

HOUSE BILL REPORT

HB 1648

As Reported by House Committee On:

Consumer Protection & Business

Appropriations

Title: An act relating to ticket sales.

Brief Description: Concerning ticket sales.

Sponsors: Representatives Reeves, Ryu, Berry, Walen, Simmons, Ramel, Orwall, Duerr, Gregerson, Doglio, Stonier, Pollet and Morgan.

Brief History:

Committee Activity:

Consumer Protection & Business: 1/31/23, 2/15/23 [DPS];

Appropriations: 2/22/23, 2/24/23 [DP2S(w/o sub CPB)].

Brief Summary of Second Substitute Bill

- Establishes a ticket sales license that ticket sellers, ticket resellers, and ticket resale marketplaces must obtain and requires licensees to make certain consumer disclosures.
- Limits the sale of nontransferable admission tickets, the use of certain internet domain names for admission ticket sales websites, and the circumstances in which a ticket reseller may sell an admission ticket not owned by, under contract to be transferred to, or in the possession of the ticket reseller.
- Excludes nine categories of entities and individuals from the licensing and consumer disclosure requirements and admission ticket sales limitations.
- Prohibits persons from knowingly reselling, or offering for resale, admission tickets obtained using software to circumvent or evade a ticket seller's security measures on its internet website, application, phone system, or similar technology, which prohibition is enforceable under the

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

HOUSE COMMITTEE ON CONSUMER PROTECTION & BUSINESS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Walen, Chair; Reeves, Vice Chair; Chapman, Donaghy, Hackney, Ryu and Santos.

Minority Report: Without recommendation. Signed by 6 members: Representatives Corry, Ranking Minority Member; McClintock, Assistant Ranking Minority Member; Cheney, Connors, Sandlin and Volz.

Staff: Michelle Rusk (786-7153).

Background:

Ticket Sales.

The means by which a person may purchase admission tickets from ticket sellers to certain events in this state is regulated. Specifically, a person is prohibited from using or selling software to circumvent, thwart, interfere with, or evade access controls or security measures on a ticket seller's website, in furtherance of the Legislature's intent 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 on the ticket seller's website. A "ticket seller" is a person that makes admission tickets available at an initial presale or sale to the general public, either directly or indirectly, and an "admission ticket" is evidence of a right of entry to an "event," which, as defined, includes a concert, theatrical performance, sporting event, exhibition, show, or similar activity held in this state.

The use or sale of software to interfere with or disrupt the operation of ticket sales over the internet is found to be an unfair or deceptive act in trade or commerce and an unfair method of competition for the purposes of applying the Consumer Protection Act (CPA). The CPA prohibits unfair or deceptive acts or practices in trade or commerce; the formation of contracts, combinations, and conspiracies in restraint of trade or commerce; and monopolies. Persons injured by violations of the CPA may bring a civil action to enjoin further violations and recover actual damages, costs, and attorney's fees. The Attorney General may bring an action in the name of the State, or as *parens patriae* on behalf of persons residing in the state, against any person to enjoin violations of the CPA and obtain restitution.

Summary of Substitute Bill:

Ticket Sales Prohibited Acts.

The prohibition on using software to circumvent or evade a security measure or other control on a ticket seller's internet website is expanded to apply to an application, phone system, or similar technology, and specifies that the prohibition is on the use of software that circumvents technology used by a ticket seller to enforce posted event admission ticket purchasing limits or to maintain the integrity of posted online admission ticket purchasing order rules.

It is also prohibited for a person to knowingly resell or offer for resale an admission ticket that such person knows was obtained using 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 website, application, phone system, or similar technology. Violations of these prohibitions are enforceable through the CPA.

Ticket Sales License Established.

A license is created that must be obtained in order for a person to engage in the business of a ticket seller, ticket reseller, or ticket resale marketplace, and is administered by the Department of Licensing (DOL). The following definitions are established:

- A "ticket reseller" is a person or entity that resells or offers for resale admission tickets.
- A "ticket resale marketplace" is a person or entity that operates a platform or exchange to facilitate the resale or offering for resale of admission tickets between third parties, which includes platforms or exchanges operating by means of an internet website, application, phone system, or other similar technology, and who does not generally maintain their own ticket inventory, and which may include a ticket seller.

When applying for a license, applicants must disclose whether they own, are owned by, or share common ownership with any other ticket seller or ticket reseller. No person may hold more than two ticket sales licenses, and no license may be transferred, except with the DOL's written permission.

The Uniform Regulation of Business and Professions Act governs discipline of licensees, and the DOL Director is authorized to set license and renewal fees, adopt rules, and set license expiration and renewal dates. Receipts from administration of the license are deposited into the Business and Professions Account.

Licensees must also register with the Secretary of State for a business license to do business in Washington.

Required Disclosures.

Price Disclosures.

Ticket sellers, ticket resellers, and ticket resale marketplaces may not sell, resell, or offer for sale or resale admission tickets without disclosing to a consumer, prior to a user selecting a

ticket, the total amount they will be charged for an admission ticket. Price disclosures must include: (1) the base price of the admission ticket; and (2) the all-in price of the admission ticket. "Base price" means the dollar value of an admission ticket reflecting the dollar amount a customer is required to pay, excluding any charges, fees, and taxes; and "all-in price" means the total cost of an admission ticket, including all fees, which may include service fees, processing fees, delivery fees, facility fees, and resale fees.

