ticket reseller, and ticket marketplace that does not have a permanent business address constitutes a separate violation, and makes remedies cumulative to each other and the remedies or penalties available under all other state laws.
 - 4) Replaces reference to ticket sellers with original sellers, ticket resellers, and ticket marketplaces who must comply with the requirement under current law for ticket sellers to maintain records of ticket sales, deposits, and refunds.
 - 5) Requires only a ticket reseller, at the time of listing or marketing, and before selling a ticket, to own, possess, or have the contractual right to sell the ticket and to disclose to the purchaser the location in 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 at the time of listing or marketing of and before selling a ticket via a description or a map. Further requires only a ticket marketplace, in each listing on its website, to disclose this information, excluding the face price a ticket reseller must disclose, to the purchaser.

- 6) Replaces the prohibition on a ticket seller contracting to sell or accepting payment for tickets unless the ticket seller has lawful possession of the ticket with a prohibition only on a ticket reseller from advertising, offering for sale or contracting for the sale unless the ticket reseller has the ticket in their possession and the ticket reseller has contractual authority from the event presenter to obtain it. Prohibits a ticket reseller from advertising, offering for sale, or contracting for the sale of a ticket, or accepting 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 ticket reseller to do so.
- 7) Requires a ticket marketplace 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 before accepting a listing to market or sell a ticket.
- 8) Replaces a ticket seller with only a ticket reseller or ticket marketplace in the prohibition under current law from representing that they can deliver or cause to be delivered a ticket at a specific price or within a specific price range and to fail to deliver that ticket within a reasonable time, or by a contracted time, at or below the price stated or within the range of prices stated. Subjects only a ticket reseller or ticket marketplace to the remedies under current law for a violation.
- 9) Authorizes an original seller or event presenter who suffers injury from a violation of these laws to bring a civil action against that person and authorizes the original seller or event presenter to recover damages for the injury, plus any damages a court may determine to be appropriate, and reasonable attorney's fees and costs.
- 10) Prohibits a person from using a website to display a trademarked or copyrighted URL, title, designation, image, mark, or other symbol without the written consent of the trademark or copyright holder and prohibits the use of a 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.
- 11) Updates prohibitions on using or selling software to circumvent measures designed to ensure an equitable ticket buying process by prohibiting the purchase of tickets in excess of posted limits for an online event ticket sale, prohibiting the circumventing or disabling of an electronic queue, waiting period, presale code or other sales volume limitation systems, prohibits circumventing or disabling a system used to facilitate entry into an event,

prohibits purchasing tickets in violation of the event presenter's posted terms and conditions, and prohibits the use of multiple ISP addresses, purchaser accounts, or multiple email address to purchase tickets in excess of posted ticket limits.

- 12) Updates provisions of the law related to refunds in the event of a cancellation by specifying that refunds must be issued by the person who sold or facilitated the sale of the ticket to the purchaser whether they are an original seller, event presenter, ticket reseller, or ticket marketplace. Requires the person who processed the sale of the ticket to provide a refund in the event of a postponement, reschedule, or replacement event.
- 13) Requires original sellers, event presenters, ticket resellers, and ticket marketplaces to disclose the total cost of a ticket, including a listing of all ancillary fees that are required to be paid in order to purchase the ticket, before the ticket is selected for purchase and to disclose, in a clear and conspicuous manner, the amount of any service or other ancillary charge that is imposed and added to the actual ticket price, or any other fee, tax, or surcharge to the purchaser. Prohibits original sellers, event presenters, ticket resellers, and ticket marketplaces from making a false or misleading disclosure of subtotals, fees, charges, or any other component of the total price of a ticket, or present those fees, charges, taxes, or other components more prominently, or in the same or larger size, than the total price of the ticket.
- 14) 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 and requires any listing for a resale ticket to include the face price of the original ticket and a link to the event presenter's website where the purchaser can determine the availability of a face value ticket and purchase that ticket.
- 15) Exempts any event for which tickets are distributed free of charge from being subject to any of the above requirements.

