

SB 1534

Measure Title:	RELATING TO CONSUMER PROTECTION.
Report Title:	Consumer Protection; Event Ticket Sales Practices; Prohibition
Description:	Requires an event operator to disclose the number of tickets available for sale to the general public for an event; prohibits a place of entertainment that is funded by donations, public funds, or is tax exempt from entering into exclusive ticketing contracts; and prohibits ticket sellers from disclosing ticket purchasers' personally identifiable information.
Companion:	
Package:	None
Current Referral:	CPH
Introducer(s):	KOUCHI (Introduced by request of another party)



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTIETH LEGISLATURE, 2019**

ON THE FOLLOWING MEASURE:

S.B. NO. 1534, RELATING TO CONSUMER PROTECTION.

BEFORE THE:

SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND HEALTH

DATE: Friday, February 22, 2019

TIME: 9:35 a.m.

LOCATION: State Capitol, Room 229

TESTIFIER(S): Clare E. Connors, Attorney General, or
Mana Moriarty, Deputy Attorney General

Chair Baker and Members of the Committee:

The Department of the Attorney General provides the following comments.

The purpose of this bill is to regulate ticket sales at places of entertainment.

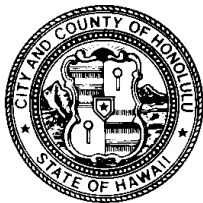
This bill prohibits any place of entertainment that is funded through public donations or state or county funds, or is exempt under section 501(c)(3) of the Internal Revenue Code, from entering into an exclusive ticketing contract with a primary seller. If the prohibition substantially impairs an existing contractual obligation, it may violate article I, section 10, of the United States Constitution, the Contracts Clause.

To avoid a Contracts Clause challenge, we recommend amending this bill by adding a new section to read as follows:

"SECTION . This Act shall not be applied so as to impair any contract existing as of the effective date of this Act in a manner violative of either the Hawaii State Constitution or article I, section 10, of the United States Constitution."

Thank you for the opportunity to provide comments.

KIRK CALDWELL
MAYOR



GUY H. KAULUKUKUI
DIRECTOR

TRACY S. KUBOTA
DEPUTY DIRECTOR

LATE

**Testimony of the Department of Enterprise Services
Before the
Senate Committee on Commerce, Consumer Protection, and Health**

**Friday, February 22, 2019
9:35 a.m.
State Capitol, Conference Room 229**

**On the following measure:
S.B. No. 1534 - Relating to Consumer Protection**

Chair Baker and Members of the Committee:

My name is Guy H. Kaulukukui, and I am the Director of the Department of Enterprise Services. Certain provisions of this bill are contrary to the responsibilities, accountability and operations of the Department of Enterprise Services' Box Office which actively monitors ticket sales and protects the rights of our consumers. For this reason, the Department of Enterprise Services opposes S.B. No.1534 and offers the following testimony regarding (a) exclusive ticketing contracts and (b) disclosure of the number of tickets to be sold.

Exclusive ticketing contracts- Prohibition

The department is particularly opposed to this aspect of the measure because absent exclusivity, ticket companies could cherry pick the events they will sell tickets to and the events they will abandon. The Blaisdell needs a ticket company that is willing to take on the \$10 events as well as the \$100 or \$500 events as diverse as local exhibitions and Phantom of the Opera. Additionally, non-exclusivity would require box office staff to navigate multiple ticket platform hardware and software, creating an untenable workload and potentially compromising customer service. Further, there are checks and balances to ensure the smooth sale of complex shows and minimize trouble on the event date, and this system is much more efficient when box office staff is working directly with a single vendor. Exclusive contracts also create a partnership in training and acquisition of equipment that makes for seamless operation. The investment in technology, research and products is considerable and must be amortized over a period of time to fully recoup expenses.

Finally, the exclusive use of a reputable ticket company provides the Blaisdell with the ability to assist the customer with issues on site (duplicate tickets, reprint tickets or track lost tickets) through their accounts. It allows for safety features to protect customer information during the buying process and through unique codes that are scanned for entry.

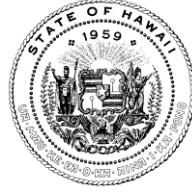
Disclosure of number of tickets sold

The department notes that it is often difficult for promoters to determine the number of tickets to be sold for an event at the time of original sale because:

- (1) The staging and effects have not yet been determined and that affects the number of rows or amount of seating;
- (2) Demand for tickets may cause promoter and venue to increase capacity when possible to meet the needs of the community;
- (3) Lack of demand may require that seats are “killed”, covered or not sold so as to manage the experience for the audience and keep labor costs down;
- (4) Venues and promoters are often working on variable and flexible seating arrangements that continue even as the event date approached; and
- (5) Ongoing life safety and security assessment which are typically not completed by the time tickets go on sale.

Ironically, an unintended outcome of this measure is that secondary ticket market resellers and the scalpers may have an easier time targeting successful shows, making it more difficult for the consumer to purchase tickets to those shows.