Disclosures of subtotals, fees, and any other component of an admission ticket purchase price:

- must not be false or misleading;
- cannot be presented more prominently than an admission ticket's total purchase price; and
- must be fully disclosed before a user is required to enter login credentials if the user is purchasing a ticket on a platform or exchange that requires login credentials to complete a purchase.

Consumer Disclosures.

Prior to a user completing a purchase of an admission ticket, ticket sellers and ticket resellers must also disclose to users:

- the terms of a purchaser's right to cancel a purchase;
- the applicable refund policy if an event is canceled;
- whether the seller is owned by, owns, or shares common ownership with another ticket seller or ticket reseller;
- whether an admission ticket is transferable;
- a hyperlink to a copy of the licensee's ticket sales license;
- contact information to submit a consumer complaint, including information for the Washington Consumer Protection Division's complaint website; and
- that Washington has consumer protections for consumers of admission tickets for events, and where those laws may be found.

If a ticket reseller is owned by, owns, or shares common ownership with a ticket seller, they must disclose to a user prior to the user completing a purchasing of an admission ticket:

- whether admission tickets for an event are still available for purchase from the ticket seller that the ticket reseller shares common ownership with, owns, or is owned by; and
- the face value of the admission ticket available for purchase from that ticket seller.

Admission Ticket Sales Limitations.

Ticket Transferability.

A ticket seller may sell nontransferable admission tickets if it provides consumers an option at the time of initial sale or presale to purchase the same ticket in a transferable form. A person may not be discriminated against or denied access to an event solely because the admission ticket was resold, or resold on a ticket resale marketplace not affiliated with the ticket seller.

Unauthorized Internet Domain Names.

The website of a ticket seller, ticket reseller, and ticket resale marketplace used to sell admission tickets may not use internet domain names containing the name of, or a substantially similar name as, a place of entertainment or name of an event unless the website operator is acting on behalf of the place of entertainment, event, or the person or entity scheduled to perform or appear at the event.

Tentative Tickets.

A ticket reseller may not use a tentative ticket policy under which it resells admissions tickets that are not owned by, under contract to be transferred to, or in the possession of the ticket reseller, unless the policy is disclosed to the purchaser at the outset of the transaction. A required disclosure must include an approximate delivery date and the number of admission tickets guaranteed to be grouped together. If a ticket reseller does not secure the tentative tickets, the reseller must refund to a consumer any deposit made.

Exclusions.

The following are excluded from licensing and consumer disclosure requirements and admission ticket sales limitations:

- agricultural fairs as provided in RCW 15.76.120;
- public and private kindergarten through grade 12 schools;
- institutions of higher education as defined in RCW 28B.92.030;
- nonprofit cultural institutions, including accredited zoos and aquariums;
- movie theaters;
- professional and collegiate athletic teams;
- charitable corporations as defined in RCW 24.03A.010;
- federally recognized tribes;
- individual persons who are the original purchaser for personal use of one or more admission tickets to an event, including persons who are the original purchaser for personal use of season tickets to theatrical performances or sporting events; and
- individual employees of a ticket seller, ticket reseller, or ticket resale marketplace if they meet certain requirements.

Substitute Bill Compared to Original Bill:

The substitute bill:

- restores the definition of "admission ticket" to current law, replaces the defined term "face value" with "base price," modifies the definition of "ticket reseller," and adds definitions for "all-in price," "internet domain name," and "ticket resale marketplace";
- excludes 10 categories of entities and individuals from the licensing and consumer disclosure requirements and admission ticket sales limitations;
- specifies that the prohibition on the use or sale of software to circumvent or evade a ticket seller's security measures or access control systems, and tickets procured using such software, is a prohibition on the use of software that circumvents technology

- used by a ticket seller to enforce posted event admission ticket purchasing limits or to maintain the integrity of posted online admission ticket purchasing order rules;
- expands the scope of what actions constitute a per se violation of the CPA to include the unauthorized sale of admission tickets not owned by, under contract to be transferred to, or in the possession of a ticket reseller, and knowingly selling admission tickets procured using prohibited software, and specifies that ticket sellers have an affirmative obligation to notify the Attorney General of the use of such software;
 - modifies provisions related to ticket sale licenses to: (1) require the license for ticket resale marketplaces; (2) remove the requirement that licensees maintain a permanent place of business in Washington; (3) remove data-reporting requirements; (4) require licensees to register for a business license with the Secretary of State; (5) replace disciplinary provisions in the bill with existing disciplinary mechanisms under the Uniform Regulation of Business and Professions Act; (6) remove express licensing fees; and (7) direct the deposit of receipts from administration of the license into the Business and Professions Account;
 - applies consumer disclosure requirements to ticket resale marketplaces;
 - removes limitations on charging delivery fees and the use of dynamic pricing;
 - requires ticket sellers who sell nontransferable tickets to provide consumers an option to purchase the same ticket in a transferable form;
 - prohibits the website of a ticket seller, ticket reseller, and ticket resale marketplace used to sell admission tickets from using certain internet domain names, subject to an exception;
 - limits the circumstances in which a ticket reseller may sell an admission ticket not owned by, under contract to be transferred to, or in the possession of the ticket reseller; and
 - removes the preemption clause and changes the effective date to January 1, 2025.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 16, 2023.

