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Testimony of the Department of Commerce and Consumer Affairs

**Before the
House Committee on Consumer Protection and Commerce
and
House Committee on Judiciary**

**Thursday, February 21, 2019
2:15 p.m.
State Capitol, Conference Room 329**

**On the following measure:
H.B. 1166, H.D. 1, RELATING TO CONSUMER PROTECTION**

Chair Takumi, Chair Lee, and Members of the Committees:

My name is Stephen Levins, and I am the Executive Director of the Department of Commerce and Consumer Affairs' (Department) Office of Consumer Protection. The Department supports this bill.

The purposes of this bill are to: (1) cap the service charges for a primary and secondary ticket seller; (2) require website operators to guarantee refunds in certain circumstances and to disclose that the website is not the primary ticket seller; (3) prohibit the sale of tickets on a speculative basis; and (4) prohibit the use of bot computer programs to gain an unfair advantage of securing tickets.

H.B. 1166, H.D. 1 is an attempt to level the playing field for consumers seeking to purchase tickets to events in high demand in Hawaii. This measure appears to stem

from the extreme frustration experienced by thousands of Hawaii residents who attempted to obtain tickets for last November's Bruno Mars concerts at Aloha Stadium.

Consumers throughout the nation have become exasperated by the sale of event tickets in high demand. Holdbacks by promoters and computer programs called "bots" limit supply, create scarcity, and drive up prices. These actions create increased demand for tickets on the secondary market, where the prices can be hundreds or even thousands of dollars more than the tickets' face value.

Bots are illegal under federal law because they improperly preclude others from obtaining tickets. Users of these computer programs unlawfully manipulate the seller's website to be the first to obtain tickets. After obtaining tickets in bulk and nearly instantaneously, the bot users skyrocket the prices and sell them on the secondary market.

This problem is exacerbated by ticket sellers offering tickets to fans through "spec sales." Spec sellers often take payment before to the public sale without disclosing to the purchaser that they do not hold the tickets they are offering for sale. Because spec sellers do not know what, if any, tickets they will acquire, they sell speculative tickets to unwary purchasers without row or seat numbers. Consequently, consumers frequently receive tickets in areas they never requested or desired; even worse, they never receive tickets because the spec seller is unable to perform.

The Department supports the bill's prohibition on bot sales and spec sales and supports the amendments in H.D. 1. H.D. 1 expands the service fees refund requirement to apply to both primary ticket sellers and secondary ticket sellers and includes postponement of an event as a condition for obtaining a refund.

However, the Department recommends strengthening the protections of buyers who purchase event tickets from primary ticket sellers. As currently written, primary ticket sellers are required to refund only the service fees to buyers if the event is cancelled or postponed. In contrast, website operators that resell event tickets on their websites are required to refund the full amount paid for the event tickets, including any applicable taxes, and servicing, handling, and processing fees if the event is cancelled, postponed, or if the buyer is denied entry or if the event ticket is not delivered. The

Department recommends including the same protections for consumers who purchase tickets from primary ticket sellers.

Thank you for the opportunity to testify on this bill.



Barbara N. Saito
President

February 8, 2019

Chair Angus L.K. McKelvey
House Committee on Economic Development and Business
Hawaii State Legislature

Re: **House Bill 130, House Bill 1166**

Dear Chair McKelvey and esteemed Committee Members:

I was vice president of various businesses run by the late Tom Moffatt, Hawaii's legendary promoter. I continue to present events and to consult for clients on local ticket sales and event promotion, and have been "in the industry" in Hawaii for nearly forty years.

I've reviewed House Bills 130 and 1166, the latest attempts to regulate ticket sales in the state of Hawaii. They are, as were previous attempts at regulation, incomplete and flawed. I respectfully request and strongly suggest that they not be passed in their current condition.

Since my experience covers both concerts, cultural events, sports and theater, I'll use the term "event" when not providing concert-specific testimony hereafter.

Any ticketed event is a speculative venture; it's a gamble from start to finish, with the full weight of success in the hands of ticket buyers and subject more to their control than any presenter, ticket seller, or act of nature. Ticket sales are the entire purpose behind promoting events, they're not a by-product to be regulated independent of regulating the businesses that engage in the trade.

Much as it's a difficult truth to accept, secondary markets, speculative trades and the use of "bots" are driven by consumer demand. Were there no demand, inflated price points via resale and other schemes would not exist. Resale is nothing new – there have been scalpers for centuries and there will continue to be scalpers under any future law.

