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Testimony of the Department of Commerce and Consumer Affairs

**Before the
House Committee on Consumer Protection & Commerce
Tuesday, January 30, 2024
2:00 p.m.
Via Videoconference
Capitol Room 329**

**On the following measure:
H.B. 1573, RELATING TO CONSUMER PROTECTION**

Chair Nakashima and Members of the Committee:

My name is Mana Moriarty, and I am the Executive Director of the Department of Commerce and Consumer Affairs' (Department) Office of Consumer Protection (OCP). The Department opposes this bill in large part because section -5 limits the recourse available to a consumer who purchases tickets from a primary seller. Under section -5 of this bill, a consumer who purchases tickets from a primary seller is only entitled to a refund of a service fee and is not entitled to a refund of the ticket price.

The purposes of this bill are to: 1) Cap the primary and secondary ticket seller service charges that may be added to event ticket prices; 2) Require website operators to guarantee refunds in certain circumstances and disclose that the website is not the primary ticket seller; and 3) prohibit speculative tickets and the usage of bots.

Section -5 of this bill treats consumers who purchase tickets from a primary seller worse than those who buy from a secondary seller. Section -5 requires all primary and

secondary sellers to refund service fees charged for the event ticket if the event is canceled or postponed. However, under section -6, this is limited recourse for a consumer who purchased tickets from a primary seller as compared to a consumer who purchased tickets from a reseller, as a reseller is required to provide a full refund of the amount paid for the event ticket and all service fees if the event is cancelled or postponed.

Furthermore, federal law currently provides far more robust remedies against actors using bots than section -8 of this bill. Section -8 is modeled after the Federal Better Online Ticket Sales Act (BOTS Act) of 2016 (15 U.S.C § 45C) but offers less protection to consumers. This measure makes it a misdemeanor, meaning a punishment of up to one year imprisonment and a fine of up to \$2,000.00, for anyone who uses ticket bots to unfairly find and purchase tickets in ways human customers cannot. In contrast, the Federal Trade Commission treats a violation of the BOTS Act as an unfair or deceptive act or practice subject to penalties applicable to violations of the FTC Act. The civil penalty for a violation is scheduled to increase to \$51,744 per violation from the current level of \$50,120 per violation.

A state attorney general, as *parents patriae*, is already authorized by Congress under the BOTS Act, to bring a civil action on behalf of the State in a district court of the United States to:

1. Enjoin further violation of the BOTS Act.
2. Compel compliance.
3. Obtain damages, restitution, or other compensation on behalf of residents.

The federal remedies are more robust than just a misdemeanor offense offered in this measure.

For the foregoing reasons, the department opposes this measure. Thank you for the opportunity to testify on this bill.

January 29, 2024

Representative Mark M. Nakashima, Chair
House Committee on Consumer Protection and Commerce
Hawai'i State Capitol, Room 432
415 South Beretania St.
Honolulu, HI 96813



On behalf of StubHub, I write to respectfully raise concerns with HB 1573, a bill for an act ‘relating to consumer protection’ as introduced.

StubHub believes that a competitive, transparent, and secure ticket marketplace unequivocally supports fans. Competition can drive affordability and an overall better consumer experience. We advocate for comprehensive regulation that addresses the ticket buying experience holistically and caution against regulation that may have the unintended consequence of emboldening engrained monopolies within the live events industry.

We would appreciate the opportunity to work further with Representative Kila, Chair Nakashima, and the Consumer Protection and Commerce Committee to further public policies that create a competitive, transparent and secure ticketing marketplace.

Background on StubHub

Founded in 2000, StubHub revolutionized the ticket resale marketplace by providing a safe, secure and transparent platform to connect ticket buyers and sellers. Our industry leading FanProtect Guarantee ensures buyers and sellers can transact with confidence, knowing that in the rare instance something goes wrong with a transaction, each order is protected, and a robust customer service team is available to assist. As a marketplace that connects buyers and sellers, StubHub does not collect any portion of the ticket price that is set by the seller. Rather, the sale price of the ticket is remitted entirely to the seller once the transaction is complete.

House Bill 1573

As Section 1 of this bill accurately depicts, consumers are often exposed to holdbacks and other practices from primary ticket sellers that limit the ability of the public to access tickets at fair and market driven prices. However, as introduced, we are concerned that House Bill 1573 may have the unintended consequence of empowering primary ticket sellers, not consumers, and limiting innovation. Sections of the “Chapter Event Ticket Sales” where we have specific concerns include:

- **Section 2 and Section 3** – Both of which prohibit the sale of an event ticket at more than face value. Regulatory models built around “face value” are challenging given how little meaning can be applied to the concept of “face value” in today’s ticket market. While “face value” used to be a static price, the industry today is regularly using dynamic or market-based pricing for primary ticket sales. These provisions may have the unintended consequence of forcing consumers to navigate price floors and price caps set by primary ticket sellers and in doing so will severely limit fan choice.

- **Section 7** – which prohibits the sale of speculative tickets. StubHub is concerned that by prohibiting the sale of speculative tickets instead of regulating the practice through robust disclosures, HB 1573 may have the unintended effect of limiting existing services offered in the marketplace and stifling innovation that may create better options for consumers, such as selling a ticket procurement service that allows consumers to avoid the frustrating primary sale process.
- **Section 9** - which empowers primary ticket sellers to impose unfair restrictions on the sale of a ticket rightfully purchased by a consumer. This provision further consolidates control over the ticket purchasing process with those who sell the ticket, rather than those who purchased the ticket.

Conclusion

The live event ecosystem is complex and often can frustrate consumers. Unfortunately, as introduced, HB 1573 does not empower consumers in the ticket buying transaction but instead strengthens an existing entity that already has significant market power. StubHub is eager to work with Representative Kila, Chair Nakashima and the Committee to create comprehensive, balanced, and consumer-oriented legislation to benefit ticket buyers in Hawai'i. We believe that a competitive ticket marketplace will empower consumers and drive better outcomes in Hawai'i. Thank you for your consideration.

Sincerely,

Sean Auyash
Government Relations Manager
StubHub

Cc: Representative Darius Kila

HB-1573

Submitted on: 1/28/2024 8:42:49 AM

Testimony for CPC on 1/30/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Michael EKM Olderr	Individual	Support	Written Testimony Only

Comments:

I support this bill because it's directed at a problem that has plagued consumers for too long. With bills like this in effect, it would guarantee to encourage consumers to participate and buy tickets to events if the price is accessible to them.