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**SUBSTITUTE SENATE BILL 5321**

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**State of Washington 66th Legislature 2019 Regular Session**

**By** Senate Environment, Energy & Technology (originally sponsored by Senators Carlyle, Palumbo, Wellman, Mullet, Pedersen, Billig, Hunt, Liias, and Van De Wege)

AN ACT Relating to ticket sales over the internet; amending RCW 19.345.005, 19.345.010, and 18.235.020; adding new sections to chapter 19.345 RCW; prescribing penalties; and providing an effective date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  (1) No person, firm, or corporation may resell or engage in the business of the resale of any tickets to a place of entertainment without having first procured a ticket reseller license for each location at which business will be conducted from the department.

(2) No person, firm, or corporation may operate an internet web site or any other electronic service that provides a mechanism for two or more parties to participate in a resale transaction or that facilitates resale transactions by the means of an auction, or own, conduct, or maintain any office, branch office, bureau, agency, or subagency for such a business without having first procured a ticket reseller license for each location at which business will be conducted from the department.

(3) Any operator or manager of a web site that serves as a platform to facilitate resale, or resale by way of a competitive bidding process, solely between third parties and does not in any other manner engage in resales of tickets to places of entertainment is exempt from the licensing requirements of this chapter.

(4) The department shall issue and deliver to an applicant who qualifies under this section a ticket reseller license to conduct such a business and to own, conduct, or maintain a bureau, agency, subagency, office, or branch office for the conduct of such a business on the premises stated in the application upon the payment by or on behalf of the applicant according to RCW 43.24.086. Ticket reseller licenses may not be transferred or assigned, except by permission of the department.

(5) A ticket reseller license expires one year from issuance, unless revoked by the department.

(6) A ticket reseller license must be granted upon a written application setting forth information the department may require in order to carry into effect the provisions of this chapter.

(7) If an applicant or licensee under this section demonstrates that their business provides a service to facilitate ticket transactions without charging any fees, surcharges, or service charges above the established price on every transaction, except a reasonable and actual charge for the delivery of tickets, then the fees for licensing under this section are not required.

(8) This section does not apply to ticket sales by an operator.

NEW SECTION. **Sec.**  (1) Immediately upon the receipt of the license issued pursuant to this chapter by the department, the licensee named therein shall cause the license to be posted and at all times displayed in a conspicuous place in the principal office of the business for which it is issued. It shall also cause the license for each branch office, bureau, agency, or subagency to be posted and at all times displayed in a conspicuous place in such a branch office, bureau, agency, or subagency for which it is issued. If a licensee does business on the internet, including via a retail ticket purchasing platform, it shall provide a license number displayed in a conspicuous manner or a hyperlink displayed in a conspicuous manner to a scanned copy of the license. The license is subject to inspection by the department or the designee of the department at all reasonable times.

(2)It is unlawful for any person, firm, partnership, or corporation holding a license to post the license or to permit the license to be posted upon any premises other than those described therein or to which the license has been transferred pursuant to the provisions of this chapter or unlawfully to alter, deface, or destroy such a license.

NEW SECTION. **Sec.**  (1) Any licensee that facilitates the resale of tickets shall disclose in a clear and conspicuous manner the total price of the ticket and the portion of the ticket price stated in dollars that represents a service charge, or any other fee, or surcharge prior to accepting payment.

(2) Any licensee utilizing an online resale marketplace shall post a clear and conspicuous notice on the web site that the web site is for the secondary sale of a ticket, that the price of such a ticket offered for sale may exceed the established price and shall also state the refund policy of the platform in connection with the cancellation or postponement of an event. An online resale marketplace shall require that the user confirm having read such a notice before completing any transaction.

NEW SECTION. **Sec.**  (1) It is unlawful for any licensee to mislead or deceive, own, operate, or control a ticket web site for an event scheduled at a place of entertainment and use a subdomain or domain name in a ticket web site's URL that contains:

(a) The name of the place of entertainment, provided that this subsection (1)(a) does not preclude the use of general terms to depict a geographical location or venue category;

(b) The name of the specific event, including the name of a person or entity scheduled to perform or appear at the event; or

(c) A name substantially similar to those in (a) or (b) of this subsection.