COMMENTS

1. Ticketing woes: anti-consumer practices and antitrust issues

Ticketing for major sports events, concerts, and other live entertainment has drawn many critics for a variety of anti-consumer practices. This includes speculative sales, where ticket sellers sell tickets they do not actually have at the time of the sale.

One practice is the use of automated software or "bots" to rapidly buy up tickets to in-demand events that the person deploying the bots then turns around and sells at a hefty

markup. This has been such a nefarious process that the federal government passed a law in 2016 to stop people from employing this scheme, the Better Online Ticket Sales Act (BOTS Act). The BOTS act prohibits the circumvention of a security measure, access control system, or other technological control measure used online by a ticket issuer. The Act also prohibits selling or offering to sell an event ticket obtained through such a circumvention violation if the seller participated in, had the ability to control, or should have known about the violation. The act applies to event tickets for public concerts, theater performances, sporting events, and similar activities at venues with seating capacity of over 200.

The FTC enforced the act against three New Yorkers that collectively made over \$26 million in revenue over the matter of a few years:

The defendants pulled off the scheme by using bots on the Ticketmaster website. The programs—which went by the names Automack, Tixman and Tixdrop—were capable of repeatedly searching web pages for available tickets and then automatically reserving them.

In addition, the defendants used hundreds of credit cards belonging to fake people, and routed their internet activity to the Ticketmaster page through spoofed IP addresses. “In many instances, Defendants also did not use their address as the primary address, shipping address, or billing address for their Ticketmaster accounts. Instead, they used over 550 addresses that were either fake or unrelated to their business,” the FTC alleged in a court complaint.¹

However, as the author points out, the BOTS act lacks a consumer enforcement mechanism and is rarely enforced. In fact, this FTC enforcement action in early 2021 was the first time the FTC brought such an action.

The lack of healthy competition in the ticket selling world is also a primary concern of consumer advocates and ticket buyers. The worst culprit according to many is Live Nation Entertainment. In 2010, the company, which is a massive events promoter and venue operator, merged with Ticketmaster, a ticket sales giant. Together they control an estimated 70 percent of the ticketing and live event venues market. The merged entity was responsible for the infamous Taylor Swift ticketing debacle:

It’s no secret that Taylor Swift fans were outraged in November 2022 when millions flocked to Ticketmaster.com to grab tickets to see the heartbreak queen for the first time since 2018 and the website crashed. The

¹ Michael Kan, *3 Scalpers Fined for Using Bots to Scoop Up Tickets on Ticketmaster* (Jan. 22, 2021) PCMag, <https://www.pcmag.com/news/3-scalpers-fined-for-using-bots-to-scoop-up-tickets-on-ticketmaster>. All internet citations are current as of April 19, 2023.

long wait lines and frozen screens sparked an uproar with fans, blaming Ticketmaster for ruining their chances to see the pop star.

“As the leading player, we have an obligation to do better,” said Joe Berchtold, Live Nation Entertainment president and chief financial officer, at the hearing Tuesday.

This is not the first time consumers have called for the breakup of Ticketmaster and Live Nation. It’s also not the first time the Department of Justice has been reportedly looking into alleged misconduct by the company.

When the Live Nation and Ticketmaster merger was approved in 2010, it was under the condition of a consent decree. Among other things, the purpose of that agreement was to forbid Live Nation from retaliating against a venue for using a ticketer other than Ticketmaster. After an investigation, in 2019 the DOJ made its most significant enforcement action of an antitrust decree in 20 years when it alleged Live Nation Entertainment violated that decree. The company settled with the government.²

The near-monopoly power has created concerns among many that Live Nation will retaliate if you go with a ticketing company other than their Ticketmaster operation and in many cases exclusivity agreements require Ticketmaster to be used:

“In a world where the promoter and the venue are not affiliated with each other, we can trust that the promoter will look to get the best deal from the venue; however, in this case the promoter and the venue are part of the same corporate entity so the line items are essentially Live Nation negotiating to pay itself,” [one musician] said.