Thank you for the opportunity to testify on this bill.



DAVID Y. IGE
GOVERNOR

JOSH GREEN
LT. GOVERNOR

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

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Testimony of the Department of Commerce and Consumer Affairs

**Before the
Senate Committee on Commerce, Consumer Protection, and Health
Friday, February 22, 2019
9:35 a.m.
State Capitol, Conference Room 229**

**On the following measure:
S.B. 1534, RELATING TO CONSUMER PROTECTION**

Chair Baker 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 offers comments on this bill.

The purposes of this bill are to: (1) require an event operator to disclose the number of tickets available for sale to the public for an event, (2) prohibit a place of entertainment that is funded by donations, public funds, or is tax exempt from entering into exclusive ticketing contracts, and (3) prohibit ticket sellers from disclosing ticket purchasers' personally identifiable information.

This bill seeks to improve transparency for consumers who purchase tickets to events at entertainment facilities by requiring the operator to disclose the number of tickets available and the number of tickets available for sale to the public. This bill touches upon the practice of "holding" some tickets from the public during the initial on-sale and reserving other tickets for special non-public "pre-sales." Holds usually go to

industry insiders, artists, agents, venues, promoters, marketing departments, record labels, and sponsors. The percentage of tickets that are held for any given event can vary drastically, but some figures report that operators and venue hold as much as 29% of available tickets for insiders, which adds to the confusion surrounding ticket shortages and high prices.

At the same time, not all operators hold this many tickets. Bruno Mars (together with Aloha Stadium), for example, held only 8.24% of the available tickets for his three sold-out November 2018 concerts at Aloha Stadium. While a disclosure may not have significantly reduced frustration for individuals wanting to purchase tickets to Mars' Hawaii performances, their awareness of the number of tickets actually available to the public may have allayed some consumer suspicions that many of the tickets were being bought by scalpers, non-Hawaii residents, and bots.

S.B. 1534 prohibits publicly funded and tax-exempt non-profit organizations from entering into exclusive ticket contracts with primary sellers. Accordingly, this measure would affect state-operated venues, such as Aloha Stadium, and 501(c)(3) organizations, like the Maui Arts and Cultural Center. However, the impact of and need for this provision are unclear.

The Department is also concerned the terms "ticket seller" and "third party" are not defined in the §481B- section pertaining to third-party information sharing agreements. While this section appears to address privacy issues, it could lead to enforcement issues because it is not clear who is a ticket seller or a third party.

Finally, the last section of the bill prohibits an operator, a promoter, or a ticket service for a place of entertainment from printing the customer's name or other personally identifiable information on a ticket, unless the customer is able to remove, delete, or fully obscure the customer's name or any other personally identifiable information without impacting the ticket's use to enter the event. However, it is unclear how merely removing the name of a customer on a ticket would preserve the customer's privacy.

Thank you for the opportunity to testify on this bill.

Dear Committee,

We write on behalf of TicketNetwork, an online resale marketplace that facilitates transactions between live event ticket buyers and sellers. We wanted to take this opportunity to voice our support of Senate Bill 1534 and hopefully provide an explanation as to our viewpoint.

Ticket resale marketplaces such as TicketNetwork, StubHub and SeatGeek all work to connect people who have tickets with people who might want to purchase those tickets. We have crafted and posted notices on our marketplaces that the website is a marketplace and not a box office or venue and that tickets may be above or below face value. Potential ticket buyers are even provided a FAQ page to help with any common questions about buying tickets through a marketplace. Marketplaces such as TicketNetwork do not buy or sell tickets, but they do try to create a consumer-friendly environment with built-in protections for the ticket buyer. TicketNetwork already provides a 100% guaranteed refund for event cancellations, non-delivery of tickets, tickets that are denied entry, etc. and posts this guarantee in a very visible location.

As the resale marketplace already provides disclosures, we would ask that primary ticket sellers be required to provide disclosures as well, namely the number of tickets that will be going on sale during the initial sale to the general public. In 2018, the United States Government Accountability Office published a report which included the finding that even industry representatives admitted 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.”¹ More tickets were reserved by parties such as the venue, artist, promoter, etc. as “holds.” This means that at the time of the official initial sale of tickets, consumers do not really have a reasonable shot at obtaining a general on-sale ticket. TicketNetwork asks that a provision be added 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 and not perpetuate the myth that bots and ticket scalpers are the reason that tickets sell out so quickly. Transparency provides an additional layer of information to the consumer which can only help in their purchase process. This is why we support the transparency portion of S.B. 1534.

As for the prohibition on exclusive ticketing contracts, taxpayer-funded facilities should not use taxpayer funds to restrict all businesses from participating in commerce with those facilities. Governmental agency contacts are conducted in an open environment where there are many rules to ensure that the process is fair. The same standards for fairness and transparency should hold true for other taxpayer funded and nonprofit facilities. Requiring venues to contract with specific companies fails to provide needed freedoms for a free market economy and forces small businesses such as venues to use only channel for commerce.

