

LATE



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PRESENTATION OF THE
OFFICE OF CONSUMER PROTECTION

TO THE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

THE TWENTY-SEVENTH
REGULAR SESSION OF 2014

MARCH 13, 2014
9:30 AM

TESTIMONY SUPPORTING THE INTENT OF H. B. 2012, H.D. 2, RELATING TO
CONSUMER PROTECTION.

TO THE HONORABLE ROSALYN H. BAKER, CHAIR,
AND TO THE HONORABLE BRIAN T. TANIGUCHI, VICE CHAIR,
AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs, Office of Consumer Protection ("OCP") appreciates the opportunity to appear today and testify supporting the intent of H. B. 2012, H.D. 2, Relating to Consumer Protection. My name is Bruce B. Kim and I am the Executive Director of OCP.

H. B. 2012, H.D. 2 would prohibit the sale of tickets at prices greater than the sum of the price printed on the ticket, any lawful taxes collected, and any reasonable charge that shall not exceed an four-hundred percent of the price printed on the ticket. There are exceptions made for "primary ticket sellers", as defined by the bill, as well as

for persons selling tickets for events outside of the State, and tickets offered for sale on secondary market websites that guarantee refunds for certain eventualities and make specified disclosures, per proposed section 481B-A(b)(3). Violations of the proposed new section would be subject to a per se HRS § 480-2 Unfair or Deceptive Act or Practice ("UDAP") penalty, i.e. treble damages, attorneys' and court fees. It also prohibits the use of "computer software to circumvent a security measure, access control system, or other control or measure on a ticket seller's web site . . ." ("bots"), and stipulates a fine for violations.

OCP has concerns about the exception to proposed section 481B-A, subsection (a), created by subsection (b)(3). While the refund guarantees and disclosures mandated by subsection (b)(3) would be beneficial to Hawaii's consumers, the act of exempting compliant secondary market websites from subsection (a) would enable precisely the sorts of ticket scalping activities that this legislation proposes to address, as the secondary market websites are the primary means for ticket scalpers to resell the tickets they obtained at the expense of Hawaii consumers who want to attend an event.

As drafted, the anti-bot section (§481B-B) may be difficult for OCP to enforce. In order to be able to discover the identity of persons utilizing bots to illegally acquire event tickets, OCP would need to use the kinds of investigatory techniques normally utilized in cybercrimes investigations, and at this time OCP does not have the staff, resources, or expertise required to commence such an investigation. The likelihood that a bot operator would be located outside of the State, or even outside of the United States,

raises serious questions as to OCP's ability to effectively prosecute violations of proposed section 481B-B. California recently passed (AB 329, 2013) anti-bot legislation in what has been recognized as one of the stronger efforts to curb the use of ticket bots. In that legislation use of a ticket bot is a criminal act, a misdemeanor, which is probably more enforceable, as cybercrimes resources can be brought to bear on investigating the persons who control the bots. To our knowledge, no person has ever been prosecuted under the California law.

Under current law, OCP has the jurisdiction to investigate and enforce potential violations of HRS § 480-2, Unfair or Deceptive Acts or Practices. This is sufficient, currently, to address instances where a promoter, primary ticket seller, or secondary ticket seller, misrepresents ticket availability or ticket prices.

To date OCP has not received any complaints from consumers regarding the Bruno Mars Concert incident.

Thank you for the opportunity to submit testimony supporting the intent of H. B. 2012, H.D. 2. I would be happy to answer any questions members of the committee may have.

LATE

A Tom Moffatt Production

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Tom Moffatt, President

March 12, 2014

The Honorable Rosalyn H. Baker
Chair
Committee on Consumer Protection and Commerce
Hawaii State Senate
Hawaii State Capitol, Room 230
415 South Beretania Street
Honolulu, HI 96813

RE: House Bill 2012-HD2, Anti-Scalping Bill

Dear Chairwoman Baker:

As longtime promoters in the state of Hawaii, we welcome protections that aid residents in purchasing tickets to shows they wish to see; for more than fifty years, it has been our desire to present quality entertainment from around the world, at the most reasonable prices possible, to Hawaii's residents and visitors.

