

Date of Hearing: April 23, 2019
ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION
Ed Chau, Chair
AB 1032 (Quirk) – As Amended April 3, 2019

SUBJECT: Ticket sellers: equitable ticket buying process: use or sale of services.

SUMMARY: This bill would clarify that existing prohibitions intended to ensure an equitable ticket buying process under the Ticket Sellers Act are to benefit ticket buyers who are intended event attendees, as defined, and would the expand prohibited conduct to include the use or sale of services to circumvent security measures, access control systems, or other control or measures, as specified. Specifically, **this bill would:**

- 1) Provide that it shall be unlawful for a person to intentionally use or sell services to circumvent a security measure, access control system, or other control or measure that is used to ensure an equitable ticket buying process.
- 2) Define a “control measure that is used to ensure an equitable ticket buying process” to include limits on the number of tickets that a person can purchase.
- 3) Define “event attendee” to mean a person who purchases one or more tickets with the intent to attend the event for which the ticket or tickets are purchased, and clarify that an event attendee does not include a ticket seller.

EXISTING LAW:

- 1) Provides that a “ticket seller” is any person who for compensation, commission, or otherwise sells admission tickets to sporting, musical, theatre, or any other entertainment event. (Bus. & Prof. Code Sec. 22503.)
- 2) Provides that a “primary contractor” is the person or organization that is responsible for the event for which tickets are being sold. (Bus. & Prof. Code Sec. 22503.5.)
- 3) Makes it unlawful for a ticket seller to contract for the sale of tickets or accept consideration for the sale of tickets unless the ticket seller meets one or more of the following requirements:
 - The ticket seller has the ticket in their possession.
 - The ticket seller has a written contract to obtain the offered ticket, as specified.
 - The ticket seller informs the purchaser that the seller may not be able to supply the ticket at the contracted price or range of prices, as specified. (Bus. & Prof. Code Sec. 22502.1(a)-(c).)
- 4) Allows acceptance of a deposit from a prospective purchaser as part of an agreement that the ticket seller will make best efforts to obtain a ticket at a specified price or price range and within a specified time. (Bus. & Prof. Code Sec. 22502.1.)

- 5) Makes failure to deliver the tickets within a reasonable time or by a contracted time, at or below the price stated or within the range of prices stated, punishable as a misdemeanor. (Bus. & Prof. Code Sec. 22505.)
- 6) Provides that in addition to other remedies, a ticket seller who fails to supply a ticket at or below a contracted price or within a contracted price range shall be civilly liable to the ticket purchaser for two times the contracted price of the ticket, in addition to any sum expended by the purchaser in nonrefundable expenses for attending or attempting to attend the event in good faith reliance on seat or space availability, and reasonable attorneys' fees and court costs. (Bus. & Prof. Code Sec. 22502.3.)
- 7) Provides that ticket price of any event which is canceled, postponed, or rescheduled shall be fully refunded to the purchaser by the ticket seller upon request. (Bus. & Prof. Code Sec. 22507.)
- 8) Declares that any deposit on a future event for which tickets are not available shall be refundable. (Bus. & Prof. Code Sec. 22506.)
- 9) Requires that a ticket seller disclose any service charges assessed, as provided. (Bus. & Prof. Code Sec. 22508.)
- 10) Requires that any ticket seller who includes tickets to an event in conjunction with the sale of a tour or event package, as defined, disclose in any advertisements or promotional materials the price charged or allotted for the tickets. (Bus. & Prof. Code Sec. 22509.)
- 11) Allows local agencies to impose local fees or taxes. (Bus. & Prof. Code Sec. 22510.)
- 12) Exempts certain persons, including:
 - Any primary contractor or seller of tickets for the primary contractor, as specified (Bus. & Prof. Code Sec. 22503.5);
 - Persons who sell six tickets or less to any one single event, provided the tickets are sold off the premises (Bus. & Prof. Code Sec. 22504.);
 - Any nonprofit charitable tax-exempt organization selling tickets to an event sponsored by the organization. (Bus. & Prof. Code Sec. 22511.)
- 13) Provides that a violation of any of these provisions constitutes a misdemeanor, and in addition authorizes a civil penalty not to exceed \$2,500 for each violation, which may be assessed and recovered in a civil action brought in the name of the people, as specified. (Bus. & Prof. Code Sec. 22500(c).)
- 14) Provides that any person who, without the written permission of the owner or operator of the property on which an entertainment event is to be held or is being held, sells a ticket of admission to the entertainment event, which was obtained for the purpose of resale, at any price which is in excess of the price that is printed or endorsed upon the ticket, while on the grounds of or in the stadium, arena, theater, or other place where an event for which