(2) Subsection (1) of this section does not apply if the licensee is acting on behalf of or with the consent of the place of entertainment, event, artist, or sports team for which the web site is being created.

(3) Any licensee that owns, operates, or controls such a ticket web site is subject to a civil penalty in an amount of no more than one thousand five hundred dollars for each violation.

(4) Any licensee that is subject to a civil penalty under this section and that licensee has been assessed a penalty under this section in the previous three years must be assessed a civil penalty of no more than five thousand dollars for each violation.

NEW SECTION. **Sec.**  (1) A ticket issued by the operator of a place of entertainment allows for admission to the place of entertainment at the date and time specified on the ticket, subject to the terms and conditions as specified by the operator. It is unlawful for an operator of a place of entertainment, or the operator's agent, to employ a paperless ticketing system unless the consumer is given an option to purchase paperless tickets that the consumer can transfer at any price, and at any time, and without additional fees, independent of the operator or operator's agent. Notwithstanding the provisions of this subsection, an operator or operator's agent may employ a paperless ticketing system that does not allow for independent transferability of paperless tickets only if the consumer is offered an option at the time of initial sale to purchase the same tickets in some other form that is transferable independent of the operator or operator's agent including, but not limited to, paper tickets or e-tickets. The established price for any given ticket must be the same regardless of the form or transferability of the ticket.

(2) Additionally, nothing in this section may be construed to prohibit an operator of a place of entertainment from maintaining and enforcing any policies regarding conduct or behavior at or in connection with their venue. Further, nothing in this section may be construed to prohibit an operator of a place of entertainment or the operator's agent, from restricting the resale of tickets that are offered as part of a targeted promotion, at a discounted price, or for free, to specific individuals or groups of individuals because of their status as, or membership in, a specific community or group, including, but not limited to, persons with disabilities, students, religious or civic organizations, or persons demonstrating economic hardship. However, tickets offered promotionally to the general public are not considered tickets offered to specific individuals or groups of individuals. Any promotional discounted or free tickets for which the operator or operator's agent restricts resale must be clearly marked. An operator is permitted to revoke or restrict season tickets for reasons relating to violations of venue policies including, but not limited to, attempts by two or more persons to gain admission to a single event with both the canceled tickets originally issued to a season ticket holder and those tickets reissued as part of a resale transaction, and to the extent the operator may deem necessary for the protection of the safety of patrons or to address fraud or misconduct.

(3) The operator or the promoter must determine whether a seat for which a ticket is for sale has an obstructed view, and must disclose the obstruction. If the operator or promoter discloses that a seat for which a ticket is for sale has an obstructed view, it is the responsibility of the secondary ticket reseller to disclose the obstruction upon the resale of the ticket. The obstruction may not include: An obstruction of view caused by a person, or persons, seated or standing in an adjacent seat, or seats, or occupying an aisle; an obstruction of view caused by an object or objects placed upon an adjacent seat or seats, or in an aisle; or an obstruction of view that is de minimus or transitory in nature.

(4) An operator or its agent may not transfer a prospective ticket purchaser through any means to an unaffiliated licensee or secondary ticket reseller without providing a clear and conspicuous disclosure that informs the prospective purchaser that the ticket is not being offered by the operator or its agent, but rather by a licensee or other ticket reseller in the secondary market.

NEW SECTION. **Sec.**  (1) It is unlawful for any licensee to contract for the sale of tickets, contract to obtain tickets for another, or accept consideration for payment in full or for a deposit for the sale of tickets unless the licensee meets one or more of the following requirements:

(a) The licensee has the offered tickets in its possession;

(b) The licensee has a written contract to obtain the offered ticket at a certain price from a person in possession of the ticket or from a person who has a contractual right to obtain such a ticket; or

(c) The licensee informs the purchaser in a clear and conspicuous manner and in plain language at the time of offering such a ticket for sale and in a written notice prior to the completion of the transaction that the licensee does not have possession of the ticket, has no contract to obtain the offered ticket at a certain price from a person in possession of the ticket or from a person who has a contractual right to obtain such ticket, may not be able to supply the ticket at the contracted price or range of prices, and requires such a purchaser to expressly confirm prior to completing the transaction that the purchaser has read such a notice.

