



DAVID Y. IGE  
GOVERNOR

JOSH GREEN  
LT. GOVERNOR

**STATE OF HAWAII  
OFFICE OF THE DIRECTOR  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

335 MERCHANT STREET, ROOM 310  
P.O. BOX 541  
HONOLULU, HAWAII 96809  
Phone Number: 586-2850  
Fax Number: 586-2856  
cca.hawaii.gov

CATHERINE P. AWAKUNI COLÓN  
DIRECTOR

JO ANN M. UCHIDA TAKEUCHI  
DEPUTY DIRECTOR

**Testimony of the Department of Commerce and Consumer Affairs**

**Before the  
House Committee on Economic Development and Business  
Wednesday, February 6, 2019  
10:10 a.m.  
State Capitol, Conference Room 309**

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

Chair McKelvey and Members of the Committee:

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 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; however, it recommends strengthening other components of the bill. For example, the Department suggests expanding the proposed refund language to include consumers who purchased their tickets directly from the primary ticket seller. As currently drafted, the primary seller would have no obligation to refund a consumer, even if an event were cancelled. Additionally, the Department recommends including the postponement of an event as a condition for obtaining a refund. This is particularly important for Hawaii residents traveling from another island to attend an event. These consumers should not be penalized for being unable to travel on a rescheduled date.

Thank you for the opportunity to testify on this bill.



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

Re: **House Bill 1166**

February 4, 2019

This testimony is submitted on behalf of TicketNetwork, a leading online resale marketplace that facilitates ticket transactions between buyers and sellers. TicketNetwork has been operating its marketplace since 2002 as one of the first online marketplaces, and now one of the only remaining independently owned marketplaces. Since 2002 TicketNetwork has been at the forefront of using modern technology and customer-friendly policies to ensure buyers and sellers of tickets can safely and securely buy and sell tickets online. We write today because we are concerned with some of the provisions in House Bill 1166. While the intent of the bill is laudable, we feel that some of the language should be reviewed in order to craft language that will decrease consumer confusion about the ticket resale industry and maintain an equitable arena for the average consumer as well as for primary and secondary ticket sellers.

As stated in House Bill 1166, the New York Attorney General's Office and the United States Government Accountability Office both published studies on the ticket industry. They each found a number of issues preventing consumers from accessing tickets to entertainment events. One main issue is the number of tickets actually released to the general public in an initial sale by a primary ticket seller, and yet this problem is left completely unaddressed by HB 1166. In the GAO study, it was reported from industry representatives that "10 percent to 30 percent of tickets for major concerts typically are offered through presales, although it can be as many as about 65 percent of tickets for major artists performing at large venues."<sup>1</sup> The New York AG's Office's Report also found similarly alarming numbers: approximately 54% of tickets for major concerts are offered through presales and not disclosed to the average consumer.<sup>2</sup> In fact, this was the NY AG's very first point in their extensive report outlining the issues with the industry. More tickets were reserved by parties such as the venue, artist, promoter, etc. as "holds" than are available to the general public. This means that at the time of the official initial sale of tickets, average consumers are already losing out, misinformed and have the odds stacked against them, but do not even know it. TicketNetwork asks that a provision be added to

---

<sup>1</sup> GA-18-347 "EVENT TICKET SALES: Market Characteristics and Consumer Protection Issues," U.S. Government Accountability Office (April 2018).

<sup>2</sup> "Obstructed View: What's Blocking New Yorkers from Getting Tickets," Attorney General of the State of New York (January 28, 2016), available at [https://ag.ny.gov/pdfs/Ticket\\_Sales\\_Report.pdf](https://ag.ny.gov/pdfs/Ticket_Sales_Report.pdf).



HB 1166 to mandate reporting from primary ticket sellers on the number of tickets to be released during the initial sale to the public in order to enhance consumer understanding of their chances to procure tickets.

TicketNetwork agrees with addressing consumer confusion issues by mandating disclosures, which already exist on TicketNetwork's resale platform, and prohibiting the use of bot technology, already in existence in federal law, to circumvent security measures on primary ticket seller websites. Consumers deserve choices and transparency throughout the ticket buying process, and mandating disclosures while keeping a more level playing field for consumers by prohibiting bots would go far. These disclosures mandated under HB 1611 would decrease consumer confusion about the cost of their tickets and allow them to make an educated choice about which tickets to purchase and from where.

However, the language of HB 1611 in placing a price cap and restricting the offering of tickets not in the possession of a reseller (so called "speculative tickets") do not address the heart of those issues.

First, Section 3 of HB 1166 attempts to help consumers by putting a price cap on service charges for tickets, whether sold by a primary or secondary ticket seller, but price caps are difficult, if not impossible, to monitor and enforce. In fact, most states and even other countries that have price cap language in their legislation have already recognized the inability to enforce those portions of the law and thus do not. For example, Massachusetts, Arkansas and even Quebec in Canada have ceased attempting to enforce this portion of their respective laws. And the reason for this is simple; tickets for an event may have service fees, facility fees, convenience fees, venue maintenance fees and other types of fees that have been tacked on to the "face value" of the ticket and were disclosed to the consumer at the initial sale but are not listed on the ticket itself. All of those fees added by the venue or promoter and paid by the initial buyer often overreach that price cap threshold. By adding a price cap on resale, it would unintentionally disallow consumers from recouping the full amount of their costs if they try to resell their tickets when they can't go to a show. And as we mentioned above, due to all of these fees that are not listed on the ticket, the ability to enforce this provision is severely impaired, if not impossible.

Next, Section 7 would prohibit primary or secondary sellers from offering a ticket for sale or resale that is not currently in their possession or cemented in a formal, written contract for such tickets. The goal behind this provision is good, but the language needs a little broadening. Most times, ticket agreements in effect between an event promoter and seller or seller and reseller have not been put into a formal written contract. The reality is that many times ticket buyers procure tickets in person, via informal emails or through other means. Section 7 should be amended to include other types of agreements for tickets, not merely those



in writing to better address the realities of how most purchasers procure tickets prior to having those tickets in their possession.

Lastly, Section 9 should be removed completely. Allowing a primary ticket seller to create contractual restrictions on resale or deny a consumer the ability to resell a ticket that he or she can no longer use creates a monopoly for the primary seller from a practical standpoint because that primary seller then has unlimited authority to completely restrict resale, set terms that benefit the primary seller or secondary sellers affiliated with the primary seller, and remove a consumer's freedom to transfer or resell a ticket that he or she has rightfully purchased and can no longer use. This section is at odds with consumers' expectation that once they spend their money on a ticket, they should be allowed to do whatever they want with it, whether that be go to the event, give the ticket to a friend or charity, or even resell the ticket. Section 9 would allow primary sellers to prohibit those actions, and that, in turn, hurts consumers.

TicketNetwork asks that HB1611 be amended to get at the heart of the issue, namely the prohibition on the use of bot technology and the need for proper disclosures. These measures allow for better consumer clarity about the ticket buying process and create a more equitable distribution of tickets for all concerned.