The band told CNBC if they want to play a certain size venue in a particular city, they are sometimes left no choice other than to use Live Nation because of the lack of competition in some regions. Then if they would like to use another ticketer other than Ticketmaster, they say that is not an option.

“Ticketmaster has created these exclusive contracts, once you sign that contract, a band is not allowed to come in and say, ‘we want to sell our

² Emily Lorsch, *Why Live Nation and Ticketmaster dominate the live entertainment industry* (Jan 25, 2023) CNBC, <https://www.cnbc.com/2023/01/25/the-live-nation-and-ticketmaster-monopoly-of-live-entertainment.html>.

tickets with X, Y, Z platform,” said Jordan Cohen, one of the band’s eight members.

They even have a song with the lyric, “Live Nation is a monopoly.” “Due to Live Nation’s control across the industry, we have practically no leverage in negotiating,” Lawrence said.

While the company does have some competition, experts say no other firm currently stands a chance.³

These concerns are not just from musicians and consumer advocates. The Justice Department was reported to have opened an investigation into Live Nation, focused on whether the company has “abused its power over the multibillion-dollar live music industry”:

Members of the antitrust division’s staff at the Justice Department have in recent months contacted music venues and players in the ticket market, asking about Live Nation’s practices and the wider dynamics of the industry, said the people, who spoke on the condition of anonymity because the investigation is sensitive. The inquiry appears to be broad, looking at whether the company maintains a monopoly over the industry, one of the people said.⁴

This Committee’s federal counterpart felt the issue pressing enough to hold an oversight hearing to delve into the issue, “Location Change: That’s the Ticket: Promoting Competition and Protecting Consumers in Live Entertainment.”⁵ Senator Klobuchar explained the need for the hearing: “For too long, consumers have faced high fees, long waits, and website failures, and Ticketmaster’s dominant market position means the company faces inadequate pressure to innovate and improve.”⁶

The practices above leave consumers in the lurch. They are forced to pay exorbitant service fees and other charges, exacerbated by the fact that the original ticket seller faces little competition. Then, if they are not among the lucky ones who can buy quickly, they

³ *Ibid.*

⁴ David McCabe & Ben Sisario, *Justice Dept. Is Said to Investigate Ticketmaster’s Parent Company* (Jan 24, 2023) The New York Times, <https://www.nytimes.com/2022/11/18/technology/live-nation-ticketmaster-investigation-taylor-swift.html>.

⁵ Video of the hearing available at: <https://www.judiciary.senate.gov/committee-activity/hearings/thats-the-ticket-promoting-competition-and-protecting-consumers-in-live-entertainment>.

⁶ News Releases, *Klobuchar, Lee Announce Date of Senate Judiciary Committee Hearing on Problems in America’s Ticketing Markets* (Jan. 17, 2023) Senator Amy Klobuchar website, <https://www.klobuchar.senate.gov/public/index.cfm/2023/1/klobuchar-lee-announce-date-of-senate-judiciary-committee-hearing-on-problems-in-america-s-ticketing-markets>.

are price gouged on the secondary market. A report by the United States Government Accountability Office (GAO) confirmed these practices and outcomes:

Consumer protection issues include difficulty buying tickets at face value and the fees and marketing practices of some market participants.

- Professional resellers, or brokers, have a competitive advantage over consumers in buying tickets as soon as they are released. Brokers can use numerous staff and software (“bots”) to rapidly buy many tickets. As a result, many consumers can buy tickets only on the resale market at a substantial markup.
- Some ticket websites GAO reviewed did not clearly display fees or disclosed them only after users entered payment information.
- “White-label” resale sites, which often appear as paid results of Internet searches for venues and events, often charged higher fees than other ticket websites – sometimes in excess of 40 percent of the ticket price – and used marketing that might mislead users to think they were buying tickets from the venue.⁷

The GAO report also discussed potential solutions:

Selected approaches GAO reviewed, such as ticket resale restrictions and disclosure requirements, would have varying effects on consumers and businesses.

