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BETTER ONLINE TICKET SALES ACT OF
2016

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

ON

S. 3183



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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

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SECOND SESSION

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BETTER ONLINE TICKET SALES ACT OF 2016

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Mr. THUNE, from the Committee on Commerce, Science, and
Transportation, submitted the following

R E P O R T

[To accompany S. 3183]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 3183) to prohibit the circumvention of control measures used by Internet ticket sellers to ensure equitable consumer access to tickets for any given event, and for other purposes, having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill (as amended) do pass.

PURPOSE OF THE BILL

The purpose of S. 3183, the Better Online Ticket Sales Act of 2016 (BOTS Act of 2016), is to prohibit the circumvention of control measures used by Internet ticket sellers to ensure equitable consumer access to tickets for any given event.

BACKGROUND AND NEEDS

The market for live event tickets has encountered challenges from scalpers who use software to circumvent the safeguards primary ticket sellers use to limit ticket purchases. This software, commonly referred to as “bots” or “bot” software, automates ticket-buying on online platforms by: (1) automatically and continuously checking ticket seller websites for ticket releases; (2) automatically reserving and displaying available tickets for the human operator; (3) automatically buying tickets using as many names, addresses, and credit card numbers as necessary to appear to be individual ticket buyers; and (4) defeating anti-ticket bot security measures such as so-called CAPTCHA (Completely Automated Public Turing test to tell Computers and Humans Apart) to determine whether or not a ticket purchaser is human (for example, by asking the pur-

chaser to type correctly a series of letters that appear as a twisted or stretched image on the ticketing website).¹

In many cases, primary ticket sellers limit purchases. For example, ticket sellers often make tickets available to the general public on a set date and time² and may limit the number of tickets to four or six per purchasing party.³ These measures are aimed at ensuring that ticket buyers have a fair chance of obtaining tickets to the live event, which are necessarily limited in number. Ticket sellers also generally prohibit the use of automated software to defeat the technical safeguards and subvert ticket purchase limits. For example, Ticketmaster prohibits the “[u]se of any automated software or computer system to search for, reserve, buy or otherwise obtain tickets . . . available on the Site.”⁴

The use of ticket bots has frustrated the intentions of performers⁵ and other ticket sellers⁶ to make tickets available equitably and at reasonable prices. Primary ticket sellers have estimated that ticket bots obtain 60 percent of the most desirable tickets for some shows.⁷ Ticket bots also have enabled scalpers to purchase and subsequently sell large swaths of event tickets on the secondary market at exorbitant prices. One study finds that, on average, scalpers mark up the price of tickets on the secondary market by 49 percent of the primary ticket seller’s price.⁸ The ability to buy massive amounts of tickets in violation of primary ticket sellers’ terms and technical controls, however, has enabled scalpers in some instances to mark up the price by over 1,000 percent.⁹

Several States have enacted laws to combat ticket bots.¹⁰ Two of these States, New York and Connecticut, also have issued reports on the market for event tickets in those respective States.¹¹ Although these reports focus more broadly on the ticket market as a whole, they include some data on ticket bots.¹² For example, the New York Attorney General found that at least tens of thousands

¹Eric T. Schneiderman, N.Y. State Office of the Attorney General (OAG), *Obstructed View: What’s Blocking New Yorkers from Getting Tickets*, pp. 15-16, January 2016, at http://www.ag.ny.gov/pdfs/Ticket_Sales_Report.pdf [hereinafter N.Y. OAG Report].

²Letter from William M. Rubenstein, Commissioner of Consumer Protection, State of Connecticut, to Hon. Paul Doyle, State Sen., Co-Chair, General Law Comm., State of Connecticut, p. 4, February 22, 2012, at http://www.ct.gov/dcp/lib/dcp/pdf/publications/final_ticket_letter.pdf (“The date on which tickets will be available to all members of the public is known as the ‘public on-sale date.’”) [hereinafter Conn. Report].