(2) Nothing in this section prohibits a licensee from accepting a deposit from a prospective purchaser for a resale pursuant to subsection (1)(c) of this section, provided that the licensee informs the purchaser in writing prior to receipt of consideration of the terms of the deposit agreement, and includes in the written notice the disclosures otherwise required by this section. If a licensee has entered into a contract with or received consideration from a prospective purchaser for the sale of a ticket or tickets and cannot supply such a ticket or tickets at the contracted prices range, the licensee shall refund any moneys paid by the prospective purchaser within ten days of receipt of request for refund from the purchaser.

(3) Nothing in this section may be construed to nullify, expand, restrict, or otherwise amend or modify laws, rules, or regulations in effect on the effective date of this section, and nothing in this section may be construed as making lawful any fraudulent, deceptive, or illegal act or practice that is unlawful pursuant to laws, rules, or regulations in effect on the effective date of this section.

NEW SECTION. **Sec.**  (1) Every licensee shall at all times keep full and accurate sets of records showing: (a) The prices at which all tickets have been bought and sold by the licensee; and (b) the names and addresses of the person, firm, or corporation from whom they were bought. Licensees offering for initial sale tickets by means of an auction shall maintain a record of the price when known and the number of tickets and types of seats offered through auction.

(2) Records required to be kept under this section must be made available upon request to the attorney general, the department, or other governmental body with the express authority to enforce any section of this chapter. These records must be retained for a period of not less than five years.

(3) Twice annually, on June 30th and December 31st, every licensee that resells tickets or facilitates the resale or resale auction of tickets between independent parties by any and all means shall report to the department the total number of, and average resale or average final resale auction price of, all tickets to each ticketed event, provided, however, that repeat performances of a single event, and multiple events that are part of a season long performance, must be treated as a single event for the purposes of the reporting requirement of this subsection.

NEW SECTION. **Sec.**  The department may issue an order to cease and desist the unlicensed practice of ticket selling, deny an application for a ticket seller license, refuse to renew a license, revoke or suspend a license, impose a fine not exceeding one thousand dollars per violation, issue a reprimand, or order restitution upon proof to the satisfaction of the department that a person, applicant, or licensee has violated any provision of this chapter, the uniform regulation of business and professions act, chapter 18.235 RCW, or any rule adopted under this chapter.

NEW SECTION. **Sec.**  A licensee may lose its license and may be barred from licensure for a period not to exceed three years to be determined by the department if such a licensee:

(1) Knowingly utilized ticket purchasing software in order to purchase tickets;

(2) Knowingly resold or offered to resell a ticket that the licensee knew was obtained using ticket purchasing software; or

(3) Intentionally maintained any interest in or maintained any control of the operation of ticket purchasing software to purchase tickets.

NEW SECTION. **Sec.**  (1) The department has the power, upon complaint of any person or on its own initiative, to investigate the business, business practices, or business methods of any licensee that are related to the licensee's obligations under this chapter.

(2) Each licensee is obliged, on request of the department, to supply such information as may be required concerning its business, business practices, or business methods provided that the information requested is related to the complaint that forms the basis of such an investigation.

(3) Each operator of any place of entertainment is required, on request of the department, to supply such information as may be required concerning the business, business practices, or business methods of any licensee under this chapter, provided that the information requested is related to the complaint that forms the basis of such an investigation.

NEW SECTION. **Sec.**  The department may adopt rules as deemed necessary for the implementation and enforcement of this act.

NEW SECTION. **Sec.**  (1) The attorney general may bring an action in the name of the state, or on behalf of persons residing in the state, to restrain and prevent any act prohibited or declared to be unlawful in this chapter.

(2) For actions brought by the attorney general, the legislature finds that the practices covered by this chapter are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. For actions brought by the attorney general, a violation of this chapter is not reasonable in relation to the development and preservation of business and is an unfair or deceptive act in trade or commerce and an unfair method of competition for purposes of applying the consumer protection act, chapter 19.86 RCW.

