

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

SB 829 (Wilk)

Version: February 17, 2023

Hearing Date: April 25, 2023

Fiscal: Yes

Urgency: No

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**SUBJECT**

Ticket sellers: exclusivity

**DIGEST**

This bill prohibits exclusivity contracts for ticket sales between venues and ticket sellers.

**EXECUTIVE SUMMARY**

As the BeyHive knows too well, there are very real problems in the world of ticket buying. Some fans saw ticket fees for Beyoncé’s most recent tour go as high as \$550 and others amount to over 25 percent of the ticket price.<sup>1</sup> The domination in the live venue/ticketing world of Live Nation/Ticketmaster showed fans who Run the World. In addition to this infamous ticket buying debacle, 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 one particular concern, the lack of competition in ticket sales. With the merger of Live Nation, a leading venue operator, and Ticketmaster, the leading ticket seller, consolidation has worked against consumers. The bill prohibits a contract between an operator of an entertainment facility and a primary ticket seller from providing for the primary ticket seller to be the exclusive and sole primary ticket seller for the operator of the entertainment facility. The bill is author sponsored. There is no known support or opposition. The bill passed out of the Senate Business, Professions, and Economic Development Committee on an 11 to 0 vote.

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<sup>1</sup> Ethan Millman, *Beyoncé Fans Are the Latest to Be Fleeced by Huge Ticket Fees* (Feb. 9, 2023) RollingStone, <https://www.rollingstone.com/music/music-news/beyonce-renaissance-tour-ticket-fees-1234676864/>.

**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 ticket:
  - 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) Prohibits a contract between an operator of an entertainment facility and a primary ticket seller from providing for the primary ticket seller to be the exclusive and sole primary ticket seller for the operator of the entertainment facility.
- 2) Makes it unlawful to threaten or to seek to enforce a provision made unlawful hereby or to otherwise penalize an operator of an entertainment facility for entering into an agreement with another primary ticket seller.

- 3) Provides that a waiver of a provision of this bill is contrary to public policy and thus is void and unenforceable.
- 4) Clarifies that it does not require an operator of an entertainment facility to enter into an agreement with a primary ticket seller or require that an operator of an entertainment facility have an agreement with multiple primary ticket sellers.
- 5) Defines the following terms:
  - a) “entertainment” means all forms of entertainment including, but not limited to, theatrical or operatic performances, concerts, motion pictures, all forms of entertainment at fairgrounds and amusement parks, and all types of athletic competitions including football, basketball, baseball, boxing, tennis, hockey, and any other sport, and all other forms of diversion, recreation or show;
  - b) “entertainment facility” means a publicly or privately owned place of entertainment including, but not limited to, an amusement park, arena, auditorium, concert hall, live performance venue, museum, racetrack, stadium, theater, or other place where entertainment events are presented for a price of admission. The facility does not have to be used exclusively for entertainment events;
  - c) “operator” means any person who owns, operates, or controls an entertainment facility; and
  - d) “primary ticket seller” means a primary contractor as defined in Section 22503.5, ticket seller, or agent of the primary contractor or ticket seller that engages in the primary sale of tickets for an event.

## 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 Automatick, 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.<sup>2</sup>

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 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.

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<sup>2</sup> 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 18, 2023.

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.<sup>3</sup>

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 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.

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<sup>3</sup> 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>.

While the company does have some competition, experts say no other firm currently stands a chance.<sup>4</sup>

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.<sup>5</sup>

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.”<sup>6</sup> 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.”<sup>7</sup>

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 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

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<sup>4</sup> *Ibid.*

<sup>5</sup> 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>.

<sup>6</sup> 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>.

<sup>7</sup> 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>.

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.<sup>8</sup>

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 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

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<sup>8</sup> *Event Ticket Sales: Market Characteristics and Consumer Protection Issues* (Apr. 2018) GAO, <https://www.gao.gov/assets/gao-18-347.pdf>.



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.”<sup>9</sup> 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.

## 2. Addressing consumer protection issues in ticket sales

According to the author:

SB 829 seeks to end the monopoly that is plaguing the live entertainment business across the country. This bill will prevent ticket sellers from utilizing exclusivity clauses in their contracts with venues. By prohibiting exclusivity clauses the ticket seller market will open and different sellers can compete. Preventing this clause will overall provide protections for consumers, businesses and artists.

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<sup>9</sup> *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>.

This bill seeks to create more competition in the ticket selling economy. To address the concerns discussed at length above that operations such as Live Nation/Ticketmaster create exclusivity agreements to prevent real competition, this bill specifically prohibits contracts between operators of entertainment facilities and primary ticket sellers that provide for the primary ticket seller to be the exclusive and sole primary ticket seller for the operator of the entertainment facility.

### **SUPPORT**

None known

### **OPPOSITION**

None known

### **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 currently in this Committee and is set to be heard 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 785 (Caballero, 2023) reworks the laws governing ticket sellers, including creation of various categories of ticket sellers with different provisions applying to each. SB 785 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 11, Noes 0)

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