³Testimony of Gil Genn, Managing partner of the Maryland Sports & Entertainment and Industry Coalition, in U.S. Congress, U.S. Committee on Energy & Commerce, Subcommittee on Commerce, Manufacturing, and Trade, *Legislative Hearing on 17 FTC Bills*, hearings, 114th Congress, May 24, 2016, (“[F]or most live entertainment events there is a restriction on the number of seats one purchaser can buy – usually between 4 and 8 tickets.”) [hereinafter Genn Testimony].

⁴Ticketmaster, Terms of Use, last visited Oct. 19, 2016, at <http://www.ticketmaster.com/h/terms.html>.

⁵Lin-Manuel Miranda, “Stop the Bots From Killing Broadway,” *New York Times*, June 7, 2016, at <http://www.nytimes.com/2016/06/07/opinion/stop-the-bots-from-killing-broadway.html>; Patrick Doyle, “Eric Church on Scalpers, Bro-Country and Blake Shelton Scandal,” *Rolling Stone*, June 11, 2014, at <http://www.rollingstone.com/music/news/eric-church-on-scalpers-bro-country-andblake-shelton-scandal-20140611>.

⁶Genn Testimony, at p.2.

⁷Ben Sisario, “Concert Industry Struggles With ‘Bots’ That Siphon Off Tickets,” *New York Times*, May 26, 2013, at <http://www.nytimes.com/2013/05/27/business/media/bots-that-siphon-off-tickets-frustrate-concert-promoters.html>.

⁸N.Y. OAG report, p. 4.

⁹Ibid.

¹⁰Shawntaye Hopkins, *Blame it on the Bots: States Act to Ban Ticket-Buying Software*, The Current State (Council of State Gov’ts), July-August 2016, at http://www.csg.org/pubs/capitolideas/enews/cs53_1.aspx (“about a dozen states have laws that ban ticket bots”).

¹¹See N.Y. OAG Report; Connecticut Report.

¹²N.Y. OAG Report, p 4.

of tickets per year are being acquired using bots. At present, there have been no reports of enforcement of any of the State laws.

LEGISLATIVE HISTORY

On July 13, 2016, Senator Moran (for himself, Senator Blumenthal, Senator Fischer, and Senator Schumer) introduced S. 3183, which was referred to the Committee on Commerce, Science, and Transportation. Additional cosponsors include Senators Nelson, Klobuchar, Cantwell, Warner, and Stabenow.

On September 13, 2016, the Consumer Protection, Product Safety, Insurance and Data Security Subcommittee held a hearing on S. 3183.

On September 21, 2016, the Committee held an Executive Session at which S. 3183 was considered. The bill was approved unanimously by voice vote and was ordered to be reported with an amendment (in the nature of a substitute).

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

S. 3183—Better Online Ticket Sales Act of 2016

S. 3183 would prohibit people from taking certain actions to circumvent technology used by ticket sellers to enforce online event ticket purchase rules and limits. The bill also would prohibit the resale of tickets obtained in that manner. The Federal Trade Commission (FTC) would enforce the proposed prohibition.

Based on information from the FTC about its current enforcement capabilities, CBO estimates that increased costs related to monitoring and enforcing the new prohibitions established by S. 3183 would total less than \$500,000 per year; such spending would be subject to the availability of appropriated funds.

In addition, CBO estimates that enacting S. 3183 would increase federal revenues from civil penalties imposed to enforce the new prohibition; therefore, pay-as-you-go procedures apply. However, CBO estimates that those collections would be insignificant because of the small number of cases that the agency would probably pursue. Enacting the bill would not affect direct spending.

CBO estimates that enacting S. 3183 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2027.

S. 3183 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

On September 9, 2016, CBO transmitted a cost estimate for H.R. 5104, the Better Online Ticket Sales Act of 2016, as ordered reported by the House Committee on Energy and Commerce on July 13, 2016. The two pieces of legislation are similar and CBO's estimates of the budgetary effects are the same.

The CBO staff contact for this estimate is Stephen Rabent. The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

NUMBER OF PERSONS COVERED

The bill would establish a new prohibition on conduct relating to circumvention of ticket access control measures, with certain exceptions including investigation and research. This prohibition would be treated as a trade rule defining an unfair or a deceptive act or practice under the Federal Trade Commission Act (15 U.S.C. 41 et seq.; FTC Act). Therefore, this legislation would subject those individuals or businesses engaged in such conduct to new regulations.