admission tickets are sold is to be held or is being held, is guilty of a misdemeanor. (Pen. Code Sec. 346.)

- 15) Provides that, notwithstanding specified provisions above, it shall be unlawful for a person to intentionally use or sell software to circumvent a security measure, access control system, or other control or measure that is used to ensure an equitable ticket buying process. (Pen. Code Sec. 346.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Purpose of the bill:** This bill seeks to further ensure that individuals are able to purchase tickets for events at fair prices by expanding the Ticket Sellers Act to also prohibit services (not just software) designed to circumvent measures that are used to ensure an equitable ticket buying process. This bill is author-sponsored.
- 2) **Author's Statement:** According to the author:

Illegal bots are limiting Californians ability to attend the events they want. Ticket brokers use bots to rapidly purchase tickets in bulk in order to raise the prices and charge additional fees, pricing out average consumers. However, as the State of California has moved to limit the influence of bots in manipulating the event ticket marketplace, a first-party platform has emerged which circumvents the law. Ticketmaster's TradeDesk platform allows brokers to network hundreds of Ticketmaster.com accounts, buy thousands of tickets, and instantly relist those tickets at inflated prices on Stubhub, Vivid Seats, or Ticketmaster's own resale platform. While it looks and acts like what we would consider a bot, the distinction may be drawn that TradeDesk is actually a service, which allows a ticket scalper to more effectively skirt the law against use of bots to circumvent the equitable ticket buying process for those fans who intend to attend sporting and entertainment events.

California's laws preventing this type of practice were written with third-party bots in mind, and not first-party platforms. AB 1032 establishes parity between these ticket selling tools and services, thereby ensuring that hard fought protections for consumers remain effective.

- 3) **Prior legislative efforts to regulate ticket sales in California:** In 2014, California specifically prohibited the use of "bots" (*i.e.*, software able to execute the purchasing process without human involvement) to purchase tickets to entertainment events. (AB 1832 (Calderon, Ch. 158, Stats. 2014) AB 1832 was intended to prevent ticket resellers (commonly known as "scalpers") from simply purchasing many, if not all, of the tickets to an event before event attendees had the opportunity, thus forcing the event attendees to pay ticket resellers amounts significantly above the ticket's face value. At the time, several major news agencies chronicled the "bots" stranglehold on the ticket industry and the legislature responded by specifically prohibiting that activity. (Kolber, *The Man Who Broke Ticketmaster*, Motherboard, (Feb. 10, 2017) <https://motherboard.vice.com/en_us/article/mgxq8/the-man-who-broke-ticketmaster> [as of Apr. 11, 2019].) Violations of these prohibitions constitute a misdemeanor, resulting in a fine of up to \$2,500, or not more

than six months in county jail, and civil liability of up to \$2,500 per violation. (Bus. & Prof. Code Sec. 22500(b)-(c).)

- 4) **This bill represents a small step to curb anti-consumer practices in the ticket resale market, which persists despite past legislative efforts:** Since 2014, some ticket sellers have arguably turned a blind eye to prohibited practices related to the resale of tickets by offering new services to individuals and brokers trying to manage their ticket subscriptions.