Protecting consumers’ private information and information about business partners is something we applaud. Ticket sellers (like Ticketmaster) share customer and business partner information with the venue, artist, team, league without permission from the customer. This is a consumer and small business privacy advocacy issue.

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



Ticketmaster tends to exploit customer data without permission, so having protections in place only benefits consumers, who may not know where their information is being shared. In addition, small companies or individuals doing business with primary ticket sellers or sports team organizations should have the peace of mind of knowing that their information is not being shared or used in a way they have not agreed to.

In conclusion, TicketNetwork fully supports the provisions of S.B.1534 and hopes that other states follow the lead of Hawaii in creating a more transparent ticket industry and protecting consumers and small businesses which come into contact with this industry.



*Barbara N. Saito
President*

February 8, 2019

Chair Rosalyn H. Baker
Senate Committee on Commerce, Consumer Protection, and Health
Hawaii State Senate

Re: **Senate Bill 1534**

Dear Chair Baker 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 Senate Bill 1534, one of the latest attempts to regulate ticket sales in the state of Hawaii. It is, as were previous attempts at regulation, ill-written and potentially harmful to the marketplace. I respectfully request and strongly suggest that it not be passed and tender my testimony to support my position.

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

In particular, the two subsections of Senate Bill 1534 are inadequate and potentially damaging:

§1481B "Disclosure of number of tickets to be sold"

The purpose behind this part of Senate Bill 1534 is unclear. I'm unaware of any historical ticket sale at which any consumer based their purchase on the number of tickets to be sold. It may have influenced the day and time of their purchase, or attempt to purchase, but not much else.

We already provide ample opportunity for a ticket buyer to see the configuration.

Chair Rosalyn H. Baker
Senate Committee on Commerce, Consumer Protection, and Health
Hawaii State Senate
Senate Bill 1534
February 8, 2019

Ticket maps, also called seating charts, are already published as our primary business tool. These maps are available on venue websites, at box office windows, promoter websites, and through other means including media reports.

With the exception of general admission events, the capacities for which are set by the Fire Marshal, the seating available for any given event is *not* a secret.

In my experience, consumers, as a rule, don't care as much about how many tickets everyone else can buy as they care about where they can sit in relation to the attraction.

Sadly, there can only ever be one front row, and venue capacities are finite.

§1481B "Exclusive ticketing contracts; prohibition"

Selling tickets is the entire purpose of promoting events. Promoters may enter into ticket sales contracts through various partners including local travel agencies, hotels, non-profit groups (like charities) and even fan clubs from foreign countries.

We also enter into ticket sales contracts with the attractions themselves related to their own endeavors that cover charities, fan clubs, incentive pricing and the like. In this case, these contracts are non-negotiable.

This Bill, which seeks to curb "scalpers" and other resellers, places restrictions on, and appears to place blame on, venues and promoters who control nothing of the commerce of tickets past their primary sale at face value. It will burden the wrong parties in the "scalping" dilemma and may cause certain attractions, by virtue of regulatory blockage, to bypass Hawaii altogether.

Bills related to event ticket sales surface only after the biggest attractions have performed here. We're in the second round of reactionary, faulty Bills related to a Bruno Mars engagement. There was proposed regulation after Michael Jackson appeared here, too.

Chair Rosalyn H. Baker
Senate Committee on Commerce, Consumer Protection, and Health
Hawaii State Senate
Senate Bill 1534
February 8, 2019

No Bills were introduced in response to tickets sales for Journey or Earth, Wind & Fire or or Jack Johnson (fun facts: they, too, sold out multiple show; they operated ticket sales in roughly the same manner as Bruno Mars).

Resellers exert far too much influence over available inventory, but they aren't directly or routinely buying seats from legitimate venues and promoters (nearly all of whom I've worked with at some time or another). "Bots" are not the reason prime seats evaporate from local inventory: the number one tool for professional resellers is "scalping" – local residents willing to upsell their tickets.

This Bill doesn't possess the strength necessary to regulate supply and demand. At the same time, does the State of Hawaii wish to make criminals out of the ohana at the front of the queue – if you could identify them – who upsold all their tickets to Stub Hub?

I'd personally love to see professional resellers and speculative sales disappear, but I recognize *that* ship sailed some twenty-odd years ago and it'll take much hard work to call it back to 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, Senate Bill 1534, well-intentioned as it may be, is neither complex enough nor knowledgeable enough to ameliorate what is, at its core, a complaint by one segment of ticket buyers against another.

This Bill could, with its deficiencies and omissions, cause more harm than good by creating business casualties or flouting trade practices along its way. It could certainly cause Hawaii's residents to lose out on seeing world-class events that are already difficult to attract.

I therefore urge you to reject it, 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 below the text "With much aloha,".