

JAN 20 2023

A BILL FOR AN ACT

RELATING TO CONSUMER PROTECTION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that the ticket-
2 purchasing process for popular events is frustrating for
3 consumers. According to reports by the attorney general of the
4 state of New York and the federal Government Accountability
5 Office, event tickets for popular concerts go through one of
6 three channels: holds, pre-sales, and general public sales. Due
7 to event tickets being held or sold through pre-sales, the
8 general public only has access to a fraction of the event
9 tickets, sometimes less than half.

10 Additionally, primary ticket sellers are not transparent
11 with fees and charges. First, a consumer may not be informed of
12 the applicable taxes and charges until the very end of the
13 ticket-purchasing process, shocking a consumer with the
14 additional cost. Second, the amount of the fees or charges do
15 not always appear justified by the proffered reason for the fees
16 or charges.



1 The legislature further finds that popular events held in
2 the State attract secondary market profiteers, commonly known as
3 scalpers, who exacerbate the frustrations of the ticket-
4 purchasing process to the detriment of ordinary consumers.
5 First, scalpers are additional persons with whom consumers must
6 compete for event tickets, thereby increasing the demand for an
7 inelastic supply. Second, scalpers increase the cost of an
8 event to a consumer, but the cost increase is not spent to make
9 the event better for the consumer. Lastly, some scalpers do not
10 compete equally with consumers as some scalpers utilize computer
11 software to navigate a ticket-selling platform and its security
12 measures in a fraction of the time as a human being to purchase
13 multiple tickets and conduct multiple transactions
14 simultaneously. For example, in 2018, thousands of tickets for
15 a concert held in the State by recording artist Bruno Mars ended
16 up on third party websites at inflated prices.

17 However, the legislature recognizes that the secondary
18 market provides a service to consumers who are willing to pay
19 more for the convenience of purchasing tickets at any time up to
20 the date of the event. Additionally, the secondary market
21 provides an opportunity to obtain tickets for consumers whose



1 schedule and commitments prevented them from purchasing event
2 tickets when the event tickets were initially made available.

3 Due to each position's merits, the legislature finds that
4 states differ in their approaches to the problem of ticket
5 scalping. Some states explicitly allow the practice of ticket
6 scalping and curb any attempt to limit the practice. Other
7 states take the opposite stance by prohibiting the practice in
8 its entirety. Yet, other states take an intermediate approach
9 by placing various limitations such as capping the profit a
10 ticket scalper may make; restricting the time or place of ticket
11 scalping; requiring ticket scalpers to be licensed or
12 registered; or mandating certain business practices to ensure a
13 certain level of consumer protection.

14 Additionally, the legislature finds that today's
15 technology, such as the Internet, makes inflating the prices of
16 event tickets both substantially easier to accomplish and harder
17 to curb. Recently, variable demand pricing has been deemed by
18 many to be a predatory and exclusionary practice. Variable
19 demand pricing, also referred to as dynamic pricing, occurs when
20 technology is used to adjust the price of an item based on its
21 supply and perceived demand. Variable demand pricing can



1 inflate prices and create situations where an event ticket can
2 cost several thousand dollars before any applicable fees and
3 charges are applied. Primary ticket sellers are also in a
4 unique position to limit the sale and supply of event tickets,
5 which further inflates prices when they practice variable demand
6 pricing. Although primary ticket sellers have argued that the
7 sale of event tickets using variable demand pricing combats
8 ticket-scalping and unfair secondary markets, this practice
9 instead creates an opaque and unfair primary market, which
10 prices out most consumers, except those who are wealthy or those
11 with powerful interests. As such, the legislature finds that an
12 intermediate approach is the most pragmatic at providing
13 consumers with protection and fairness in the ticket-purchasing
14 process.

15 Thus, the purpose of this Act is to regulate event ticket
16 sales by:

- 17 (1) Capping the service charges that a primary and
18 secondary ticket seller may place on top of the price
19 of an event ticket;
- 20 (2) Requiring primary and secondary ticket sellers to
21 guarantee a full refund in certain situations;



1 "Event ticket" means a ticket of admission or any other
2 evidence of right of entry to a theater, place of amusement or
3 entertainment, or other place in the State where public
4 exhibitions, games, contests, or performances are held.

5 "Primary ticket seller" means an owner or operator of a
6 venue or sports team, manager or provider of an event, event
7 promoter, a provider of ticketing services or an agent of the
8 owner, operator, manager, or provider, that engages in the
9 primary sale of event tickets or retains the authority to
10 otherwise distribute tickets.

11 "Secondary ticket seller" means any person engaged in the
12 business of reselling event tickets at a price greater than the
13 price printed on the ticket.

14 "Variable demand pricing" means the practice by which
15 technology is used to change the price of an event ticket based
16 on the supply and perceived demand of the tickets for the event.

17 "Website operator" means a person who owns or controls an
18 internet website that advertises the resale of tickets, offers
19 the resale of tickets, or facilitates a secondary ticket
20 exchange.



1 § -3 Variable demand pricing prohibited. No event
2 ticket shall be sold or offered for sale by a primary or
3 secondary ticket seller through variable demand pricing.

4 § -4 Sale of event tickets at more than face value
5 prohibited; Exemption. Except as provided in this chapter, it
6 is unlawful for any person to sell or offer for sale event
7 tickets at a price greater than the price printed on the ticket.
8 This section shall not apply to charitable organizations, as
9 defined in section 467B-1, and their employees and volunteers
10 for event tickets resold or offered for resale through a raffle,
11 auction, or similar fundraising activity for the benefit of a
12 charitable organization's charitable purposes.

