H-4010.1

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**HOUSE BILL 2921**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**State of Washington 65th Legislature 2018 Regular Session**

**By** Representatives Kloba, Kirby, McBride, and Appleton

AN ACT Relating to ticket sales over the internet; amending RCW 19.345.005 and 19.345.010; adding new sections to chapter 19.345 RCW; and prescribing penalties.

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 reselling any tickets to a place of entertainment without having first procured from the department a license for each location at which business will be conducted.

(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 from the department a license for each location at which business will be conducted.

(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 section.

(4) The department shall issue and deliver to an applicant a 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 of a fee of five thousand dollars and shall be renewed upon the payment of a like fee annually. The license may not be transferred or assigned, except by permission of the department.

(a) The license runs to the following January 1st unless revoked by the department prior to that date.

(b) The license must be granted upon a written application setting forth that information as the department may require in order to enable the licensee to carry into effect the provisions of this chapter and must be accompanied by proof satisfactory to the department of the moral character of the applicant.

(5) If any 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 must be waived.

NEW SECTION. **Sec.**  (1) Immediately upon the receipt of the license issued pursuant to this chapter by the department, the licensee must at all times post and display the license in a conspicuous place in the principal office of the business for which it is issued, and 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, so that all persons visiting the principal office, branch office, bureau, agency, or subagency may readily see the same, and if the licensee does business on the internet, to provide 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) The department shall require the applicant for a license to file with the license application a bond to the department in a penal sum of twenty-five thousand dollars, with two or more sufficient sureties or a duly authorized surety company, which bond must be approved by the department.

(2) Each bond must be conditioned that the obligor will not be guilty of any fraud or extortion, will not violate directly or indirectly any of the provisions of this chapter or any of the provisions of the license provided for in this chapter, will comply with the provisions of this chapter and will pay all damages occasioned to any person by reason of any misstatement, misrepresentation, fraud, or deceit or any unlawful act or omission of such obligor, agents, or employees of the obligor, while acting within the scope of their employment, made, committed, or omitted in connection with the provisions of this chapter in the business conducted under such a license or caused by any other violation of this chapter in carrying on the business for which such a license is granted.

(3) One or more recoveries or payments upon such a bond does not vitiate the bond but such a bond remains in full force and effect. However, the aggregate amount of all such recoveries or payments may not exceed the penal sum thereof. Before the department shall draw upon such a bond, the department shall issue a determination in writing that includes the basis of such an action. The department shall notify the licensee in writing of any such determination and afford the licensee an opportunity to respond within twenty days of the receipt of such a determination.

(4) In no event may the bond be drawn upon in less than twenty-five days after the service of a determination to the licensee. Such written notice may be served by delivery thereof personally to the licensee, or by certified mail to the last known business address of the licensee. Only upon such a determination of the department may moneys be withdrawn from the bond. Upon the commencement of any action or actions against the surety upon any such bond for a sum or sums aggregating or exceeding the amount of such a bond, the department shall require a new and additional bond in like amount as the original one, which must be filed with the department within thirty days after the demand therefor. Failure to file such a bond within such a period constitutes cause for the revocation of the license issued to the licensee upon whom such demand shall have been made. Any suit or action against the surety on any bond required by the provisions of this section must be commenced within one year after the cause of action has accrued.

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. Operators 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) These records 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 ten 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. However, 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.**  (1) The department may deny an application or may revoke or suspend a license issued pursuant to this chapter, impose a fine not exceeding one thousand dollars per violation payable to the department, issue a reprimand and order restitution upon proof to the satisfaction of the department that the holder thereof has:

(a) Violated any provision of this chapter or any rule or regulation adopted under this chapter;

(b) Made a material misstatement in the application for such a license;

(c) Engaged in fraud or fraudulent practices;

(d) Demonstrated untrustworthiness or incompetency; or

(e) Been convicted of a serious offense or misdemeanor which, in the discretion of the department, bears such a relationship to licensure as to constitute a bar to licensure or renewal.

(2) In the event that the department revokes or suspends any such license, or imposes any fine or reprimand on the holder of the license, the department's determination must be in writing and officially signed. The original of such a determination, when so signed, must be filed with the department and copies must be served personally or by certified mail upon the licensee or applicant and addressed to the principal place of business of such a licensee.

(3) No license may be suspended or revoked nor may any fine or reprimand be imposed, nor may any application be denied, until after an opportunity for a hearing before an officer or employee of the department designated for such a purpose by the department upon notice to the licensee or applicant of at least ten days. The notice must be served by certified mail and state the date and place of the hearing and set forth the ground or grounds constituting the charges against the licensee or the reasons for the proposed denial of the application. The licensee or applicant must have the opportunity to be heard in his or her defense either in person or by counsel and may produce witnesses and testify on his or her behalf. A stenographic record of the hearing must be taken and preserved. The hearing may be adjourned from time to time. The person conducting the hearing must make a written report of the person's findings and a recommendation to the department for decision. The department shall review such findings and the recommendation and, after due deliberation, shall issue an order accepting, modifying, or rejecting the recommendation and dismissing the charges or suspending or revoking the license or imposing a fine or reprimand upon the licensee. For the purpose of this chapter, the department or any officer or employee of the department designated by him or her, may administer oaths, take testimony, subpoena witnesses, and compel the production of books, papers, records, and documents deemed pertinent to the subject of an investigation.

NEW SECTION. **Sec.**  (1) The department shall have the power, upon complaint of any person or the initiative of any person, to investigate the business, business practices, and business methods of any licensee that relates to this state's or any other state's ticket resale law, or in regards to ticket resale practices generally.

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

(4) The department has the power to adopt rules as may be deemed necessary for the enforcement of this chapter.

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 may bring an action in the person's own name to enjoin such an unlawful act, and to seek up to five hundred dollars per violation, or actual damages, whichever is greater. The court may award reasonable attorneys' fees to a prevailing plaintiff.

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

(13) "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.

NEW SECTION. **Sec.**  Sections 1 through 8 of this act are each added to chapter 19.345 RCW.

**--- END ---**