Chair Angus L.K. McKelvey
House Committee on Economic Development and Business
Hawaii State Legislature
House Bill 130, House Bill 1166
February 8, 2019

A segment of our public is willing to stand in line for days, or logjam the internet or phone banks, to buy the best seat locations to sell to someone desperate enough to pay far over face value. These are the people you'll pursue: relatives, neighbors, kupuna, keiki, rich people, poor people. They're "bots" in the same way computer programs are "bots", but until Hawaii chooses to regulate buyers based on their purchase *intent*, "bots" will exist even if only in human form, and they will elect to upsell to anyone willing to pay the most money.

Reselling didn't start overnight, and it didn't start because promoters decided to create the buyer mentality. It didn't start because of Bruno Mars. I've had many, many conversations for many, many shows through the years with buyers who were willing to "pay any price" to:

- a) sit in the front row,
- b) obtain any kind of ticket to a sold-out event, and/or
- c) obtain a backstage pass.

It shouldn't surprise anyone that these questions come not just from affluent or well-connected residents but from all walks of life who would "die" if not "as close as possible" to an artist they adore. Artists like Elvis Presley, Michael Jackson, Bruno Mars and many more.

House Bills 130 and 1166, in several respects, place blame on the wrong side of the ticket transaction. If consumers can't buy or otherwise influence their way into the best seats, they're quick to blame promoters or ticket sellers because they can't blame or even identify the ohana that stood in line in front of them, who then sold all their tickets to Stub Hub.

Several promoters and origin sellers have enacted their own processes to ensure the integrity of a resold ticket. Ticketmaster offers its own resale platform to provide the same consumer protections for resold tickets that apply to face-value tickets. Some promoters engage in fundraising with tickets, auctioning or offering premium locations to raise money for local charities. We're not a charity, but work with charities through our

Chair Angus L.K. McKelvey
House Committee on Economic Development and Business
Hawaii State Legislature
House Bill 130, House Bill 1166
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for-profit ventures. I can't imagine our Legislature wants such important community support to fall victim to ill-written House Bills that appear to penalize a promoter for not being a non-profit organization.


Equally important are contractual obligations to attractions – especially with concerts. Some artists require the first rows, or select seats within the first rows, for promotions funding their own philanthropy or to upgrade fans from the back seats. These are endeavors that look, on the surface, as if promoters are withholding the best seats or reselling them out of greed. Despite such erroneous perceptions, promotions like these are no longer negotiable. If a promoter or venue or even a municipality blocks the ability, the artist can simply choose to perform elsewhere.

If regulation isn't arduously written to target crafty resident ticket buyers, it will not effectively curtail scalping in any form, period. They'll find other ways to ply their trade, and the state will lose tax revenue from local but untraceable scofflaws. Conversely, a regulation that *does* target these resident ticket buyers would only create more criminals. Is that what we, as a state, want to do because of show tickets?

I'd personally love to see resellers and speculative sellers disappear, but I recognize *that* ship sailed some twenty-odd years ago. It'll take much hard work to call it back toward port. So, while I fully support the protection of Hawaii's ticket buyers and believe it's my duty as a local promoter to do so, House Bills 130 and 1166, well-intentioned as they may be, are neither complex enough nor fair enough to ameliorate what is, at its core, a complaint by one segment of consumers against another. These bills could, with their deficiencies and omissions, cause more harm than good by creating business casualties or flouting fair trade practices along their way.

I therefore urge you to reject them, and I thank you immensely for your consideration of my testimony.

With much aloha,

A handwritten signature in black ink, consisting of several overlapping loops and a central scribble, positioned to the right of the text "With much aloha,".

Chairs Takumi and Lee and Members of the Committees:

My name is Andrew Bianchi, and I am the Director of Public Policy for Ticketmaster, a subsidiary of Live Nation Entertainment. I'm pleased to provide comments on HB 1166.

Ticketmaster supports efforts to address the use of BOTs, speculative ticketing, and other deceptive or harmful practices in the ticket marketplace. Indeed, we invest heavily in protecting the integrity of the primary ticket market in the hopes of preserving and improving consumer access to tickets at face value. Further, we do share some concerns regarding the price caps mentioned in this bill, and look forward to working with the authors office on these topics.

The use of computer software, often referred to as BOTs to circumvent our security measures, allows nefarious ticket brokers and scalpers to unfairly buy significant numbers of high-demand seats to high-profile concerts and events before regular fans can. The use of BOTs is illegal and violates Ticketmaster's terms of use, yet unfortunately, the use of BOTs by ticket scalpers is becoming more and more sophisticated, and they are on the rise.

By using BOTs, scalpers essentially jump to the front of the line over and over again just as tickets to top shows go on sale, leaving true fans scrambling for tickets on the secondary market. The use of BOTs denies access and drives up costs for consumers.

