

Date of Hearing: April 22, 2021

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION

Ed Chau, Chair

AB 472 (Cooley) – As Amended April 13, 2021

**SUBJECT:** Campsite reservations: securing an equitable process

**SUMMARY:** This bill would prohibit a person from using or selling software or services to circumvent a security measure, access control system, or other control or measure used to ensure an equitable campsite reservationmaking process for visitors, as defined. Specifically, **this bill would:**

- 1) Provide that it shall be unlawful for a person to intentionally use or sell software or services to circumvent a security measure, access control system, or other control or measure that is used to ensure an equitable campsite reservationmaking process for visitors.
- 2) Specify that “a control measure that is used to ensure an equitable campsite reservationmaking process” includes limits on the number of campsite reservations that a person can make.
- 3) Define “campsite reservation” to mean a reservation for an outdoor recreation or camping venue, including, but not limited to, a state or local park.
- 4) Specify that a “campsite reservation” includes park permits that are required for overnight access to an area or trail or required to engage in a specific recreational activity that are issued to a limited number of applicants, including, but not limited to, wilderness permits and backcountry permits.
- 5) Define “visitor” to mean a person who makes a campsite reservation with the intent to visit the outdoor recreation or camping venue for which the reservation is made.

**EXISTING LAW:**

- 1) Pursuant to the federal Better Online Ticket Sales (BOTS) Act of 2016, except as specified, prohibits any person from circumventing a security measure, access control system, or other technological control or measure on an internet website or online service that is used by the ticket issuer to enforce posted event ticket purchasing limits or to maintain the integrity of posted online ticket purchasing order rules; prohibits the sale or offering for sale of any event ticket in interstate commerce known to have been obtained in violation of that provision; and defines “event” to mean any concert, theatrical performance, sporting event, show, or similarly scheduled activity, taking place in a venue with a seating or attendance capacity exceeding 200 persons that is open to the general public and is promoted, advertised or marketed in interstate commerce or for which tickets are generally sold in interstate commerce. (15 U.S.C. Sec. 45c(a).)
- 2) Permits the attorney general of a state that has reason to believe that an interest of the residents of the state has been or is threatened or adversely affected by a person’s violation of the provisions in 1), above, to bring a civil action on behalf of the residents of the state in an appropriate district court of the United States to enjoin further violation; to compel

compliance; and to obtain damages, restitution, or other compensation on behalf of such residents. (15 U.S.C. Sec. 45c(c)(1).)

- 3) Pursuant to state law, prohibits a person from intentionally using or selling software or services to circumvent a security measure, access control system, or other control or measure that is used to ensure an equitable ticket buying process for event attendees, as defined; specifies that “a control or measure that is used to ensure an equitable ticket buying process” includes limits on the number of tickets that a person can purchase; and defines “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, not including a ticket seller, as defined. (Bus. & Prof. Code Sec. 22505.5.)
- 4) Provides that a violation of the provisions of 3), above, or another specified law pertaining to ticket sellers, shall constitute a misdemeanor. (Bus. & Prof. Code Sec. 22505.)
- 5) Defines “ticket seller” to mean 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.)

**FISCAL EFFECT:** Unknown

**COMMENTS:**

- 1) **Purpose of this bill:** This bill seeks to provide for equitable access to the State’s sought-after public lands by prohibiting the use of “bots” to bypass security measures, access control systems, or other controls or measures intended to provide for equitable access to reservations for campsites or wilderness permits. This bill is author sponsored.
- 2) **Author’s statement:** According to the author:

Our State and local parks are a public good that all should have equitable access to. In recent years there has been a surge of interest in camping and outdoor recreational activities, leading to an increase in demand for reservations in a space with finite supply. Due to this increased demand, bot services began promising individuals the ability to reserve their preferred campsites, at times for a premium cost. Bots are online software that can perform automated and directed tasks. These bots acquire reservations at speeds faster than a human and unfairly limit the supply of sites for the average camper.

State Parks, with their Reserve California booking site, have worked to implement technological improvements to reduce the use of bots in campsite reservations. However, constantly evolving technology threatens to create a game of “cat and mouse” in the struggle to limit bot use. Additionally, current law provides consumer protections limiting the use of bots in ticket purchases for entertainment events/venues. However, these protections are not extended to outdoor recreational venues.