- **Nontransferable tickets.** At least three states restrict nontransferable tickets – that is, tickets whose terms do not allow resale. Nontransferable tickets allow more consumers to access tickets at a face-value price. However, they also limit consumers' ability to sell tickets they cannot use, can create inconvenience by requiring identification at the venue, and according to economists, prevent efficient allocation of tickets.
- **Price caps.** Several states cap the price at which tickets can be resold. But according to some state government studies, the caps generally are not effective because they are difficult to enforce.
- **Disclosure requirements.** Stakeholders and government research GAO consulted generally supported measures to ensure clearer and earlier

⁷ *Event Ticket Sales: Market Characteristics and Consumer Protection Issues* (Apr. 2018) GAO, <https://www.gao.gov/assets/gao-18-347.pdf>.

disclosure of ticket fees, although views varied on the best approach (for example, to include fees in an “all-in” price or disclose them separately).

Some market-based approaches are being used or explored that seek to address concerns about secondary market activity. These approaches include technological tools and ticket-buyer verification to better combat bots. In addition, a major search engine recently required enhanced disclosures from ticket resellers using its advertising platform. The disclosures are intended to protect consumers from scams and prevent potential confusion about who is selling the tickets.

In response to growing concerns within the ticketing industry, a coalition of consumer groups, including the Consumer Federation of America, Consumer Action, and the National Consumers League published the “Ticket Buyer Bill of Rights,” which they describe as “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.⁸ The Ticket Buyer Bill of Rights features five 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;

The Right to a Fair Marketplace, where fans compete with actual humans, not illegal software bots, for tickets, and, lastly;

The Right to Recourse, where harmed fans retain the choice to seek remedies through the public court system and are not blocked by terms and conditions that force them into private arbitration.

⁸ *Ticket Buyer Bill of Rights*,

<https://www.ticketbuyerbillofrights.org/#:~:text=The%20Ticket%20Buyer%20Bill%20of%20Rights%20is%20a,year.%20The%20Bill%20of%20Rights%20features%20four%20pillars%3A>.

2. Addressing consumer protection issues in ticket sales

According to the author:

SB 785 will reform the laws governing the purchase and sale of tickets to live entertainment and sporting events in California, and create meaningful protections for consumers, artists, teams, and local venues.

Current law regulates ticket brokers but does not apply to the resale platforms where consumer deception and price gouging occurs. 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.

SB 785 will protect consumers, artists, teams, and venues by regulating the organized ticket scalping that currently harms consumers and the event presenters who bring live entertainments their fans. Specifically, this bill will:

- Impose true ticket price transparency and full fee disclosures on all ticket sellers across all platforms. In other words, the first price a consumer sees will be the final price they pay - no surprises at checkout.
- End the outrageous practice of speculative ticketing by imposing easily enforceable rules to reduce consumer price gouging and penalizing ticket sellers and platforms who list speculative tickets.
- Establish serious penalties for the use of deceptive websites that lure consumers into buying tickets at inflated prices.
- Establish serious penalties for employing bots that allow professional scalpers to hoard tickets and engage in large-scale scalping, depriving consumers of access to face value tickets.

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.

Chapter 21 of Division 8 of the California Business and Professions Code provides a series of regulations governing “ticket sellers,” defined as any person who for

compensation, commission, or otherwise sells admission tickets to sporting, musical, theatre, or any other entertainment event.

This bill overhauls this entire chapter in an attempt to address the consumer protection issues identified above. The bill includes a number of new protections. For instance, it carries out a directive from the Bill of Rights above by prohibiting deceptive URLs and the use of designs, images, and internet addresses that are substantially similar to those of an event presenter or original seller. It also bolsters an existing provision and borrows from the BOTS act to go after practices that seek to vacuum up tickets. It provides:

[I]t shall be unlawful for a person to intentionally use, cause to be used, or sell software or services to do, or to otherwise engage in, 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 ISP addresses, multiple purchaser accounts, or multiple email addresses to purchase tickets in excess of posted ticket limits.