Ticketmaster supports HB 1166's ban on the practice of speculative ticketing. In addition to the use of bots to edge consumers out of the primary market and pull that inventory on resale sites, a growing problem is this practice called "speculative ticketing." Spec ticketing is when unofficial resellers list tickets for sale even though they do not actually have those tickets in hand, often before the real tickets even go on sale. They are betting (or speculating) that they will be able to get tickets and then resell them to fans at inflated prices. Because of practices like speculative ticketing and the use of bots to fulfill those orders, consumers are being forced to the resale market before ever having a chance in the primary market for face-value tickets.

This is not only wrong, it's unfair. It forces real fans to compete against resellers who have a host of sophisticated tools at their disposal, teams of buyers, and bots working to scoop up tickets or hold them in reserve. Unfortunately, we see this practice play out all the time. A tour is announced and within minutes some major reselling platforms will be hit by unofficial resellers listing tickets for sale at prices above face value – all before even the presale period begins. We support banning the practice of speculative ticketing.

Ticketmaster recognizes that the secondary ticketing marketplace serves a valuable consumer need, allowing fans and resellers to exchange and sell tickets. We even participate in the resale marketplace by providing a platform that allows fans and resellers to list their tickets on our interactive seat maps alongside any remaining primary ticket inventory, providing consumers with complete transparency in terms of ticket availability at face value and via resale simultaneously.

We do have concerns about HB 1166's attempt to cap service fees. We are concerned that the language as written does not fully contemplate the range of pricing strategies for lower priced tickets as well as purpose of the service fees themselves. Many believe that ticketing companies set primary ticket prices and fees. However, the face value purchase price is determined by the team, artist, and/or promoter. Service fees are determined in coordination between the team, artist, promoter, primary ticket issuer,

and other entities involved in the planning and execution of an event. Service fees can sometimes include amounts that go directly to the content owner or venue on top of what is charged by the ticket issuer for the purposes of administering the ticketing process. We appreciate the intent regarding fees well in excess of what could be considered reasonable, and we look forward to further discussion.

On the issue of inventory disclosure, Ticketmaster opposes any effort to require event organizers to disclose the number of tickets that they intend to sell to the public for a concert, game or live entertainment event. Not only do seat maps, stage design, and ticket inventory often fluctuate in the days leading up to an event's initial on-sale, it is the ticket resellers who would stand to benefit from having such information so readily available. By listing the number of tickets that will be made available at on-sale, we would be providing resellers using bots technology with a specific target for their algorithms and ultimately further hinder consumer access to face value tickets. Further, the seating capacity of a venue is generally known to the public, and nearly all events organizers would seek to maximize the number of attendees for their event. This is simply an to place onerous requirements on event planners,

Ticketmaster appreciates the overall goals of HB 1166 and supports efforts to thwart the use of BOTs technology and speculative ticketing that frustrates and deceives consumers and limits their access to face value tickets. We look forward to further discussion regarding concerns mentioned above. Thank you for the opportunity to provide testimony.

Thank you,

Andrew Bianchi

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**Testimony from Rick Bartalini on behalf of Rick Bartalini Presents
To House Committee on Consumer Protection and Commerce
And House Committee on Judiciary
Thursday, February 21, 2019**

**On the following measure:
H.B. No. 1166, H.D. 1 - Relating to Consumer Protection**

Chair Takumi, Chair Lee, and Members of the Committees:

Rick Bartalini Presents is a locally owned and operated business based in Honolulu, Hawai'i. Rick Bartalini Presents' clients have included Diana Ross, Mariah Carey, Lionel Richie, Trevor Noah, Bill Maher, Earth, Wind & Fire, Jackson Browne, Bonnie Raitt, Johnny Mathis and countless others.

The drive to regulate the resale of concert tickets is not new. States and countries have tried to pass and enforce such regulations for decades without success.

Resale tickets are—and have always been—driven by supply and demand. While computer-generated “bots” are a frustrating strategy of ticket resellers, we cannot forget that your family members, friends, colleagues and neighbors are also reselling tickets to augment their income to live in the 12th most expensive city in the country.

In Hawai'i, ticket resellers are everyday citizens from all walks of life. They are not employees of Russian troll farms. These residents predominately resell their tickets on Craigslist. For the 2016 Mariah Carey concerts alone, there were hundreds of listings, accounting for thousands of tickets, for her three sold-out shows at the Blaisdell Arena. Additionally, Hawai'i, the US mainland, and global consumers utilize eBay, StubHub, and Ticketmaster online resale programs.