ECONOMIC IMPACT

S. 3183 is expected to have an overall positive impact on the Nation's economy. While this legislation aims to prohibit the use of bots, and therefore is intended to have a negative impact on the business model of ticket resellers who employ this method to purchase improperly available tickets in large numbers, S. 3183 nevertheless would have a positive impact on the secondary ticket sellers to the extent that it would advance a fair and competitive ticket market. S. 3183 would ensure a large percentage of available tickets remain available to fans at fair and reasonable prices, which in turn would encourage additional spending on merchandise, concessions, and additional events.

PRIVACY

S. 3183 would not have a negative impact on the personal privacy of individuals.

PAPERWORK

S. 3183 would increase the paperwork burden of States, requiring the attorney general of a State to notify the Federal Trade Commission (FTC) in writing that the attorney general intends to bring a civil action under this legislation before initiating the civil action (if feasible, or otherwise immediately upon instituting the civil action), including a copy of the complaint filed to initiate the civil action.

CONGRESSIONALLY DIRECTED SPENDING

In compliance with paragraph 4(b) of rule XLIV of the Standing Rules of the Senate, the Committee provides that no provisions contained in the bill, as reported, meet the definition of congressionally directed spending items under the rule.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title.

This section would provide that the Act may be cited as the "Better Online Ticket Sales Act of 2016" or the "BOTS Act of 2016."

Section 2. Unfair and deceptive acts and practices relating to circumvention of ticket access control measures.

This section would prohibit any individual from circumventing a security measure, access control system, or other technological control or measure on an Internet website of a ticket issuer that is used by the ticket issuer to enforce posted event ticket purchasing limits or to maintain the integrity of posted online ticket purchasing order rules. It also would prohibit the sale or offer for sale of any event ticket in interstate commerce obtained in violation of these measures if the person selling or offering to sell the tickets either participated directly in or had the ability to control the conduct in violation of these measures, or knew or should have known that the event tickets were acquired in violation of these measures.

This section would exempt the creation or use of any computer software or system to: investigate, or further the enforcement or defense of, any alleged violation of this section or other statute or regulation; or engage in research necessary to identify and analyze flaws and vulnerabilities of measures, systems, or controls if these research activities are conducted to advance the state of knowledge in the field of computer system security or to assist in the development of computer security product.

This section would require the FTC to enforce this section as an unfair or deceptive act or practice under the FTC Act, while holding any individual in violation of this section subject to the penalties and entitling them to the privileges and immunities of that law.

This section would allow the attorney general of a State to bring civil action on behalf of the State's residents, as *parens patriae*, if the attorney general believes that an interest of the State's residents has been or is threatened by any person in violation of this section. It would provide a State's attorney general the authority to obtain damages, restitution, or other compensation on behalf of the State's residents.

This section also would require a State's attorney general to notify the FTC of any civil action pertaining to this section within 10 days of the action's initiation with some feasibility exceptions provided. It would allow the FTC to intervene in any civil action brought by a State's attorney general under this section.

This section would reaffirm that nothing in the section may be construed to prevent a State's attorney general from exercising his or her investigatory powers by the laws of the State. This section would prevent a State's attorney general, in an effort to preempt action by the FTC, from bringing a civil action under this section if the FTC has already instituted a civil action or an administrative action against the same defendant.

It would authorize that any action under this section may be brought in the applicable district court of the United States or another court of competent jurisdiction. This section also would authorize any other consumer protection officer authorized by a State to bring a civil action within this section subject to the same requirements and limitations that apply to a State's attorney general.

This section contains a savings provision that would provide that nothing in the section be construed to limit, impair, or supersede the operation of the FTC Act or any other provision of Federal law.

Section 3. Definitions.

Section 3 of the bill would define terms used in the bill, including “covered events,” “tickets,” and “ticket issuers.”

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee states that the bill as reported would make no change to existing law.

