A BILL FOR AN ACT

RELATING TO CONSUMER PROTECTION.

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

SECTION 1. The legislature finds that the ticket-purchasing process for popular events is frustrating for consumers. According to reports by the Attorney General of the state of New York and the federal Government Accountability Office, event tickets for popular concerts go through one of three channels: holds, pre-sales, and general public sales. Due to event tickets being held or sold through pre-sales, the general public only has access to a fraction of the event tickets, sometimes less than half.

Additionally, primary ticket sellers are not transparent with fees and charges. First, a consumer may not be informed of the applicable taxes and charges until the very end of the ticket-purchasing process, shocking a consumer with the additional cost. Second, the amount of the fees or charges do not always appear justified by the proffered reason for the fees or charges.
Further, the legislature finds that popular events held in
the State attract secondary market profiteers, commonly known as
scalpers, who exacerbate the frustrations of the ticket-
purchasing process to the detriment of ordinary consumers.
First, scalpers are additional persons with whom consumers must
compete for event tickets, thereby increasing the demand for an
inelastic supply. Second, scalpers increase the cost of an
event to a consumer, but the cost increase is not spent to make
the event better for the consumer. Lastly, some scalpers do not
compete equally with consumers as some scalpers utilize computer
software to navigate a ticket-selling platform and its security
measures in a fraction of the time as a human being to purchase
multiple tickets and conduct multiple transactions
simultaneously.
However, the legislature recognizes that the secondary
market provides a service to consumers who are willing to pay
more for the convenience of purchasing tickets at any time up to
the date of the event. Additionally, the secondary market
provides an opportunity to obtain tickets for consumers whose
schedule and commitments prevented them from purchasing event
tickets when the event tickets were initially made available.
Due to each position's merits, the legislature finds that states have varied in their approach to ticket scalping. Some states have explicitly allowed the practice of ticket scalping and curbed any attempt to limit the practice. Other states have taken the opposite stance by prohibiting the practice in its entirety. Yet, other states have taken an intermediate approach by placing various limitations such as capping the profit a ticket scalper may make; restricting the time or place of ticket scalping; requiring ticket scalpers to be licensed or registered; or mandating certain business practices to ensure a certain level of consumer protection.

Additionally, the legislature finds that today's technology, such as the internet, makes the practice of ticket scalping both substantially easier to accomplish and harder to curb. As such, the legislature finds that an intermediate approach is the most pragmatic at providing consumers with protection and fairness in the ticket-purchasing process.

Thus, the purpose of this Act is to regulate event ticket sales by:
(1) Capping the service charges a primary and secondary ticket seller may place on top of the price of an event ticket;

(2) Requiring website operators to guarantee a full refund in certain situations and to disclose that the website and seller are not the primary ticket seller; and

(3) Prohibiting the practice of selling tickets that are not in the seller's possession and the practice of using or selling software to circumvent a primary ticket seller's security measures.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

"CHAPTER

EVENT TICKET SALES

§ -1 Definitions. As used in this chapter, unless the context otherwise requires:

"Director" means the director of commerce and consumer affairs.

"Event ticket" means a ticket of admission or any other evidence of right of entry to a theater, place of amusement or
entertainment, or other place in the State where public exhibitions, games, contests, or performances are held.

"Primary ticket seller" means an owner or operator of a venue or sports team, manager or provider of an event, event promoter, a provider of ticketing services or an agent of the owner, operator, manager or provider, that engages in the primary sale of event tickets or retains the authority to otherwise distribute tickets.

"Secondary ticket seller" means any person engaged in the business of reselling event tickets at a price greater than the price printed on the ticket.

"Website operator" means a person who owns or controls an internet website that advertises the resale of tickets, offers the resale of tickets, or facilitates a secondary ticket exchange.

§ -2 Sale of event tickets at more than face value prohibited. Except as provided in this chapter, it is unlawful for any person to sell or offer for sale event tickets at a price greater than the price printed on the ticket.