Rick Bartalini Presents has made an exhaustive and unusual effort to offer Hawai'i consumers presale tickets in advance of mainland sales by geo-limiting ticket sales by zip codes. Such presales are offered through Hawai'i-based media outlets, the Blaisdell Center and our own local ticket buyer database in order to give Hawai'i residents priority access to tickets. This has shown to be very effective. Yet, even after working with Ticketmaster and the Blaisdell Center to create this special privilege to honor Hawai'i residents, local ticket buyers have chosen to resell their tickets above face value. It can be a profitable, and usually successful, venture for them.

The success people continue to have reselling tickets at premium prices clearly demonstrates the demand for resale tickets. It also demonstrates that fluctuating and premium prices do not deter consumers from purchasing. Just as Hawai'i consumers will continue to purchase gasoline that fluctuates in price based on supply and demand on the world stage, they will also continue to purchase other commodities with fluctuating and premium prices, including concert tickets.

The issue of computer-generated bots is central to any discussion about concert ticket sales, and it's a valid concern. However, it's simply implausible to legislate computer generated bots, which are generated globally. How will local laws be applied to computer programs that are routed through various countries throughout the world? How will

these computer-generated bots be identified? How will this proposed legislation prevent computer generated bot purchases? Who would be held accountable for such violations of this proposed legislation?

There is simply no software or mechanism that can determine which ticket buyers are human beings and which are bots. No ticketing company, venue, city, state, or promoter has a viable system to identify and delete these computer-generated bots or resale accounts. The only way to do so would be manually, and in situations like the Mariah Carey concerts, where 16,000 tickets were purchased in a single hour, this manual identification would be an exhaustive, labor-intensive, and expensive process. Not only would this add costs to the consumer, as the labor costs would need to be recouped, further driving up ticket prices, but the process would be frustrating to consumers as they would wait for purchases to be cancelled and seats to be offered for sale again.

Added ticket fees are another issue of concern around ticketing practices. Ticket fees are a mechanism to help defer the costs of services for such high-risk events. Despite assumptions to the contrary, this is actually a high risk, low return business everywhere in the world. For example, Mariah Carey's sold out performances in 2016 drew over 21,000 guests and grossed \$2,422,795.00. Expenses for the concerts exceeded \$2,170,000.00. This included over \$107,000.00 in general excise tax paid to the state but excludes the promoter's overhead expenses. Another example would be Lionel Richie's recent concerts in Honolulu. The two performances at the Blaisdell Arena drew 14,000 guests and grossed \$1,554,093.75. Expenses totaled \$1,283,659.59. This included \$70,000.00 in general excise tax paid to the state. To be clear, as the promoters of these events that took the risk to bring these performances to Hawai'i, we did not break even until selling \$2.17M and \$1.28M in sales. That level of financial risk and nominal return on investment should scare even the most aggressive Wall Street investor. Imagine the catastrophic losses when concerts of such magnitude don't sell out. Ticket fees help cover the costs of services provided by the promoter, venue, and ticketing company, all while helping to minimize risk and potential significant losses for the promoter. The States of Hawai'i and Alaska increase the level of risk exponentially due to their remote locations and increased expenses. They are the least viable markets for presenting entertainment in North America. If legislators compromise a promoter's ability to be financially viable in the state, we will simply stop presenting shows for the people of Hawai'i and leave. The lost revenue will have widespread and a negative economic impact on general excise tax revenue, local businesses, jobs and services such as rental fees, services fees, concessions revenue to the City of Honolulu for performances at the Blaisdell Center. Additionally, advertising outlets including television, radio and print media would be negatively impacted, as well as labor unions, security companies, sound, lighting and video vendors, caterers, hotels, transportation companies, restaurants, parking vendors and even child care providers.

The promoter pays the general excise tax based on the gross revenue of the event, which is unusual in most cities. This further increases the promoter's expenses and thus the level of financial risk. If this bill passes, consumers can expect an increase in ticket prices.

Rick Bartalini Presents is a promoter. Rick Bartalini the human being, is a passionate live music fan who frequently attends concerts around the world. As a consumer himself, he understands the issues surrounding resale tickets. However, there is no easy answer to these complex issues. Legislating ticket resales will be ineffective, both because global bots can't be subject to local laws and because our friends and neighbors here in Hawai'i will continue buying and reselling tickets. And, as demonstrated, legislating fees and taxes will only hurt the consumer and Hawai'i's economy.

The situation is a complex one. I can adroitly contribute to the discussion as a promoter, as a consumer, and as a resident and taxpayer of Hawai'i. I would be happy to meet with committee members at their convenience, to shed further light on the subject at hand and to discuss possible solutions that would benefit all parties involved.

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