For example, Ticketmaster's TradeDesk gives individuals (or brokers) a tool to pool all of the tickets they have bought from various sellers in one place (including tickets purchased from Ticketmaster), and to list those tickets for sale on the secondary market. Ticketmaster has received sharp criticism for failing to apply Ticketmaster's terms of use to its own product, TradeDesk. In other words, while Ticketmaster has specific ticket-purchasing limits listed in its terms and conditions, it apparently has not been policing the number of tickets held by brokers (in excess of those limits) on its TradeDesk platform. (Cribb & Chown Oved, *We went undercover as ticket scalpers — and Ticketmaster offered to help us do business*, Toronto Star, (Sep. 19, 2018) <<https://www.thestar.com/news/investigations/2018/09/19/we-went-undercover-as-ticket-scalpers-and-ticketmaster-offered-to-help-us-do-business.html>> [as of Apr. 11, 2019].)

Ticketmaster's President, Jared Smith, responded to these allegations last year on the company's blog:

TradeDesk is Ticketmaster's version of an inventory management tool for professional ticket resellers (brokers). It is neither secret nor unique to Ticketmaster. Like StubHub's product called Ticket Utils or Vivid Seat's Skybox, TradeDesk is used by brokers to manage tickets they already have. All of these tools organize a broker's ticket inventory so the tickets can be priced and listed for sale on various ticket marketplaces, not just on Ticketmaster as was suggested. These tickets could have come from Ticketmaster, from other ticketing systems or could have been purchased directly from a team, a venue or another reseller. TradeDesk is overwhelmingly used to manage season tickets for sporting events.

TradeDesk is not a scheme to help Ticketmaster sell tickets twice. In fact, less than 4% of the concert tickets we sell each year are listed and sold again on Ticketmaster. What does make TradeDesk unique, however, is that it offers an integration with Ticketmaster for *validating* tickets that are uploaded to it. As a result, our integrated marketplace is fundamentally different than all the others – safer, more transparent, and where each resale ticket is clearly identified and required to be 100% verified before ever being listed for sale. (Ticketmaster, *Setting the Record Straight on TradeDesk and Ticketmaster Resale*, (Sept. 24, 2018) <https://blog.ticketmaster.com/jared-smith-statement-tradedesk-resale/> [as of Apr. 13, 2019].)

It is important to note that this bill does not seek to regulate the secondary market directly. Instead, this bill seeks to clarify that existing protections (requiring an equitable ticket buying process) are intended to benefit *event attendees*, and not brokers. By clarifying that the use of services (in addition to software) to circumvent measures that are used to ensure equitable ticket buying processes for event attendees is prohibited, this bill may arguably help ensure that existing statutory protections extend to the type of business relationships facilitated by Ticketmaster's TradeDesk and similar business models.

Furthermore, by specifying that event attendees are the persons the law is designed to protect, and not brokers, this bill should help ensure that natural persons are able to enjoy the protections and benefits the law intended.

- 4) **Privacy benefits of major secondary market websites:** While the economic impact of secondary market ticket sales on event attendees is arguably negative, the ticketing industry's envelopment of the secondary ticket market does present potential privacy and consumer protection benefits. Specifically, by centralizing the secondary market, these businesses provide consumers with a buffer between themselves and ticket resellers. That buffer seemingly provides consumers with a single entity through which they can enforce their consumer privacy rights under various California laws, including, among others, the Data Breach Notification law, the California Consumer Protection Act, and Shine the Light.
- 5) **Prior legislation:** AB 1832 (Calderon, Ch. 158, Stats. 2014) made it unlawful for a person to intentionally use or sell software to circumvent a security measure, access control system, or other control or measure that is used to ensure an equitable ticket buying process.

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 Web site that is used to ensure an equitable ticket buying process.

SB 1602 (Battin, 2006), would have expanded the definition of scalping under the Penal Code, to extend the prohibition against selling event tickets purchased for resale above market value on the event premises, to any purchase of tickets for resale in an amount over the limitation on the maximum number of tickets allowed by the original ticket seller and for any amount of profit. The bill also would have criminalized the use of automated computer purchases of event tickets in order to accomplish the purchase above the seller's limit, by defining the practice as "criminal interference" with the seller's website. The bill was placed in the inactive file on the Senate Floor.

REGISTERED SUPPORT / OPPOSITION:

Support

California District Attorneys' Association

Opposition

None on file

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