§ -3 Price cap for event tickets sold by a primary or secondary ticket seller. No event ticket shall be sold or
offered for sale by a primary or secondary ticket seller at a price greater than the sum of:

(1) The price printed on the event ticket;
(2) Any tax that the seller may lawfully collect on the price printed on the event ticket; and
(3) Any reasonable charge for services actually rendered and directly related to the cost of selling or offering to sell the event ticket, which charge shall not exceed fifty per cent of the price printed on the event ticket.

§ -4 Charitable organizations and their agents.

Charitable organizations, as defined in section 467B-1, and their employees and volunteers are exempt from the limitations of section -2 for event tickets resold or offered for resale through a raffle, auction, or similar fundraising activity for the benefit of a charitable organization's charitable purposes.

§ -5 Credit card; fees; cancellations. (a) No secondary ticket seller shall charge a fee for the use of a credit card to purchase event tickets without first disclosing that a fee will be charged and the fee amount.
(b) A secondary ticket seller shall refund any and all service fees charged for the purchase of an event ticket when the public exhibition, game, contest, or performance for which the event ticket was purchased is canceled.

§ -6 Website operators. For event tickets resold or offered for resale by or through an internet website, the website operator shall:

(1) Guarantee a full refund of the amount paid for the event ticket, and any applicable taxes and servicing, handling, or processing fees, if:

(A) The ticketed event is cancelled;

(B) The purchaser is denied admission to the ticketed event, unless the denial is due to the action or omission of the purchaser; or

(C) The event ticket is not delivered to the purchaser in time for the purchaser to attend the event; and

(2) Disclose that:

(A) The internet website is not the primary ticket seller;
(B) The person selling the ticket is not the primary ticket seller; and

(C) The price of the event ticket listed on that internet website may be higher than the ticket's original face value.

§ -7 Speculative tickets prohibited. No person shall intentionally resell or offer for resale an event ticket if:

(1) The event ticket is not in the seller's possession; or

(2) The seller does not have 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 event ticket.

§ -8 Circumvention of online ticket purchase processes prohibited. (a) No person shall intentionally use or sell computer software to circumvent a security measure, access control system, or other control or measure on a ticket seller's website that is used to ensure an equitable process for purchasing event tickets.

(b) A person found in violation of this section shall be guilty of a misdemeanor.
§ -9 Ability to restrict or deny. Nothing in this chapter shall be construed to prevent a primary ticket seller from contractually imposing restrictions on or denying a consumer's ability to resell event tickets.

§ -10 Remedies; prohibited contractual agreements. (a) Any violation of this chapter shall constitute unfair methods of competition and unfair and deceptive acts or practices in the conduct of any trade or commerce under section 480-2. Each sale, offer for sale, resale, or offer for resale in violation of this chapter shall constitute a separate violation.

(b) Any agreement entered into by a consumer for the purchase of an event ticket that waives, limits, or disclaims any of the rights set forth in this chapter shall be void as contrary to public policy.

(c) Any penalty issued pursuant to subsection (a) shall be in addition to any other remedies provided by law.

§ -11 Rules. The director may adopt rules pursuant to chapter 91 to effectuate the purpose and to enforce the requirements of this chapter."

SECTION 3. Section 440-17, Hawaii Revised Statutes, is repealed.
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SECTION 4. Section 440E-13, Hawaii Revised Statutes, is repealed.

SECTION 5. Section 481B-15, Hawaii Revised Statutes, is repealed.

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game, contest, or performance for which the ticket was purchased is canceled.

(c) For the purposes of this section, "ticket broker" means any person engaged in the business of selling tickets of admission or any other evidence of right of entry to a theater, place of amusement or entertainment, or other place where public exhibitions, games, contests, or performances are held, at a price greater than the price printed on the ticket."

SECTION 6. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 7. Statutory material to be repealed is bracketed and stricken.

SECTION 8. This Act shall take effect upon its approval.

INTRODUCED BY:  

HB HMS 2018-4131-1  
JAN 23 2019
Report Title:
Event Ticket Sales Practices; Ticket Scalping

Description:
Caps the service charges for a primary and secondary ticket seller. Requires website operators to guarantee refunds in certain circumstances and disclose that the website is not the primary ticket seller. Prohibits speculative tickets and the usage of bots. Makes conforming amendments.

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