AB 472 would [extend] provisions regarding the intentional use or sale of software or services to circumvent security controls or measures for entertainment events/venues to campsites to ensure an equitable campsite reservation process for visitors of a camping venue.

- 3) **Bots, generally:** As sales for event tickets and other competitive reservations are increasingly carried out online, the systems for their purchase are notoriously exploited by technology in ways that subvert the equitability of the process. In particular, so-called “bots,” computer programs that automatically carry out specified functions, in this case including the instantaneous bulk purchase of event tickets for resale, have become more prevalent and more sophisticated, obstructing the ability of actual humans to complete purchases of tickets and other bookings. According to a 2013 article in *The New York Times*:

“Bots,” computer programs used by scalpers, are a hidden part of a miserable ritual that plays out online nearly every week in which tickets to hot shows seem to vanish instantly. Long a mere nuisance to the live music industry, these cheap and widely available programs are now perhaps its most reviled foe, frustrating fans and feeding a multibillion-dollar secondary market for tickets.

According to Ticketmaster, bots have been used to buy more than 60 percent of the most desirable tickets for some shows; in a recent lawsuit, the company accused one group of scalpers of using bots to request up to 200,000 tickets a day. [...]

“As with hackers, you can solve it today, and they’re rewriting code tomorrow,” said Michael Rapino, Live Nation’s chief executive.<sup>1</sup>

Since that article was published, the use of this technology has only increased. According to a report from Distil Networks, a bot mitigation company, between September and December of 2018, nearly 40% of traffic on ticket purchasing sites was from bots.<sup>2</sup>

Access to bots is not universal, and is instead concentrated in the hands of those with the technological means to develop them or the financial means to purchase their services. Recognizing the growing problem bots present for maintaining an equitable ticket-buying process, California has enacted several laws seeking to criminalize the use of these programs. In 2013, California passed AB 329 (Pan, Ch. 325, Stats. 2013), which provided that a person who intentionally uses or sells software to circumvent a security measure, access control system, or other control or measure on a seller’s internet website that is used to ensure an equitable ticket buying process, is guilty of a misdemeanor. A year later, AB 1832 (Calderon, Ch. 158, Stats. 2014) made technical changes to that prohibition and broadened its applicability beyond circumvention of the measures and controls on the ticket seller’s own website. AB 1032 (Quirk, Ch. 105, Stats. 2019) further clarified that existing prohibitions intended to ensure an equitable ticket buying process are for the benefit of ticket buyers who intend to attend the event, and expanded prohibited conduct to include the use or sale of services to circumvent security measures, access control systems, or other controls or measures used to ensure an equitable ticket buying process, including limits on the number of tickets a person can purchase.

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<sup>1</sup> Ben Sisario, “Concert Industry Struggles With ‘Bots’ That Siphon Off Tickets,” *The New York Times*, May 26, 2013, <https://www.nytimes.com/2013/05/27/business/media/bots-that-siphon-off-tickets-frustrate-concert-promoters.html>, [as of Apr. 12, 2021].

<sup>2</sup> Melissa Locker, “Couldn’t get BTS tickets? Maybe blame the bots swarming Ticketmaster and other sites,” *Fast Company*, Mar. 1, 2019, <https://www.fastcompany.com/90314213/bts-ticketmaster-fail-maybe-blame-the-ticket-bots>, [as of Apr. 12, 2021].

Many ticket sellers have also adopted technological approaches to mitigating the use of bots. For instance, ticket sellers now often include “Completely Automated Public Turing tests to tell Computers and Humans Apart” (CAPTCHAs) in their ticket-buying processes, which are designed to differentiate human purchasers from bots using tasks such as identifying images, phrases, or codes. But as quickly as these technological barriers are constructed, malicious actors seem to successfully break them down. Instant sellouts and escalating resale prices for tickets are as prevalent as ever, and average consumers are crowded out of the market for face-value tickets and other limited-availability opportunities.

