

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

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Mr. Justin Dews

Associate Counsel

Office of Governor Phil D. Murphy

July 3, 2018

RE: Conditional Veto request for A-4259 and S-2783, Consumer Protections for Ticket Use

Dear Mr. Dews,

We respectfully ask that the Governor adopt the attached proposed amendments as part of a conditional veto of A-4259 and S-2783 (collectively "S-2783"). Doing this will establish consumer protections to balance those repealed in the legislation, and give Garden State residents the same rights as New Yorkers.

Currently, S-2783 removes critical protections for the access to and use of event tickets. For example, S-2783 removes the existing consumer protections requiring venues to "*create a method for season ticket holders and other ticket holders to lawfully sell back tickets to the venue for events they will not be able to attend.*"¹

Without additional consumer protections on the right to transfer or give-away tickets as they choose, S-2783's removal of these consumer protections harms New Jersey fans.

Couple S-2783's removal of required buyback of tickets with restrictions on transfer and you leave New Jersey fans exposed with tickets they can neither transfer nor sell back.

We have seen primary ticket sellers and venues begin restricting the ability of fans to transfer or resell their tickets how they want.

For example, Ticketmaster's "Credit Card Entry" tickets require a ticket purchaser to present the credit card used to buy the ticket and a government-issued identification card in order to gain entry. These tickets typically cannot be transferred or resold, meaning the ticket purchaser must attend the event in order to gain entry. Venues using these restricted tickets can deny admission to fans whose credentials do not match the original ticket buyer.

¹ Section 11 of P.L.2001, c.394 (C.56:8-35.3).

As a result, the ability to give tickets as gifts or to donate tickets to charity is limited. 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 restricted ticket, it often only allows that transfer to occur through Ticketmaster's own secondary ticket platforms, essentially eliminating consumer choice and blocking out competition.

Couple S-2783's removal of required buyback of tickets with restrictions on transfer and you leave New Jersey fans exposed with tickets they can neither transfer nor sell back. Consider, a fan who must miss a concert due to a family emergency. If S-2783 is enacted, this fan could be left with tickets that they can't give away due to restrictions on transfer and tickets for which the venue must no longer accept returns.

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S-2783 removes key consumer protections and leaves fans at the whims of venues and primary ticket sellers.

The attached proposed amendments as part of a conditional veto address some of the problems created by S-2783.

Amendments Protecting Fans' Ability to Resell or Give-Away their Tickets

To balance the repeal of the ticket buy-back program, NetChoice believes amendments should be made to the legislation that guarantee consumer choice and their ability to give-away or resell their tickets after purchase. Similar protections already exist for the fans in Connecticut, New York, and Virginia.

The attached amendment aims to maintain consumer choice, convenience, and market competition by:

- Ensuring New Jersey fans have the choice to buy tickets that they can freely away, donate, transfer, or resell when faced with ticket restrictions;
- Preventing discrimination against any fans that elects to buy a freely transferable ticket; and

Protecting a competitive secondary ticket market so fans have more choice on where to buy and sell tickets – thereby making sure businesses are competing on the price of fees, customer service, and user experience.

Without these amendments, ticket issuers and venues can unilaterally control how tickets are issued, whether or not they can be transferred or resold, and refuse to offer refunds when ticket purchasers can no longer attend an event.

Federal Law Removes Ticketmaster’s Main Justification to Impose Restricted Tickets.

Ticketmaster’s own website explains why it sometimes uses “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 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.

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.

Furthermore, S-2783 establishes New Jersey specific prohibitions on the use of bots.

New Jersey Can—and Should—Give Consumers Choice when Faced with 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.

Ticketmaster’s *primary* ticket sales platform has previously required customers to resell only through Ticketmaster’s own secondary market service. Failing to stick with Ticketmaster has resulted in voided tickets and threats to cancel patrons’ season tickets.³

The proposed amendments do not prohibit the practice of ticket restrictions; it just ensures consumers have the choice to “opt-out” of ticket restrictions when desired. This choice allows consumers flexibility in how they use their tickets, as well as in how they may transfer, give away, or resell them if they choose to do so later on.