Our testimony, which arrived late at the House of Representatives and is therefore not posted to the website, suggested strongly that an ill-written anti-scalping law could do more harm than good to Hawaii's entertainment industry, insofar as certain exceptions exist that warrant the sale of tickets above face value. Charitable organizations have used tickets as a fundraising tool, for instance, at both the local level and at the national level; certain artists, as an agreement to perform, require that tickets be sold to national charities such as "Tickets for Charity," who then auction them to the highest bidders, keeping the difference as a donation.

While the House of Representatives strove to keep these situations in mind when drafting the HD2 version of the bill, it has become extremely difficult to follow and potentially useless. It is our hope that we can assist with the following notes on the existing bill that you will discuss in committee tomorrow:

SECTION 1.

The primary way tickets are purchased and scalped is by a person, or persons, either on the phone, on the internet, or in a line when tickets for an event first go on sale. The automated purchase of tickets, to the best of everyone's knowledge, has not occurred in Hawaii. Protecting against automated purchases for the purpose of resale does not address the actual method by which tickets have typically been scalped through the centuries.

Hawaii State Senate
Twenty-Seventh Legislature, 2014
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The amount of tickets listed as available through scalping websites for the Bruno Mars concerts amounted to roughly 3% of the total tickets available for sale. Of these, several tickets listed have not even left the box office, and will not be available to scalpers for the fulfillment of their orders. Further, most scalpers will not sell through their entire inventory.

Allowing for these fluctuations, it's probable that only between 1% and 2% of tickets are ever available through a reseller, which amounts to 100 - 200 tickets for every 10,000 tickets sold – in the case of the Bruno Mars concerts, this could be between 58 and 116 tickets for each show. These tickets do not represent solely the “best tickets in the house;” they represent the full range of available prices for any given event.

In summary for Section 1, therefore, preventing blocks of tickets from being purchased by an automated setting is fine, but it does not stop scalping via traditional means.

SECTION 2.

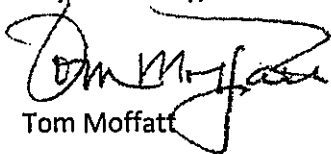
If the purpose of the bill is to stop scalpers from inflating ticket prices, provision (3) appears to create a loophole that runs run contrary to Section 1, and most of Section 2 that deals with non-primary ticket sellers.

In closing, we fully support legislation that is of benefit to Hawaii's consumers, but it is also our hope that, as Hawaii's lawmakers, the House and Senate are afforded the broadest possible understanding of the various situations in which tickets are transacted before enacting policy to curb the secondary sales market.

We are, as always, available as a resource regarding the business of entertainment and ticket sales, along with other established entities involved in the local industry. It is our hope that the experience and expertise at hand are fully engaged prior to passing any anti-scalping measures so Hawaii has a solid, enforceable, and fair law.

Attached please find the testimony submitted to the House of Representatives should you desire to make reference to it.

Most sincerely,



Tom Moffatt

:bns

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Tom Moffatt, President

February 24, 2014

The Honorable Angus L.K. McKelvey
Chair
Committee on Consumer Protection and Commerce
Hawaii House of Representatives
Hawaii State Capitol, Room 320
415 South Beretania Street
Honolulu, HI 96813

RE: House Bill 2012-HD1, currently known as the "Bruno Mars" bill

Dear Chairman McKelvey:

As longtime promoters in the state of Hawaii, we welcome protections that aid residents in purchasing tickets to shows they wish to see; for more than fifty years, it has been our desire to present quality entertainment from around the world, at the most reasonable prices possible, to Hawaii's residents and visitors.

It is unfortunate that we cannot supply an endless number of tickets for everyone who wishes to attend certain popular events. In these instances, events are considered "sold out," and a secondary market of profiteers begin to trade on the scarcity of tickets, much to the dismay of potential buyers who were not able to acquire tickets through primary channels. This secondary, or "scalper" market, is nothing new; it has existed for centuries. Like primary sales, it is fueled by supply and demand; scalpers can only profit if there are willing buyers, so as long as there are willing buyers, scalping will exist whether out in the open on the internet or on street corners outside an event's location.

Of course, the resale of tickets far in excess of their face value hurts everyone connected with a promotion except the scalper, and we applaud efforts to protect local ticket buyers, however, we caution that any anti-scalping measure should be studied carefully and allow for the many situations in which tickets are legitimately transacted in excess of their face value, particularly in the non-profit sector wherein such a resale is of benefit to the community.