- 4) **Bots and campsites:** In an 1898 article in *The Atlantic*, famed naturalist John Muir expounded on the ever-burgeoning desire to seek refuge in the outdoors:

Thousands of tired, nerve-shaken, over-civilized people are beginning to find out that going to the mountains is going home; that wildness is a necessity; and that mountain parks and reservations are useful not only as fountains of timber and irrigating rivers, but as fountains of life. Awakening from the stupefying effects of the vice of over-industry and the deadly apathy of luxury, they are trying as best they can to mix and enrich their own little ongoings with those of Nature, and to get rid of rust and disease.<sup>3</sup>

The need to escape the trials and tribulations of “civilized” life by engaging with the stunning, natural gifts of this state is, clearly, not a new phenomenon, but it is one for which resolution is increasingly under threat. As natural lands fall prey to accelerating development and population density continues to grow, the drive to seek out serenity in nature stands at odds with the increasing rarity of solitude, and the sparseness of virgin wilderness. In an attempt to secure this precious resource, the State and its localities, along with the federal government, have cordoned off their most spectacular natural lands, and have created systems for allowing public access to those lands without compromising the experience of solitude. This manifests as limitations on reservations for campsites and permits for backcountry and wilderness access. In a *KQED* article discussing the growing popularity of bots in securing campsite reservations, Brian Ketterer, the southern field division chief of California’s State Parks system describes the issue as follows:

The real story here is a lack of inventory [...] Almost 40 million people live in California and over 200 million visit the state as tourists each year. [There] are about 14,600 campsites and accommodations available by reservations [and] if you look at those numbers, it’s not in your favor. It’s like playing the lottery. [...]

California has seen the number of reservations steadily increasing. In just the past year [2016-2017], reservations were up by 9 percent, [...] and parks can’t keep up with growing demand. They don’t have the budget to open and maintain new campsites.<sup>4</sup>

The problem has only increased since then. As the COVID-19 pandemic has shuttered most conventional venues for entertainment and regional shelter-in-place orders have periodically closed down many group campsites and state parks, the supply has further dwindled while

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<sup>3</sup> John Muir, “The Wild Parks and Forest Reservations of the West,” *The Atlantic*, Jan. 1898, <https://www.theatlantic.com/magazine/archive/1898/01/the-wild-parks-and-forest-reservations-of-the-west/544038/>, [as of Apr. 12, 2021].

<sup>4</sup> Jessica Placzek, “Can’t Get That Camping Spot? It Could Be Bots,” *KQED*, May 11, 2017, <https://www.kqed.org/news/11450483/cant-get-that-camping-spot-it-could-be-bots>, [as of Apr. 12, 2021].

the demand has continued to grow.<sup>5</sup> The result is that competition for the chance to experience the State's most sought-after natural lands has reached unprecedented levels.

Capitalizing on this competition, several enterprises have emerged that provide access to bots in order to improve chances of obtaining such reservations. In some cases, these bots come in the form of free software offered online that regularly pings the reservation sites to determine availability, and to immediately initiate the booking process as soon as sites become available. In others, businesses will promise a reservation to these competitive sites for a fee, presumably relying on the use of bots to improve chances, or to book several sites at once on behalf of their customers.<sup>2</sup> Either way, the result is the same: campsite reservations sell out in mere seconds, leaving those without access to this technology, whether due to a lack of technological know-how or a lack of financial resources, at a disadvantage.

Though both state and federal laws attempt to curb this behavior as it pertains to event tickets, the federal BOTS Act applies only to events at venues with a capacity of over 200 people, and California laws prohibiting the use or sale of bots to circumvent measures for equitable ticket sales apply only to tickets for events, not for campsite reservations or wilderness permits. Recent design changes to the state parks reservation system, ReserveCalifornia, have sought to curb the use of bots by including new security features, instituting limitations on the number of modifications a reservation holder can make, and using a rolling window to reserve dates for state park sites, rather than a first-of-the-month scramble.<sup>6</sup> Still, these design changes are just the latest in the game of cat-and-mouse between bot designers and reservation managers overseeing state and local campsites and backcountry permits. This bill seeks to provide an additional tool to combat the use of bots to circumvent measures instituted to provide for an equitable reservationmaking process for campsites in this state.

- 5) **AB 472 would prohibit the use of bots for booking campsites and wilderness permits:** This bill would expand existing prohibitions on the use and sale of bots or services reliant on bots to include their use to circumvent measures to ensure an equitable campsite reservation or wilderness permit booking process. Specifically, the bill would deem it unlawful for a person to intentionally use or sell software or services to circumvent a security measure, access control system, or other control or measure that is used to ensure an equitable campsite reservationmaking process for visitors, including limits on the number of campsite reservations a person can make, and would define "visitor" to mean a person who makes a campsite reservation with the intent to visit the outdoor recreation or camping venue for which the reservation is made.

