

Date of Hearing: April 22, 2021

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION

Ed Chau, Chair

AB 1556 (Friedman) – As Amended April 5, 2021

SUBJECT: Ticket sellers

SUMMARY: This bill would require a ticket seller, as defined, to disclose to the purchaser prior to sale whether the ticket or tickets are nontransferable to a third party; and would require the ticket price for a cancelled event to be fully refunded within 30 days of the cancellation, and the ticket price for a postponed or scheduled event to be fully refunded upon request.

EXISTING LAW:

- 1) Requires that a ticket seller, 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. (Bus. & Prof. Code Sec. 22502.)
- 2) Requires the ticket price of any event which is canceled, postponed, or rescheduled to be fully refunded to the purchaser by the ticket seller upon request; and permits a local jurisdiction to require a ticket seller to provide a bond of up to \$50,000 to provide for any refunds that may be required. (Bus. & Prof. Code Sec. 22507.)
- 3) Requires any partial or full deposit received by a ticket seller on a future event for which tickets are not available to be refundable except for a service charge of not more than 10% until tickets for the event are actually available. Requires ticket sellers to maintain records of ticket sales, deposits, and refunds. (Bus. & Prof. Code Sec. 22506.)
- 4) Requires a ticket seller to 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. (Bus. & Prof. Code Sec. 22508.)
- 5) Requires ticket sellers to maintain records of ticket sales, deposits, and refunds. (Bus. & Prof. Code Sec. 22501.)
- 6) Provides that any violation of these provisions shall constitute a misdemeanor. (Bus. & Prof. Code Sec. 22505.)
- 7) Defines “ticket seller” for the purposes of these provisions, to mean any person who for compensation, commission, or otherwise sells admission tickets to sporting, musical, theatre, or any other entertainment event; and provides specific exclusions from that definition, including, among others: (1) a person or organization who is responsible for the event for which tickets are being sold (i.e. “primary contractor”) or a seller of tickets for the primary contractor operating under a written contract with the primary contractor; and (2) 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. (Bus. & Prof. Code Secs. 22503-22504.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Purpose of this bill:** This bill seeks to strengthen consumer protections related to event ticket purchases by requiring a ticket seller to disclose, prior to sale, whether the ticket or tickets are nontransferable to a third party, by requiring a ticket seller, in the event of a cancellation, to issue a full refund to the purchaser within 30 calendar days of the cancellation, and by requiring a ticket seller, in the event of a postponement or rescheduling, to issue a full refund to the purchaser upon request. This bill is author sponsored.

- 2) **Author's statement:** According to the author:

The COVID-19 pandemic has resulted in a massive number of unforeseen cancellations of live events. In March 2020 when the pandemic hit, Billboard magazine estimated that consumers spent nearly \$3.5 billion on tickets in the U.S. for concerts and festivals scheduled for the summer of 2020. These mass cancellations of events led to numerous problems for ticket buyers and ticket sellers. Customers seeking refunds of previously paid fees for cancelled events put liquidity strains on the offering businesses.

While ticket sellers attempted to offer substitute performances instead of refunds in response to closures, they were met with mixed customer responses. Many customers are also facing financial burdens due to the COVID-19 crisis and would prefer to receive refunds instead of substitutions, particularly for services whose policies explicitly included the possibility of a refund when a ticket was purchased. Some companies, facing the unprecedented strain of having to refund thousands of tickets at once, quietly amended their customer agreements retroactively to remove the refund guarantees in favor of substitute performance. An example of this is Ticketmaster, which changed the basis for refunds from postponed, rescheduled, or canceled events to strictly canceled events, thus, making it harder for people to request a refund and violating California law.

[...]

In September 2019, hundreds of people who bought tickets from usually reliable third-party vendors, such as StubHub, SeatGeek and Vivid Seats, were turned away at the door from a Black Keys concert at the Wiltern in Los Angeles. They were told that the artist was not honoring tickets purchased from third-party vendors. While Ticketmaster and the Black Keys stated they disclosed upfront that tickets were non-transferable, ticketnew.com reported that it could not find any such disclosure on Live Nation's website, the Black Keys' fan club website, and received copies of actual order confirmations from buyers who purchased tickets to the show. Ticket buyers should know whether a ticket is transferrable to a third party or not before purchase and not months later on the date of the event when being turned away from the venue.