13 § -5 Price cap for event tickets sold by a primary or
14 secondary ticket seller. No event ticket shall be sold or
15 offered for sale by a primary or secondary ticket seller at a
16 price greater than the sum of:

- 17 (1) The price printed on the event ticket;
- 18 (2) Any tax that the seller may lawfully collect on the
19 price printed on the event ticket; and
- 20 (3) Any reasonable charge for services actually rendered
21 and directly related to the cost of selling or



1 offering to sell the event ticket; provided that the
2 charge shall not exceed fifty per cent of the price
3 printed on the event ticket.

4 § -6 Credit card; fees; cancellations. (a) No
5 secondary ticket seller shall charge a fee for the use of a
6 credit card to purchase event tickets without first disclosing
7 that a fee will be charged and the fee amount.

8 (b) A primary or secondary ticket seller shall refund any
9 and all service fees charged for the purchase of an event ticket
10 when the public exhibition, game, contest, or performance for
11 which the event ticket was purchased is canceled or postponed.

12 § -7 Website operators. For event tickets resold or
13 offered for resale by or through an internet website, the
14 website operator shall:

15 (1) Guarantee a full refund of the amount paid for the
16 event ticket, and any applicable taxes and servicing,
17 handling, or processing fees, if:

18 (A) The ticketed event is cancelled or postponed;

19 (B) The purchaser is denied admission to the ticketed
20 event, unless the denial is due to the action or
21 omission of the purchaser; or



1 (C) The event ticket is not delivered to the
2 purchaser in time for the purchaser to attend the
3 event; and

4 (2) Disclose that:

5 (A) The internet website is not the primary ticket
6 seller;

7 (B) The person selling the ticket is not the primary
8 ticket seller; and

9 (C) The price of the event ticket listed on that
10 internet website may be higher than the ticket's
11 original face value.

12 § -8 **Speculative tickets prohibited.** No person shall
13 intentionally resell or offer for resale an event ticket if:

14 (1) The event ticket is not in the seller's possession; or

15 (2) The seller does not have a written contract to obtain
16 the offered ticket at a certain price from a person in
17 possession of the ticket or from a person who has a
18 contractual right to obtain such event ticket.

19 § -9 **Circumvention of online ticket purchase processes**
20 **prohibited.** (a) No person shall intentionally use or sell
21 computer software to circumvent a security measure, access



1 control system, or other control or measure on a ticket seller's
2 website that is used to ensure an equitable process for
3 purchasing event tickets.

4 (b) A person found in violation of this section shall be
5 guilty of a misdemeanor.

6 § -10 Ability to restrict or deny. Nothing in this
7 chapter shall be construed to prevent a primary ticket seller
8 from contractually imposing restrictions on or denying a
9 consumer's ability to resell event tickets.

10 § -11 Remedies; prohibited contractual agreements. (a)
11 Any violation of this chapter shall constitute unfair methods of
12 competition and unfair and deceptive acts or practices in the
13 conduct of any trade or commerce under section 480-2. Each
14 sale, offer for sale, resale, or offer for resale in violation
15 of this chapter shall constitute a separate violation.

16 (b) Any agreement entered into by a consumer for the
17 purchase of an event ticket that waives, limits, or disclaims
18 any of the rights set forth in this chapter shall be void as
19 contrary to public policy.

20 (c) Any penalty issued pursuant to subsection (a) shall be
21 in addition to any other remedies provided by law.



1 § -12 Rules. The director may adopt rules pursuant to
2 chapter 91 to effectuate the purpose and to enforce the
3 requirements of this chapter."

4 SECTION 3. Section 440-17, Hawaii Revised Statutes, is
5 repealed.

6 ~~["§440-17 Admission tickets. All tickets of admission to
7 any boxing contest for which admission fees are charged and
8 received shall have printed clearly upon the face thereof the
9 purchase price of same, and no ticket shall be sold for more
10 than the price as printed thereon."]~~

11 SECTION 4. Section 440E-13, Hawaii Revised Statutes, is
12 repealed.

13 ~~["§440E-13 Admission tickets. All tickets of admission
14 to any mixed martial arts contest for which admission fees are
15 charged and received shall have printed clearly upon the face
16 thereof the purchase price of same, and no ticket shall be sold
17 for more than the price as printed thereon."]~~

18 SECTION 5. Section 481B-15, Hawaii Revised Statutes, is
19 repealed.

20 ~~["§481B-15 Ticket brokers, fees, cancellation. (a) No
21 ticket broker shall charge a fee for the use of a credit card to~~



1 ~~purchase tickets without first disclosing that a fee will be~~
2 ~~charged.~~

3 ~~(b) A ticket broker shall refund any and all service fees~~
4 ~~charged for the purchase of a ticket when the public exhibition,~~
5 ~~game, contest, or performance for which the ticket was purchased~~
6 ~~is canceled.~~

7 ~~(c) For the purposes of this section, "ticket broker"~~
8 ~~means any person engaged in the business of selling tickets of~~
9 ~~admission or any other evidence of right of entry to a theater,~~
10 ~~place of amusement or entertainment, or other place where public~~
11 ~~exhibitions, games, contests, or performances are held, at a~~
12 ~~price greater than the price printed on the ticket."]~~

13 SECTION 6. This Act does not affect rights and duties that
14 matured, penalties that were incurred, and proceedings that were
15 begun before its effective date.

16 SECTION 7. Statutory material to be repealed is bracketed
17 and stricken.

18 SECTION 8. This Act shall take effect upon its approval.

19

INTRODUCED BY:



S.B. NO. 367

Report Title:

Event Ticket Sales Practices; Ticket Scalping; Bruno Mars Act

Description:

Caps the service charges for a primary and secondary ticket seller. Requires website operators to guarantee refunds in certain circumstances and disclose that the website is not the primary ticket seller. Prohibits variable demand pricing, speculative tickets, and the usage of bots. Makes conforming amendments.

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