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Testimony of the Department of Commerce and Consumer Affairs

Before the
Senate Committee on Transportation and Culture and the Arts
Tuesday, February 13, 2024
3:05 p.m.
Via Videoconference
Capitol Room 224

On the following measure:
S.B. 367, RELATING TO CONSUMER PROTECTION

Chair Lee 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 because section -5 limits the recourse available to a consumer who purchases tickets from a primary seller and because the remedies available under section -9 are far less effective compared to remedies under the Better Online Ticket Sales Act (BOTS Act) of 2016 (15 U.S.C § 45C). 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 service charges for a primary and secondary ticket seller; 2) Require website operators to guarantee refunds in certain circumstances and disclose that the website is not the primary ticket seller; and 3) Prohibit variable demand pricing, 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. But this is limited recourse compared to a consumer who purchased their ticket from a reseller, under section -7, because 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.

The BOTS Act (15 U.S.C § 45C) currently provides more robust remedies than section -9 of this bill against actors who unlawfully use a bot to purchase a ticket. Section -9 makes it a misdemeanor, meaning a punishment of up to one year imprisonment and a fine of up to \$2,000.00, to use a ticket bot to unfairly find and purchase tickets in a way a human customer cannot. Under the BOTS Act, a state attorney general or a state consumer protection may bring a civil action in a district court of the United States to enjoin violation of the BOTS Act, compel compliance, and obtain damages, restitution, or other compensation on behalf of residents. A violation of the BOTS Act is an unfair or deceptive act or practice and is subject to penalties applicable to a violation of the Federal Trade Commission Act (15 U.S.C § 57a(a)(1)(B)). The maximum civil penalty for a violation is scheduled to increase to \$51,744 per violation from the current level of \$50,120 per violation. The existing remedies for unlawful use of a bot are more robust than the remedies in this bill.

For the foregoing reasons, the Department opposes this bill. Thank you for the opportunity to testify.

February 13, 2024

RE: SB367 –Final requested language to protect consumers from ticket scalping and allowing variable ticket demand pricing to ensure quality entertainment continues to perform in the State of Hawai'i.

Thank you for the opportunity to provide input on this critical bill impacting the entertainment industry. We believe the entertainment industry supports protections from scalping and variable ticket demand pricing needs to be continued to attract high quality entertainment to perform in Hawai'i.

1. Variable demand pricing is critical to secure major entertainers to perform in Hawai'i.' Variable demand, or dynamic, pricing is beneficial for artists, promoters, and fans. While it may seem counter-intuitive, variable demand pricing for premium seats allows most of the tickets at an event to be sold at a far less expensive rate. A proportionally small number of highly priced seats creates a proportionally large amount of the overall revenue required to pay the artist's fees. This means that the remaining (large) proportion of seats can be priced at a lower rate than if all seats were priced the same. The high number of lower-priced seats keeps the event more economically accessible, directly contributing to the desired sell-out and resulting payout to all employees and businesses involved in the production.

Artists and their talent agents who drive the conversation around artists' contracts, including the fees and compensation that they will accept. If they can't be promised fair compensation, they simply won't accept an offer to perform. There is a direct correlation between an artist's fees and ticket sales. First, paying the artist their contractual fee is completely dependent on selling tickets to the event. To take that one step further: because of high artist fees, it is often only through high ticket prices for premium seating options, and variable demand pricing that those fees can be paid out. Therefore, it is not out of line to say that ticket prices and gross sales are critical in determining whether an artist will choose to perform at a venue -- especially in Hawai'i.

Second, ticket prices and artist fees are intertwined because ticket prices are set by considering all the costs associated with bringing an artist to Hawai'i, including their fees and compensation, travel and accommodation costs, and equipment costs.

Variable demand pricing is needed in our state's entertainment industry and included in SB367:

1. Variable demand pricing allows for the lowest price possible for most tickets.
2. The small arena size of the Blaisdell Arena in Honolulu makes it impossible to attract top acts without implementing variable demand pricing.
3. Variable demand pricing keeps tickets in the hands of authorized and trusted ticket sellers in the primary market where the revenue generated covers the expenses of artists, promoters, venues, and local businesses -- instead of scalpers' hands.
4. Hotels, airlines, and restaurants as well as other sectors of the economy use variable demand pricing. Supply and demand are critical factors in pricing goods and services across all industries-including entertainment. .

2. Anti-scalping language to protect the People of Hawai'i

The entertainment industry would support the anti-scalping measures. Artists and promoters also dislike ticket scalping. They need all tickets to be sold in the primary market so that they can get paid. Artists and promoters are not supporters of the resale market or ticket scalpers.

Large-scale corporate ticket sellers such as Ticketmaster and Live Nation operate proprietary software which can make allowances for the specific pricing requirements of an artist. These ticket sellers label and sell the tickets for each event as required by the specific contractual obligations set by the artists. Non-variable-priced tickets usually have the price printed on the ticket. However, premium seating and variable demand tickets (most commonly Platinum seating) are often labeled instead by category of ticket types, such as VIP 1 or VIP 2. The actual price paid may not appear on the ticket but is stated on the purchaser's receipt.

Specifically, to be accurate, the language needs to be in SB 367 as "original price per ticket as charged by the primary venue ticket provider.

On behalf of the live entertainment industry in Hawai'i, Rick Bartalini Presents encourages SB 367 include the language as outlined above to ensure that Hawai'i can attract quality entertainment utilizing variable pricing as well as eliminate ticket scalping for consumers. This language would prevent companies like StubHub, the worlds largest ticket resale site, and others including Ticketmaster itself, to resell tickets at exorbitant prices over the price paid by consumers on the venues primary ticket provider.

We are requesting that all other language be stricken from the bill.