- 3) **AB 1556 seeks to address two consumer protection issues raised by the event ticket selling process:** In 2020, the mechanics of the live event industry were laid bare when the COVID-19 pandemic forced the mass cancellation of live events across the country. As the pandemic wears on, measures taken to combat the pandemic, which have necessitated the closure of "non-essential" businesses including most live entertainment venues, have left many ticket holders frustrated as the struggle to receive refunds for the events they are forced to miss. As the Author notes, in many cases, ticket sellers did not offer refunds for purchases, but rather sought to substitute other, often less desirable events in their place, or

postponed the events indefinitely rather than cancelling them and providing a refund. Some companies went so far as to change their policies to no longer offer refunds, as they struggled to deal with the strain of this unprecedented onslaught of refund requests. Though undoubtedly difficult on those businesses, this failure to provide timely refunds is and has been arguably most harmful to consumers, who, during a period of economic downturn and rampant unemployment, need money in their pockets more than ever. In addition, many ticket sellers that do offer refunds for tickets make the refund process unreasonably difficult, effectively discouraging consumers from seeking their due recourse. California law currently requires ticket sellers to fully refund the ticket price of any event which is cancelled, postponed, or rescheduled upon request, but does not provide a timeframe within which this must occur, often resulting in a drawn out process that can be detrimental to consumers.

Additionally, California law requires that, prior to the sale of a ticket, the ticket seller must disclose to the purchaser some information about the tickets, including the location of the seat or seats represented by the ticket, but does not require information to be disclosed as to whether the tickets are transferrable to a third party. In late 2019, the potential harms of uninformed consumers with respect to this quality was exposed when hundreds of consumers who bought tickets to a concert by the rock band The Black Keys from otherwise reliable third-party sources, were turned away at the door and told that the tickets were not transferrable, and therefore, purchasing from a third-party rendered the tickets invalid.

AB 1556 seeks to rectify both of these problems, by (1) requiring a ticket seller to disclose to the purchaser prior to sale whether the ticket or tickets are nontransferable to a third party; and (2) requiring the ticket price of an event that is cancelled to be returned in full to the purchaser within 30 calendar days of the cancellation. The bill retains the ability of purchasers to request a refund if the event is postponed or rescheduled as well.

As the Consumer Federation of California argues in support of the bill:

Over the past year, the COVID-19 pandemic has resulted in a staggering number of cancellations for live events as the world economy went into freefall and the music, arts, entertainment and sporting worlds went largely dark. These mass cancellations led to large numbers of people demanding refunds. Many ticket sellers attempted to offer substitute performances, or even quietly removed refund guarantees from their customer agreements, in an attempt to avoid refunding customers and hold onto those revenues for as long as possible. Some ticket sellers also refused to give refunds because certain events were not cancelled but instead were “postponed”, often indefinitely. The net result was that millions of consumers suddenly struggling to make ends meet were unable to access refunds that were rightly theirs.

AB 1556 will put an end to these unfair practices by requiring ticket sellers to refund customers within 30 days of a cancelled event. The bill also ensures that customers can obtain a refund, upon request, if an event is postponed. Many consumers today are struggling as a result of the pandemic induced recession, and they cannot afford to wait months for a refund, or not receive one at all.

Indeed, AB 1556 seems to provide reasonable and valuable consumer protections that are both justified and measured in order to combat misleading and exploitative practices in which ticket sellers could engage.

However, the Ambassador Theatre Group (ATG), who have taken an “oppose unless amended” position on the bill, raise some concerns related to the bill’s applicability to their circumstances:

As the originating ticket seller, we only have the ability to initiate a refund. We cannot control the pace or workflow of intermediaries such as Merchant Service Providers, credit card-issuing banks, or consumers who may have moved or had a credit card expiration since their original purchase.

We ask that you amend the bill to only require the originating ticket seller to *initiate* the refund process within 30 days of event cancellation. This would recognize that the ticket seller is only part of a complex ticketing ecosystem and only hold us responsible over the actions we can control.

We also ask that the bill allow for some clarification to the concept of “cancellation” which is more nuanced in practice. For example, theatre operators should have the ability to replace a show that is sold as part of a multi-show subscription package should that show become unavailable for some reason, i.e., we believe that the replacement is more akin to a postponement than a cancellation. Likewise, we ask that when a performance of one production is canceled that ticket sellers be allowed to offer ticket buyers the option of being moved into another performance of the same production. Precluding these types of replacement options are not in the best interests of ticket buyers, many of which wait a long time to see a show or make travel arrangements around being able to see a show during their travel period.