The bill would define "campsite reservation" to mean a reservation for an outdoor recreation or camping venue, including, *but not limited to*, a state or local park, and would specify that this definition includes park permits that are required for overnight access to an area or trail

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<sup>5</sup> See Erika Bolstad, "State parks have been full of visitors amid the pandemic, but can budgets and regulations keep up?" *USA Today*, Updated Sep. 9, 2020, <https://www.usatoday.com/story/travel/news/2020/09/08/state-parks-struggle-keep-up-covid-19-travel-demand/5707497002/>, [as of Apr. 12, 2021].

<sup>6</sup> Tom Stienstra, "Parks declare war on bots over camp reservations," *San Francisco Chronicle*, Updated Jan. 28, 2019, <https://www.sfchronicle.com/travel/article/Parks-declare-war-on-bots-over-camp-reservations-13484794.php>, [as of Apr. 12, 2021].

or required to engage in a specific recreational activity that are issued to a limited number of applicants, including, but not limited to, wilderness permits and backcountry permits. Whether this would include the use of bots to secure reservations for federal lands managed by the National Parks Service, including highly desirable reservations and permits to sites in, e.g., Yosemite and Point Reyes National Parks, is not entirely clear. The National Park Service maintains its own reservation portal, recreation.gov, for federally-managed campsites and wilderness areas, so a reservation made for a park outside of California, by a person outside of California, would presumably lack a nexus to the State and would not be subject to the state law this bill would enact. However, a reservation made using a bot by a person in California, or for a National Park geographically located within California, may have some nexus to the State, making the applicability of the law this bill seeks to enact less certain. Regardless, the bill would clearly apply to reservations for state and local lands, strengthening regulatory security for the equitability of the campsite reservation and wilderness permitting processes.

According to the County of San Diego, who write in support of the bill:

In recent years, parks across the state have seen an increase in visitation which has led to an increase in the use of “bots” as people struggle to reserve campsites. These software bots can perform automated or directed tasks such as rapidly securing last-minute or otherwise hard to get reservations. This unfairly excludes individuals without the resources to access this technology. AB 472 would prohibit the use of bots and help ensure that all residents have an equal ability to access California’s state and local park system, including our County Parks.

The California State Parks Foundation adds in support:

In recent years, interest in camping at California State Parks sites has soared. While online reservation systems are convenient, they can also be hacked by software “bots” that gobble up available sites to re-sell them on different platforms. “Bots” are robotic ticket buying software programs that allow users to quickly buy tickets online. Typically, these are used by unscrupulous actors like ticket scalpers to buy tickets, then turn around and sell the same tickets at increasingly higher prices.

The Department of Parks and Recreation has made progress in shutting down the bots. Still, California State Parks Foundation believes that extending existing consumer protections to campsite reservations would provide additional tools to shut down fraud and preserve equitable access.

The provisions of this bill seem to further the intent of the existing state and federal laws regulating the use of bots to interfere with the equitable distribution of ticket distribution, and provide critical protections for the equitable access by Californians and tourists to the state’s public lands, which are some of the most renowned in the world. In particular, this bill would constitute a significant step toward ensuring that those lacking the financial or technical resources to avail themselves of bots for booking campsites and wilderness permits, can nonetheless avail themselves of the natural beauty this state has heavily invested in preserving.

- 6) **Related legislation:** AB 1556 (Friedman) would require a ticket seller to disclose, prior to sale, whether the ticket or tickets are nontransferable to a third party, and would require the

ticket price of any event which is cancelled to be fully refunded to the purchaser within 30 calendar days of the cancellation, and the ticket price of any event which is postponed or rescheduled to be fully refunded to the purchaser upon request.

7) **Prior legislation:** AB 1032 (Quirk, Ch. 105, Stats. 2019) *See* Comment 3.

AB 1832 (Calderon, Ch. 158, Stats. 2014) *See* Comment 3.

AB 329 (Pan, Ch. 325, Stats. 2013) *See* Comment 3.

8) **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 unanimously.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

California State Parks Foundation  
County of San Diego  
El Dorado Irrigation District

**Opposition**

None on file

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