Effective Date of Substitute Bill: The bill takes effect on January 1, 2025.

Staff Summary of Public Testimony:

(In support) This policy is a response to recent news, but actually responds to symptoms of a deeper issue. There is a need for fairness and transparency in ticket sales. Ultimately, the bill is really about consumer protection and ensuring that, when individuals go to ticket sites, they are getting the full and most transparent information possible to make smart financial decisions and be able to enjoy entertainment opportunities.

(Opposed) None.

(Other) Fan-friendly legislation includes all-in pricing and regulating the use of bots in ticket purchasing. Congress passed the Better Online Ticket Sales Act in 2016 and Washington has its own prohibition, but these laws are hardly enforced because law enforcement does not have the resources. Please include language that ticket sellers must collect bot data and give it to law enforcement, and please work with the Office of the Attorney General to ensure real enforcement. We also support the all-in pricing model, including providing disclosures before clicking on a topic. All-in pricing provides consumers with a level of transparency we believe is important for customers. The best consumer experience accounts for the cost of doing business in the original price and not at the point of sale. However, all platforms need to be held to compliance.

Ticket holdbacks must be addressed. A report by the New York State Attorney General found that far fewer than 100 percent of concert tickets are made available to the general public. Ticket companies should be required to fully disclose how many tickets are available for sale. Routinely, artists are holding back tickets, and if the public understood that, for example, only 80 percent of available seats are for sale, they would have an eye on the total market available to them.

Dynamic pricing means there is no true face value for a ticket. The 10 percent cap on dynamic pricing does not achieve its goal because there is no true face value, and it will only promote scalping and support bad actors. The secondary market is active, and if individuals on the secondary market are not subject to the dynamic pricing caps, how can there be real competition? Dynamic pricing limitations will significantly harm Washington's live event industry. Artists determine the prices for their tickets when they go on sale, including dynamic pricing, and ticket sellers execute an artist's strategy but don't themselves control pricing.

Consumers should be able to transfer tickets they lawfully purchase. Transferability is a cornerstone of a marketplace and any legislation should protect a consumer's right to transfer tickets they have purchased. Additionally, the use of white label websites should also be outlawed, which are websites deceptively posing as a primary market but they are a ticket broker.

Ticket resale marketplaces should have their own definition and licensing requirement; the ticket sales license data disclosure requirements should be retrospective instead of prospective; and there should be no brick and mortar requirement, because requiring an office in Washington will just result in increasing costs to consumers. Instead, businesses should get a business license with the Secretary of State.

Persons Testifying: (In support) Representative Kristine Reeves, prime sponsor.

(Other) Chris VanDeHoef, The FanFreedom Project; Brian Hess; Sean Auyash, StubHub; James Kimmel; Bruce Morris; Jas Sajjan, Live Nation Entertainment; Josh LaBelle, Seattle

Theatre Group; and Ryan Fitts, Vivid Seats.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Consumer Protection & Business. Signed by 17 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Berg, Chopp, Davis, Fitzgibbon, Lekanoff, Pollet, Riccelli, Ryu, Senn, Simmons, Slatter, Stonier and Tharinger.

Minority Report: Do not pass. Signed by 12 members: Representatives Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; Chandler, Connors, Couture, Dye, Harris, Rude, Sandlin, Schmick and Steele.

Minority Report: Without recommendation. Signed by 1 member: Representative Springer.

Staff: Emily Stephens (786-7157).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Consumer Protection & Business:

The second substitute bill:

- removes professional athletic teams and federally recognized tribes from the list of individuals and entities exempt from the bill;
- requires ticket sales licensees to register with the Department of Revenue and the Secretary of State if their corporate structure so requires; and
- adds ticket sales licenses to the Uniform Regulation of Business and Professions Act.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Second Substitute Bill: The bill takes effect on January 1, 2025.

Staff Summary of Public Testimony:

(In support) None.

(Opposed) None.

(Other) Artists can sometimes limit transferability to keep artists affordable for consumers. The bill would restrict the ability of artists to price certain high-demand concerts at below-market prices. The bill provides consumer protections and provides transferability. If you purchase a ticket, it should be yours to give away or to sell. Many consumers will not have the benefits from this bill because of exclusions, like for sports teams and events on tribal lands. This will create enforcement problems and confusion for consumers. Supply and demand for popular events is a challenge. Events in large venues still have limited capacity. This creates opportunities for resellers with sophisticated tools to purchase many tickets. Some bad actors want to cheat the system. Some allowance should be made for restricted transfer.

Persons Testifying: Jeff Gombosky, Live Nation; Andrew Bianchi, AXS Tickets; and Scott Hazlegrove, StubHub.

Persons Signed In To Testify But Not Testifying: None.