Other States are Protecting their Fans from Restricted Tickets

Fans are afforded the choice to buy freely transferable tickets in Connecticut, New York, and Virginia. Colorado and Illinois have more progressive laws that stipulate ticket issuers can do nothing to restrict the transfer or resale of a ticket. The amendments presented below are consistent with the protections offered to consumers in Illinois, New York and Connecticut.

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

³ Stubhub, Inc. v. Golden State Warriors, LLC, No. C 15-1436 MMC, 2015 WL 6755594 (N.D. Cal. Nov. 5, 2015), *appeal dismissed* (July 22, 2016).

Notably, the New York law was originally passed in 2010. The provision was drafted to sunset annually, and ever year the New York State General Assembly has affirmatively renewed the statute. This year, the statute was renewed for three years as it was couples with other consumer friendly reforms, some of which are contained in this legislation.

In a market where major ticket issuers, like Ticketmaster, are aggressively expanding its Credit Card Entry ticket program and investing in [facial recognition technology](#), a tool that can be readily used to limit consumers ability to easily use, transfer, or give their tickets away – protecting consumer choice is a critical protection that should be included in this legislation.

We respectfully ask that you protect New Jersey fans via proposed amendments as part of a conditional veto of S-2783.

Sincerely,

Carl Szabo

Vice President and General Counsel, NetChoice

NetChoice is a trade association of e-Commerce and online businesses. www.netchoice.org

Proposed Technical Amendments to A-4259 [First Reprint]

- **Page 3, Lines 14 – 16: strike “, but does not include a ticket holder, ticket issuer, reseller or place of entertainment”**

Note: In today’s ticket market, most entities are functioning in multiple roles. Ticket issuers, brokers, resellers, or places of entertainment may also be a ticket resale website, serving dual capacities. If any entity is facilitating the resale of tickets on the secondary market, the requirements of Section 3 should apply. This amendment is meant to clarify that when entities are serving as ticket resale platforms, they need to comply to these standards.

- **Page 4, Line 9: insert, “or a comparable replacement ticket,” after, “characterized,”**

Note: This amendment would stipulate that either a full refund or a comparable replacement ticket would be an option for consumers in the circumstances listed under this section.

- **Page 4, line 12: insert, “and not rescheduled” after, “cancelled”**

Note: This clarifies that those events that are rescheduled are not subject to the refund requirement. This is consistent with the refund policies of ticket issuers for canceled events.

- **Page 4, line 24: insert, “or control” after, “possession”**

Note: This amendment further clarifies that the practice of speculative ticketing occurs when a reseller has no right to a ticket at all and is selling it purely on speculation. A reseller very frequently purchases a ticket, thereby controlling the ticket, before they take actual possession. This is largely due to the industry practice of ticket issuers delaying deliver of the ticket, often to the inconvenience of purchasers.

Proposed Transferability Language to be Added to A-4259

A. Definitions

1. “Non-Transferable Ticketing System” means restricting, through contractual or technological means, a ticket purchaser’s ability to freely use, give away, or resell the tickets they have purchased.

B. *Notwithstanding any contrary terms or conditions:*

1. *A ticket issuer may employ a non-transferable ticketing system only if the consumer is offered an option at the time of initial sale to purchase the same ticket in a transferable form that allows tickets to be given away or resold independent of the ticket issuer.*
2. *A ticket buyer or reseller shall not be penalized, discriminated against, or denied access to an event solely on the grounds that, or the ticket resale website through which, the ticket or tickets were resold.*

C. *Notwithstanding any other provision of this subtitle, a ticket issuer or venue operator may:*

1. *Maintain and enforce policies with respect to conduct, behavior, or age at the venue or entertainment event;*
2. *Establish limits on the quantity of tickets that may be purchased;*
3. *Revoke or restrict season tickets for reasons related to violations of venue policy;*
4. *Elect not to offer tickets in a transferable form if those tickets are sold or given to individuals or groups as part of a targeted promotion, discounted price, or private event offered because of the individuals’ or groups’ status or affiliation, including, but not limited to groups or individuals characterized by a disability, membership in a religions or civic organization, students or economic hardship.*
 - i. *Tickets issued through a non-transferable ticketing systems under the exemption in subsection (C)(4) cannot be offered promotionally to the general public and must be clearly marked as a ticket restricted to the specified individual or group.*