However, it is unclear if other changes made by the bill are as effective. For instance, as noted, the existing chapter regulates "ticket sellers." This bill creates multiple additional categories, including original sellers, ticket resellers, ticket marketplaces, and event presenters. While creating additional categories may allow for more nuanced regulations, the existing law benefits from simplicity and consistency, applying a set of guidelines that apply to all ticket sellers.

The bill applies its various new or modified provisions to different categories, and not necessarily in a way that seems consistent or equitable. In fact, many of the provisions in the bill seem to go after only one side of the industry, the resellers and ticket marketplaces, the Stubhubs of the industry. And the provisions actually seem to tilt the playing field toward original sellers and event presenters, the Live Nation/Ticketmaster side of the equation, without clear consumer benefits.

For instance, existing law provides: "A ticket seller shall, 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.” This bill amends this provision to only apply to ticket resellers and adds a provision that imposes a similar requirement on ticket marketplaces. In addition, the previous provision requires a ticket reseller, before listing, marketing, or selling a ticket, to own, possess, or have the contractual right to sell the ticket. As Live Nation Entertainment owns 70 percent of the ticket marketplace, having a contractual right to sell the ticket in all practicality means having a contractual right with Live Nation Entertainment or Ticketmaster, where Ticketmaster can operate as a resale platform. Furthermore, although entities like Ticketmaster operate secondary sales through its own marketplace, the definition of “ticket marketplace” specifically carves out original sellers.

In addition, the bill imposes enhanced liability provisions that only apply to ticket resellers or ticket marketplaces:

22502.5. In addition to other remedies, a ticket reseller or ticket marketplace that violates Section 22505.1, 22502.2, or 22502.4 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.

Exacerbating the disparity, one of the predicate violations for these enhanced penalties is the requirement discussed above to disclose the location of a seat on a map or otherwise that applies to only ticket marketplaces.

Not only are these penalties not targeted at original sellers or event presenters or the type of misconduct often found in that sphere of the market, but the bill provides specific causes of action *for* them.

22502.6. An original seller or event presenter who suffers injury as a result of another person’s violation of this chapter may bring a civil action against that person and may recover from that person damages for the injury plus any additional damages a court may determine to be appropriate, and reasonable attorney’s fees and costs.

It is no surprise then that the bill is supported by Live Nation and opposed by not only ticket resellers, such as StubHub, but also consumer groups.

A coalition of groups, including Live Nation Entertainment, write in support:

[W]e support this bill because of what it will *not* do. This bill will *not* infringe upon the rights of the teams, entertainers and venues that invest in, create and deliver live events for our fans. It will confirm our intellectual property rights in our brands and events including the

determination of ticket prices and how we choose to sell our tickets, rather than turning those decisions over to third parties who have no skin in the game, little accountability and do nothing to create or enhance our fan experiences.

Consumer Federation of California writes in opposition:

Buying tickets to attend an event should be straightforward for consumers, yet the extensive use of multiple vague itemized fees by companies such as Ticketmaster (the overwhelmingly dominant player in the industry) has made this an extraordinarily expensive and frustrating process. These practices prevent consumers from comparison shopping and frequently require them to pay fees that are up to 27-30% more than the advertised price. Transparency is key when consumers engage in the purchasing of tickets to attend live events and SB 785 fails to provide adequate protection for consumers who may purchase a ticket from an original seller, ticket resellers, and ticket marketplaces.

SB 785, as currently drafted, does not properly define ticket seller and therefore fails to get at the heart of the issue, which is the control exercised over consumers by those marketplace participants such as the monopolistic Ticketmaster/Live Nation that control the industry. This bill also fails to provide consumers with ownership over their own purchased tickets, forcing consumers limited to no options should they need to resell their tickets.