ATG identifies two different circumstances that may result in confusion under the bill, both of which are most common in their particular branch of the industry, though not entirely exclusive to it. In the former case where an event is replaced with another, similar event at the same time and date, it is unlikely that the practice would be considered a postponement or rescheduling under the bill. That said, when a replacement event is identified, the purchaser may decide they are still interested in attending the replacement event, in which case the ticket seller automatically returning the value of their ticket within 30 days (i.e. if this practice is considered a cancellation) may only serve as an inconvenience to the ticket holders, who must then purchase new tickets to the replacement event. On the other hand, if the replacement event is of no interest to the ticket holder, they may indeed seek a refund on their ticket price, rather than attending the substitute event. For this reason, providing the refund upon request of the purchaser in the case of a replacement event at the same date or time, rather than automatically requiring the refund to be provided, seems the most reasonable. The author therefore offers following amendment to address this circumstance:

Author’s amendment:

On page 2, line 19, after the word “postponed”, insert a comma and strike the word “or”.
On line 20, after the word “rescheduled”, insert the following: “, *or replaced with another event at the same date and time,*”

The other circumstance identified by ATG is one in which a single performance repeats for multiple nights, such as a multi-night run of concerts by the same band or a play that runs for several nights. If the event is cancelled on one of those nights, it is theoretically possible that the venue or seller could offer attendance to a materially identical performance on another

night to substitute. For instance, if *Hamilton* is being performed each night in a given week at the same venue, and, due to illness, the cast must cancel their Monday night show, those with tickets for that performance could, rather than automatically being provided with a refund for their ticket, be offered the opportunity to attend *Hamilton* on any of the following nights. In other words, though the show itself was cancelled, the purchaser is nonetheless provided the option of still seeing the same show, albeit on a different night.

This situation is more similar qualitatively to a postponement or rescheduling, since, for the ticket holder, the effect is that the same event is occurring at a different date or time. If this circumstance were considered a cancellation, which it is, in the technical sense, AB 1556 would require that the ticket seller refund all ticket holders the value of their ticket within 30 days, and could not instead provide the option to attend a different showing. This makes the situation more difficult for the sellers, and for the ticket holders who can attend on the alternative night offered, since the option to have their tickets refunded and separately purchase tickets to another night may no longer be available. For this reason, treating this circumstance as a postponement or rescheduling rather than a cancellation would provide ticket sellers with flexibility in options to make purchasers whole, without foreclosing the possibility of receiving a refund upon request. That said, it should be noted that, in the bill in print, a cancellation affords a strict timeframe within which a refund must be received, whereas a postponement or rescheduling does not. To ensure that postponements, reschedulings, event replacements, and the circumstance outlined here are not abused by ticket sellers to avoid the timely refund of the ticket price, a similar capped timeframe should be adopted following request for a refund in order to prevent purchasers from waiting unreasonable periods for their money to be returned. To these effects, the Author offers the following amendment:

Author's amendment:

On page 2, line 21, after the word "request", insert the following:

"within 30 calendar days of the refund request.

(c) For purposes of this section, a rescheduled event includes a canceled occurrence of a recurring event for which the purchaser is offered the opportunity to attend another, materially identical occurrence of the same event at a different date or time"

ATG also raises the concern that, in some cases, the entirety of the refund process is not managed in-house by the ticket seller, but rather the ticket seller works with other businesses to effect the refund process, including merchant service providers. According to ATG, in the event a refund is not received within 30 days due to some shortcoming of another party involved in the process, the seller could be held liable, despite acting in good faith to initiate the refund process within the allotted window. ATG suggests that the Author account for this possibility by adopting an amendment that the refund process must be *initiated* within 30 days, and not that the refund is actually received. Staff notes that for the purchaser, it is hardly relevant whether the failure to return their money in a timely fashion is the fault of the ticket seller, or of a business contracted with the ticket seller. Rather, requiring only that the process is *initiated* within 30 days of the cancellation or request for refund could theoretically allow an indefinite window to complete that process, thereby rendering the effort to ensure the refund is completed in a timely manner ineffectual.

Still, it likely is not the intent of the Author to hold liable any party acting in good faith and to the best of their ability to comply with the provisions of the bill. Though it is clearly possible that assigning liability depending on the date of initiation of the refund could be easily exploited, there are other options to ensure that a ticket seller is only held liable for their share of liability for the failure to comply. For instance, current law provides that violation of any provision of the Ticket Seller's Act is a misdemeanor. However, the Author could consider making this provision enforceable through civil penalties or punitive damages, and specifying that liability for payment of that sum is several, so the multiple parties involved in the refund process can be held liable to the extent they contributed to the failure to comply. The Author could also offer a so-called "safe harbor" provision that absolves a ticket seller of liability for good faith compliance to the extent possible, though staff notes that most would-be litigants harmed by a violation of this bill may lack the resources to carry out an enforcement action that requires "proving" the seller did not act to the best of their ability. If the Author opts for this route, the Author could consider explicitly placing the burden of proof on the ticket seller to demonstrate their good faith compliance.

- 4) **Double referral:** This bill was double-referred to the Committee on Arts, Entertainment, Sports, Tourism & Internet Media where it was heard on April 12, 2021 and passed 7-0.

REGISTERED SUPPORT / OPPOSITION:

Support

Consumer Federation of California

Opposition

Ambassador Theater Group (unless amended)

Analysis Prepared by: Landon Klein / P. & C.P. / (916) 319-2200