NEW SECTION. **Sec.**  Notwithstanding any right of action granted to any governmental body pursuant to this chapter, any person who has been injured by reason of a violation of this chapter by a licensee may bring an action in the person's own name to enjoin such an unlawful act, and to seek at least five thousand dollars per violation, or actual damages, whichever is greater. The court may award reasonable attorneys' fees to a prevailing plaintiff.

NEW SECTION. **Sec.**  The ticket reseller licensing account is created in the custody of the state treasurer. All receipts collected under this chapter must be deposited into the account. Expenditures from the account may be used only for implementation and enforcement of this chapter. Only the director of the department or the director's designee may authorize expenditures from this account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

**Sec.**  RCW 19.345.005 and 2015 c 129 s 1 are each amended to read as follows:

(1) The legislature finds and declares that transactions involving tickets for admission to places of entertainment are a matter of public interest and subject to the supervision of the state and the appropriate political subdivisions of the state for the purpose of safeguarding the public and generating transparency in ticket reselling.

(2) It is the intent of the legislature to protect consumers and ticket sellers from software that simulates the action of a human being purchasing tickets from a ticket seller in order to evade controls and measures on a ticket seller's web site. The legislature is concerned by the use of software, commonly referred to as BOTs (web robots), to interfere with the operation of ticket sales over the internet, gaining unauthorized priority access to purchasing tickets, and thereby reducing access to the general public of online ticket sales at the intended original price. In order to protect consumers and ticket sellers, the legislature intends to prohibit acts and practices of persons that use or sell software to circumvent, thwart, interfere with, or evade a security measure, access control system, or other control or measure on a ticket seller's internet web site. It is not the intent of the legislature to interrupt the online ticket buying process established by the authorized ticket seller, including the distribution of tickets to season ticket holders.

**Sec.**  RCW 19.345.010 and 2015 c 129 s 2 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Admission ticket" means evidence of a right of entry to a venue or an entertainment event.

(2) "Affinity group" means an identifiable group of people who are members of the same organization, or who are customers of the same person, and who enjoy special privileges.

(3) "Event" means a concert, theatrical performance, sporting event, exhibition, show, or other similar activity held in this state.

(4) "Initial sale" means the first sale of an admission ticket by the ticket seller. "Initial sale" also includes the distribution of admission tickets under an agreement between the ticket seller and the recipient.

(5) "Person" means any individual, partnership, corporation, limited liability company, other organization, or any combination thereof.

(6) "Place of entertainment" means any privately or publicly owned or operated entertainment facility within this state, such as a theater, stadium, museum, arena, park, racetrack, or other place where concerts, theatrical performances, sporting events, exhibitions, shows, or other similar activities are held and for which an entry fee is charged.

(7) "Presale" means a sale of admission tickets at or below the price printed on the ticket by, or with the permission of, a ticket seller, prior to their release to the general public.

(8) "Promoter" means a person who organizes financing and publicity for an entertainment event.

(9) "Ticket seller" means a person that makes admission tickets available, directly or indirectly, at an initial presale or sale to the general public, and may include an owner or operator of a place of entertainment, a sponsor or promoter of an event, a sports team participating in an event, a fan club or affinity group, a theater company, a musical group, or similar participant in an event, or an employee or agent of any such person.

(10) "Department" means the department of licensing.

(11) "Established price" means the price fixed at the time of sale by the operator of any place of entertainment for admission to a place of entertainment in Washington.

(12) "Online resale marketplace" means any operator or manager of a web site or other electronic service that resells tickets or serves as a platform to facilitate resale, or resale by way of a competitive bidding process.

(13) "Operator" means any person who owns, operates, or controls a place of entertainment or who promotes or produces an entertainment.

(14) "Resale" means any sale of a ticket for more than the established price for admission to a place of entertainment in Washington other than a sale by the operator. Resale includes sales by any means, including in person, or by means of telephone, mail, delivery service, facsimile, internet, email, or other electronic means, where the venue for which the ticket grants admission is located in Washington state.

(a) "Resale" does not include any person, firm, or corporation that sells less than fifty tickets per year above the established price.