Writing in support, the Recording Academy praises the consumer protection measures included in the bill:

SB 785 will protect consumers and artists by regulating the organized, bulk ticket reselling that currently plagues the ticketing entertainment industry. Specifically, this bill will:

- Impose true ticket price transparency and full fee disclosures on all ticket sellers across all platforms. In other words, the first price a consumer sees will be the final price they pay - no surprises at check-out.
- End the outrageous practice of speculative ticketing by imposing easily enforceable rules to reduce consumer price gouging and penalizing ticket sellers and platforms who list speculative tickets.
- Establish serious penalties for the use of deceptive websites that lure consumers into buying tickets at inflated prices.
- Establish serious penalties for employing bots that allow professional scalpers to hoard tickets and engage in large-scale scalping, depriving consumers of access to face value tickets.

StubHub and Vivid Seats jointly write in opposition, highlighting the tilt of this measure:

Enshrines Double Standards & Legislates a Competitive Advantage

SB 785 fails to include any meaningful regulation of original ticket sellers or event presenters. For example, the legislation excludes those entities from basic disclosure requirements such as the ticket's location. Furthermore, the definitions in Sec. 12 of SB785 exempt the event presenter and original ticket seller from any regulations around the resale of tickets. The practical impact would be to exclude Ticketmaster, an active ticket resale marketplace that reported \$4.5B in ticket resale revenue in 2022 alone, from any of the requirements placed on resellers or ticket resale marketplaces when they act as the original ticket seller or when their parent company LNE acts as the event presenter. Finally, SB 785 prohibits any ticket reseller or ticket resale marketplace from offering a ticket for sale prior to an event presenter's public onsale process. This provision dismisses the fact that tickets are frequently distributed and/or acquired prior to the public on-sale process and serves to provide more control to event presenters.

In response to these concerns, the author has agreed to a fairly comprehensive set of amendments that do the following:

- reduce the civil penalties that apply to violations of the ticket seller chapter with guidance on the proper amount of the penalty and allow for public enforcement consistent with California's Unfair Competition Law, Business and Professions Code Section 17200 et seq.;
- insert "original sellers" into the relevant section prohibiting unfair practices;
- removes the civil cause of action provided to only original sellers and event presenters;
- removes the original seller carve out from the definition of "ticket marketplace"; and
- removes the requirement for ticket resellers and ticket marketplaces to provide a link to the event presenter's website.

SUPPORT

Axs
Bay Area Council
Black Music Action Coalition
Future of Music Coalition
Golden State Warriors
Live Nation Entertainment
Los Angeles Rams
Music Artists Coalition

Music Workers Alliance
National Football League
Recording Academy
Sag AFTRA
San Francisco 49ers
San Jose Sharks
Songwriters of North America
Union of Musicians and Allied Workers

OPPOSITION

Consumer Federation of California
StubHub
Vivid Seats

RELATED LEGISLATION

Pending Legislation:

SB 478 (Dodd, 2023) makes 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. SB 478 is set to be heard in this Committee on the same day as this bill.

SB 644 (Glazer, 2023) requires 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. The bill prescribes certain procedures for issuing the attendant refunds. It authorizes public prosecutors to bring civil actions seeking civil penalties. SB 644 is currently in the Senate Appropriations Committee.

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. SB 829 is currently in this Committee and is set to be heard the same day as this bill.

AB 8 (Friedman, 2023) requires 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. AB 8 is currently pending in the Assembly Privacy and Consumer Protection Committee.

Prior Legislation:

AB 1556 (Friedman, Ch. 180, Stats. 2021) requires for cancelled events, that a refund be made within 30 calendar days of the cancellation; and 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.

SB 342 (Hertzberg, Ch. 162, Stats. 2020) makes it unlawful to register, traffic in, or use the name of a professional sports team or the names of professional sports leagues, among others, in a domain or subdomain name of a website to sell tickets in a fraudulent, deceptive, or misleading manner. It provides a private right of action to a person who suffers an economic injury as a result of such misconduct.

AB 329 (Pan, Ch. 325, Stats. 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 website that is used to ensure an equitable ticket buying process.

PRIOR VOTES:

Senate Business, Professions, and Economic Development Committee (Ayes 9, Noes 1)
