

NetChoice *Promoting Convenience, Choice, and Commerce on The Net*

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Sen. Paul R. Feeney, Co-Chair

Rep. Tackey Chan, Co-Chair

Joint Committee on Consumer Protection and Professional Licensure

Boston, Massachusetts

RE: Support for S116 and H315 - An Act to reform the issuance and sale of sports and entertainment tickets.

Sen. Freeney, Rep. Chan, and members of the Joint Committee on Consumer Protection and Professional Licensure,

NetChoice enthusiastically supports S116 and H315, which would ensure that Massachusetts fans enjoy safe and easy ways to buy, sell, and give away their sports and concert tickets. These bills would help fans enjoy choice, convenience, and competition in the primary and secondary markets for event tickets.

S116 and H315's protections on transferability already exist for the fans of Colorado, Connecticut, New York, Utah, and Virginia. Passing S116 and H315 will give Massachusetts fans similar protections.

S116 and H315 create important consumer protections

The bills require ticket resellers to provide purchasers a **full refund** or **comparable replacement** ticket if:

- The event is canceled and not rescheduled;
- The ticket received by the purchaser is counterfeit;
- The ticket fails to conform to the description provided by the seller or reseller;
- The ticket was not delivered to the purchaser prior to the occurrence of the event, unless such failure of delivery was due to an act or omission of the purchaser; or
- The ticket does not provide the consumer admission to the event for which it was purchased.

Protecting fans' ability to resell and give-away their tickets

S116 and H315 give Massachusetts fans protections for ticket transferability, which already exist for fans in Colorado, Connecticut, New York, and Virginia. S116 and H315 aim to maintain consumer choice, convenience, and market competition:

- allows Massachusetts fans to freely give a ticket to a friend, client, or family member;
- allows fans to sell tickets they are not going to use; and
- enables fans to choose among competing secondary markets to buy and sell tickets.

Without S116 and H315, Ticketmaster can limit fans to only get restricted tickets.

Ticketmaster’s “Restricted” tickets can require a fan to present the credit card used to buy the ticket, plus a government-issued identification card for the person who bought the ticket. Venues using these restricted tickets could deny admission to fans whose credentials do not match the original ticket buyer, as seen in the attached restrictions displayed on Ticketmaster’s website.

Without the S116 and H315, citizens and businesses can’t even give away tickets to friends, family, or clients, because the purchaser’s name won’t match the ticketholder. Parents could be forced to accompany their teenagers to the event gate to show ID of the ticket *purchaser*, rather than allowing the teen to present their ticket to the usher.

While Ticketmaster sometimes gives the option to transfer a ticket, it requires a complex interaction with Ticketmaster and may require payment of yet another “convenience fee.”

A representative for Dunkin' Donuts Center said they charge a convenience fee of up to \$15 to transfer a ticket to friend.¹

We’re already seeing restricted tickets. Garth Brooks used restricted tickets for his several of his performances. Fans who gave their tickets to family or friends still had to escort them to the venue doors. And a ticketholder who couldn’t attend could not easily sell or even give away his tickets.

We’ve attached a page from Ticketmaster’s website that explains the inconvenient restrictions imposed on fans who must buy Credit Card Entry tickets.

However, fans don’t suffer these restrictions when Garth Brooks performs in Virginia, Utah, New York or Colorado. These states have laws with the same protections as the S116 and H315, so Virginia, Utah, New York or Colorado fans can freely transfer, resell, and give away their tickets.

Big-name acts like Garth Brooks regularly perform in states with laws like S116 and H315, so there’s simply no credibility to Ticketmaster’s claim that this law would stop concerts from coming to Massachusetts.

A recent federal law removes Ticketmaster’s main justification to impose restricted tickets.

Ticketmaster’s own website explains why it requires “Credit-Card Entry” restrictions – to stop software ‘bots’ used by unscrupulous brokers to grab hundreds of tickets in first minutes they go on sale:

Why is Credit Card Entry the only option for some events, or some sections?

When Credit Card Entry is the only option it’s probably because the tickets are in high demand, and the artist, team, or venue wants true fans like you to get the seats you want at face value by eliminating unfair competition from professional scalpers. Without the ability to resell tickets at steep prices, scalpers have no reason to snatch them up when they go on sale using automated software, or “bots”.

But now, there’s now a new federal law making it illegal for brokers to circumvent ticket purchase limits on sites like Ticketmaster. In December 2016, Congress passed the Better Online Ticket Sales, or BOTS Act. The bill empowers the FTC and state Attorneys General to stop ticket scalpers from buying-up tickets by bypassing online controls that limit the number of tickets a person can buy.

¹ Hearing on Rhode Island SB 263 (Apr. 23, 2019).

Even Ticketmaster supported the BOTS Act, “Ticketmaster worked closely with legislators to develop the BOTS Act and we believe its passage is a critical step in raising awareness and regulating the unauthorized use of Bots.”²

With BOTS now a federal crime, there's no justification for Ticketmaster to offer only restricted tickets.

Moreover, as CBS This Morning reported: “Ticketmaster is now accused of running what looks like an underground ticket scalping project that may be driving up prices and costing consumers millions.”



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Massachusetts can—and should—stop the anti-consumer practice of restricted tickets.

While private contracts are a private matter, governments step-in when contracts threaten property rights, constrain consumer choice, or force unfair agreements on consumers.