(b) "Resale" does not include any not-for-profit organization, or person acting on behalf of such a not-for-profit organization, as long as any profit realized from ticket reselling is wholly dedicated to the purposes of the not-for-profit organization.

(15) "Retail ticket purchasing platform" means a retail ticket purchasing web site, application, phone system, or other technology platform used to sell tickets.

(16) "Ticket web site" means an internet web site advertising the sale of tickets, offering the sale of the tickets, or facilitating a secondary ticket exchange.

(17) "URL" means the uniform resource locator for a web site on the internet.

**Sec.**  RCW 18.235.020 and 2017 c 281 s 37 are each amended to read as follows:

(1) This chapter applies only to the director and the boards and commissions having jurisdiction in relation to the businesses and professions licensed under the chapters specified in this section. This chapter does not apply to any business or profession not licensed under the chapters specified in this section.

(2)(a) The director has authority under this chapter in relation to the following businesses and professions:

(i) Auctioneers under chapter 18.11 RCW;

(ii) Bail bond agents and bail bond recovery agents under chapter 18.185 RCW;

(iii) Camping resorts' operators and salespersons under chapter 19.105 RCW;

(iv) Commercial telephone solicitors under chapter 19.158 RCW;

(v) Cosmetologists, barbers, manicurists, and estheticians under chapter 18.16 RCW;

(vi) Court reporters under chapter 18.145 RCW;

(vii) Driver training schools and instructors under chapter 46.82 RCW;

(viii) Employment agencies under chapter 19.31 RCW;

(ix) For hire vehicle operators under chapter 46.72 RCW;

(x) Limousines under chapter 46.72A RCW;

(xi) Notaries public under chapter 42.45 RCW;

(xii) Private investigators under chapter 18.165 RCW;

(xiii) Professional boxing, martial arts, and wrestling under chapter 67.08 RCW;

(xiv) Real estate appraisers under chapter 18.140 RCW;

(xv) Real estate brokers and salespersons under chapters 18.85 and 18.86 RCW;

(xvi) Scrap metal processors, scrap metal recyclers, and scrap metal suppliers under chapter 19.290 RCW;

(xvii) Security guards under chapter 18.170 RCW;

(xviii) Sellers of travel under chapter 19.138 RCW;

(xix) Timeshares and timeshare salespersons under chapter 64.36 RCW;

(xx) Whitewater river outfitters under chapter 79A.60 RCW;

(xxi) Home inspectors under chapter 18.280 RCW;

(xxii) Body artists, body piercers, and tattoo artists, and body art, body piercing, and tattooing shops and businesses, under chapter 18.300 RCW; ((~~and~~))

(xxiii) Appraisal management companies under chapter 18.310 RCW; and

(xxiv) Ticket resellers under chapter 19.345 RCW.

(b) The boards and commissions having authority under this chapter are as follows:

(i) The state board for architects established in chapter 18.08 RCW;

(ii) The Washington state collection agency board established in chapter 19.16 RCW;

(iii) The state board of registration for professional engineers and land surveyors established in chapter 18.43 RCW governing licenses issued under chapters 18.43 and 18.210 RCW;

(iv) The funeral and cemetery board established in chapter 18.39 RCW governing licenses issued under chapters 18.39 and 68.05 RCW;

(v) The state board of licensure for landscape architects established in chapter 18.96 RCW; and

(vi) The state geologist licensing board established in chapter 18.220 RCW.

(3) In addition to the authority to discipline license holders, the disciplinary authority may grant or deny licenses based on the conditions and criteria established in this chapter and the chapters specified in subsection (2) of this section. This chapter also governs any investigation, hearing, or proceeding relating to denial of licensure or issuance of a license conditioned on the applicant's compliance with an order entered under RCW 18.235.110 by the disciplinary authority.

NEW SECTION. **Sec.**  The uniform regulation of business and professions act, chapter 18.235 RCW, governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter.

NEW SECTION. **Sec.**  Sections 1 through 14 and 18 of this act are each added to chapter 19.345 RCW.

NEW SECTION. **Sec.**  This act takes effect June 30, 2020.

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