One such situation that comes to mind is the donation model used for Elvis Presley's "Aloha from Hawaii" concert to benefit the Kui Lee Cancer Fund. The ticket had no face value and was driven solely by donations, all of which were "in excess" of the face value of the ticket.

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RE: House Bill 2012-HD1, currently known as the "Bruno Mars" bill

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Seats are often given to charities for silent auctions, a popular fundraising mechanism that many charities have, at one time or another, employed for many, many years. And certain artists are patrons of national charities such as "Tickets for Charity", which also auctions tickets to raise funds; it is a condition of performance for some high-profile entertainers that these are made available for resale.

A rushed anti-scalping law could further stifle diversified and innovative sales strategies that for-profit ventures might devise to extend availability and overall affordability of entertainment events. Any flaws could potentially cause entertainers to bypass Hawaii altogether, which would harm rather than help the citizens of our state.

Finally, in light of this measure being called the "Bruno Mars" act, an attempt to craft policy based on one event, as opposed to looking at the history of events for which scalping has been an issue, puts undue pressure on this event to prove the merit of the law. Each event has its own set of circumstances and there's not typically a "one size fits all" approach to the scalping issue. While imperfect, the industry does indeed attempt to minimize the impact of scalped tickets in every marketplace, and is always looking for a better way to protect the integrity of a ticket's face value.

In the case of the Bruno Mars concerts, no organized or intentional effort to create a secondary market has been found, and the extremely high profile this topic has received is as much a reaction to the very quick sell-out of a finite number of available tickets as anything else. It is the same reaction that followed popular shows such as Elvis Presley, Elton John, Michael Jackson, Janet Jackson, Menudo, American Idol, the Rolling Stones, and The Rock with WWE, to name a few, through the decades.

We polled several online scalping sites, as well as Craigslist, and found that nearly every URL pointed to about the same group of tickets; this is an aggregation (or replication) of approximately 750 tickets over three shows, some of which never left the box office and are not available to anyone. In light of the overall sale of about 17,000 tickets, these seats represent between 3%-4% of all tickets sold, many of which may remain unsold because scalping is speculative.

The theory that tickets sold out-of-state are used primarily by scalpers may be a popular one, but it is not based in fact. Scalped tickets for most Hawaii shows are minimal compared with other states, and Bruno's tickets do not appear to be outside the norm for any other artist with a sold-out show in Hawaii. Also, not all offered tickets originated outside the state; some were sold at the box office window.

House of Representatives
Twenty-Seventh Legislature, 2014
State of Hawaii

RE: House Bill 2012-HD1, currently known as the "Bruno Mars" bill

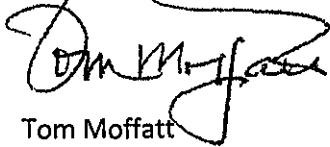
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In closing, we fully support legislation that is of benefit to Hawaii's consumers, but it is also our hope that, as Hawaii's lawmakers, the House and Senate are afforded the broadest possible understanding of the various situations in which tickets are transacted before enacting policy to curb the arbitrary secondary sales market.

We are, as always, available as a resource regarding the business of entertainment and ticket sales, along with other established entities involved in the local industry. It is our hope that the experience and expertise at hand are fully engaged prior to passing any anti-scalping measures so Hawaii has a solid, enforceable, and fair law.

Most sincerely,

A handwritten signature in black ink, appearing to read "Tom Moffatt", written over a horizontal line.

Tom Moffatt

:bns

HB2012

Submitted on: 3/13/2014

Testimony for CPN on Mar 13, 2014 09:30AM in Conference Room 229

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Barbra Armentrout	Individual	Support	No

Comments: I wholeheartedly support this bill with the exceptions of changing the effective date and also that tickets cannot be sold for more than than the printed price on the ticket. I do not believe that this will affect the type of entertainment that will come over to Hawaii for concerts. Entertainers have been coming here for years and unless the production company bringing them here also has financial interest in reselling tickets at a higher price online I do not see why this would limit Hawaii in getting great entertainment. I do not think that this will result in any loss of revenue or business for the City or the State of Hawaii. Unless as I stated above those acts or world class entertainers are involved in reselling their own tickets at a "scalping" or higher cost. All tickets should be available and sold for the price of the tickets plus handling fees etc. I do not think that a ticket should be resold for even double the ticket value much less for not more than 400%. Please work on making some form of this bill passable to help the hardworking residents of the State of Hawaii. Mahalo!

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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