Event tickets are another situation ripe with concern for anti-competitive practices that harm not only consumers but also competitive businesses.

Other states are protecting their fans from restricted tickets

Fans don’t suffer these restrictions when artists perform Colorado, Connecticut, New York, Utah, or Virginia. These states have laws with the similar protections as those in S116 and H315.

Recently Connecticut,⁴ Utah,⁵ and Virginia⁶ enacted laws similar to those in New York⁷ and Colorado⁸. These legislators protected their state’s fans’ ability to freely transfer, resell, and give away their tickets.

² 16-Dec-2016, “Obama signs law to combat ticket bots”, <http://ew.com/article/2016/12/16/obama-law-ticket-bots/>

³ CBS This Morning, *Ticketmaster is colluding with ticket scalpers and taking a cut, undercover report finds* (Sep 20, 2018)

⁴ CT Pub Act. 17-28 (2017). “No person shall employ an entertainment event ticketing sales system that fails to give the purchaser an option to purchase tickets that the purchaser may transfer to any party, at any price and at any time, without additional fees and without the consent of the person employing such ticketing system.”

⁵ Utah Code § 13-54-201. “(4) A person may not discriminate against an individual or deny an individual admission to an event solely because the individual: (a) resold a ticket to the event independent of the person who issued the ticket or the person's agent or operator; or (b) purchased a resold ticket to the event independent of the person who issued the ticket or the person's agent or operator.”

⁶ VA Stat. §§ 59.1-466.5-.7. “No person that issues tickets for admission to an event shall issue any such ticket solely through a delivery method that substantially prevents the purchaser of the ticket from lawfully reselling the ticket on the Internet ticketing platform of the ticket purchaser's choice... No person shall be discriminated against or denied admission to an event solely on the basis that the person resold a ticket, or purchased a resold ticket, on a specific Internet ticketing platform.”

⁷ NY Arts & Cult Aff L § 25.30 “[I]t shall be prohibited for any operator of a place of entertainment, or operator's agent, to: (a) restrict by any means the resale of any tickets...(b) deny access to a ticket holder who possesses a resold subscription or season ticket to a performance based solely on the grounds that such ticket has been resold...(c) employ a paperless ticketing system unless the consumer is given an option to purchase paperless tickets that the consumer can transfer at any price, and at any time, and without additional fees, independent of the operator or operator's agent.” (emphasis added).

⁸ Colorado Rev. Stat. § 6-1-718(3) “It is void as against public policy to apply a term or condition to the original sale to the purchaser to limit the terms or conditions of resale... A person or entity, including an operator, that regulates admission to an event shall not deny access to the event

Big-name acts regularly perform in these states, so there's simply no credibility to any claim that passing S116 and H315 would discourage concerts from coming to Massachusetts.

Now is the Time to Enact S116 and H315.

Ticketmaster is aggressively expanding restricted ticket program. This will limit fan choice and could impose a new battery of "convenience fees" just to give a ticket to a friend.

Now is the time to pass the S116 and H315 and help Massachusetts fans enjoy the choice and convenience of an open ticket marketplace.

Sincerely,

Carl Szabo

Vice President & General Counsel, NetChoice

NetChoice is a trade association of leading e-commerce and online companies. www.netchoice.org

to a person in possession of a valid ticket to the event...based solely on the ground that such ticket was resold through a reseller that was not approved by the operator." (emphasis added).

From TicketMaster's Website

Q. How does it work?

A. Instead of receiving tickets ahead of the event, the credit card used to make the purchase will serve as the customer's ticket. To attend the show, the customer just presents the credit card used to purchase the ticket(s) and a valid, government issued ID (such as a driver's license, state ID or passport). The gate attendant will swipe the credit card and since all the seats are assigned to a single credit card, your entire party must enter the venue at the same time.

...

Q. What if I'm not going to the show, but I purchased the tickets?

A. If you bought the tickets for a friend or family member, you will need to take them to the entry gate and still present your credit card and government issued ID.

Q. What if I want to buy tickets for someone else in another state and can't get to the venue for the day of the event?

A. To ensure that the tickets remain in the hands of the fan, paperless ticketing requires that that cardholder who purchased the tickets presents their credit card at the door for admission. We would advise you to have the person, who will be attending the show, purchase the tickets themselves with their credit card and then you can reimburse them.

...

Q. What if I don't have or I lose my credit card before the event?

A. If you do not have a credit card with the same account number as the one used to make the purchase, you will need to go to the box office call window on the day of the event for alternative handling of your situation. In this case, please be sure to bring a print out of your confirmation email or online order history and your government issued ID. The box office will verify that the name associated with the order matches the name on the government issued ID. If they do not match, entry will be denied. In all other cases, entry without your credit card will be at the discretion of each venue.

...

Q: What if I purchased the tickets, but my spouse is going to the event?

A: Your spouse must be an authorized user of the credit card, and must present the credit card along with their government issued ID to gain entry.⁹

I bought tickets for friends – can we get in separately?

If you bought for a group you gotta enter as a group, UNLESS Ticket Transfer is available for your event. To check, just click the order number under Order History in My Account and look for the Transfer Tickets button.¹⁰

⁹ <http://www.ticketmaster.com/mileycyrus/faq.html> (emphasis added)

¹⁰ <http://www.ticketmaster.com/creditcardentry> (emphasis added)