

111TH CONGRESS
2D SESSION

H. R. 4795

To prohibit restrictions on the resale of event tickets sold in interstate commerce as an unfair or deceptive act or practice.

IN THE HOUSE OF REPRESENTATIVES

MARCH 9, 2010

Mr. MATHESON (for himself and Mr. TERRY) introduced the following bill;
which was referred to the Committee on Energy and Commerce

A BILL

To prohibit restrictions on the resale of event tickets sold in interstate commerce as an unfair or deceptive act or practice.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Ticket Act”.

5 **SEC. 2. FINDINGS.**

6 Congress finds the following:

7 (1) Sponsors and promoters of major music,
8 sporting, and theatrical events are increasingly seek-
9 ing to control the resale of tickets to such events in
10 the secondary market, by employing restrictive State

1 laws, imposing and enforcing onerous contractual or
2 license terms, and imposing technological barriers on
3 ticket resale.

4 (2) Such restrictions and downstream controls
5 substantially impede interstate commerce in event
6 tickets, drive up ticket prices, reduce availability of
7 tickets to interested purchasers, narrow the choices
8 available to the public, and are unfair to consumers.

9 (3) Eliminating such restrictions and applying
10 free market principles to the secondary market in
11 event tickets would encourage a robust competitive
12 marketplace in such tickets, would promote the
13 healthy growth of electronic commerce in such tick-
14 ets in online marketplaces, and would be in the best
15 interests of ticket purchasers, fans, and the general
16 public.

17 (4) Purchasers of event tickets, whether in the
18 primary or secondary ticket markets, are entitled to
19 minimum consumer protection standards, including
20 provisions for full refunds of ticket purchases in ap-
21 propriate circumstances.

22 (5) In order to achieve a nationwide free mar-
23 ket in resale of event tickets, Congress must act to
24 preempt State or local laws that unjustifiably re-
25 strict such resales, while preserving State and local

1 authority to legislate or regulate to prevent fraud,
2 maintain public order, or vindicate other legitimate
3 State and local interests.

4 **SEC. 3. DEFINITIONS.**

5 In this Act:

6 (1) COMMISSION.—The term “Commission”
7 means the Federal Trade Commission.

8 (2) EVENT.—The term “event” means any con-
9 cert, theatrical performance, sporting event, exhi-
10 bition, show, or similar scheduled activity, taking
11 place in a venue with a seating or attendance capac-
12 ity exceeding 1,000 persons—

13 (A) that is open to the general public;

14 (B) for which an admission fee is charged;

15 and

16 (C) that is promoted, advertised, or mar-
17 keted in interstate commerce or for which event
18 tickets are generally sold in interstate com-
19 merce.

20 (3) EVENT TICKET.—The term “event ticket”
21 means any physical, electronic, or other form of a
22 certificate, document, voucher, token, or other evi-
23 dence indicating that the bearer, possessor, or per-
24 son entitled to possession through purchase or other-
25 wise has—

1 (A) a revocable or irrevocable right, privi-
2 lege, or license to enter an event venue or oc-
3 cupy a particular seat or area in an event venue
4 with respect to one or more events; or

5 (B) an entitlement to purchase such a
6 right, privilege, or license with respect to one or
7 more future events.

8 (4) PERSON.—The term “person” means any
9 natural person, partnership, corporation, association,
10 or other legal entity, including any person acting
11 under color or authority of State law.

12 (5) RESALE.—The term “resale” includes any
13 form of transfer, or offering to transfer, of posses-
14 sion or entitlement to possession of an event ticket
15 from one person to another, with or without consid-
16 eration, whether in person or by means of telephone,
17 mail, delivery service, facsimile, Internet, email, or
18 other electronic means. The term “resale” does not
19 include the initial sale of an event ticket by the tick-
20 et issuer.

21 (6) STATE.—The term “State” means any of
22 the several States, the District of Columbia, the
23 Commonwealth of Puerto Rico, or any other terri-
24 tory or possession of the United States.

1 (7) TICKET ISSUER.—The term “ticket issuer”
2 means any person that first makes event tickets
3 available, directly or indirectly, to the general public,
4 and may include—

5 (A) the operator of a venue;

6 (B) the sponsor or promoter of an event;

7 (C) a sports team participating in an event
8 or a league whose teams are participating in an
9 event;

10 (D) a theater company, musical group or
11 similar participant in an event; or

12 (E) an agent of any such person.

13 (8) VENUE.—The term “venue” means the the-
14 ater, stadium, field, hall, or other facility where an
15 event takes place.

16 **SEC. 4. PROHIBITION.**

17 (a) UNLAWFUL CONDUCT.—Except as otherwise pro-
18 vided in this Act, it shall be unlawful for any ticket issuer
19 to prohibit or restrict the resale or offering for resale of
20 an event ticket by a lawful possessor thereof.

21 (b) ACTIVITIES DESCRIBED.—Activities prohibited to
22 ticket issuers by this Act include—

23 (1) purporting to impose license or contractual
24 terms on the initial sale of event tickets (including
25 terms printed on the back of a physical ticket) that

1 prohibit resale of the ticket, or restrict the price or
2 other terms and conditions under which a ticket may
3 be resold;

4 (2) requiring the purchaser of a ticket, whether
5 for a single event or for a series or season of events,
6 to agree not to resell the ticket, or to resell the tick-
7 et only through a specific channel approved by the
8 ticket issuer;

9 (3) bringing legal action, based on an unlawful
10 prohibition or restriction on resale of an event ticket,
11 against—

12 (A) a purchaser who resells or offers to re-
13 sell an event ticket without permission of the
14 ticket issuer, or in violation of a restriction pur-
15 portedly imposed by the ticket issuer;

16 (B) persons who facilitate or provide serv-
17 ices for the resale of event tickets without such
18 permission or in alleged violation of such a re-
19 striction; or

20 (C) the operator of a physical or electronic
21 marketplace in which a ticket is offered for re-
22 sale without such permission or in alleged viola-
23 tion of such a restriction;

24 (4) imposing any penalty on a ticket purchaser
25 who resells or offers to resell an event ticket without

1 permission or in violation of a restriction purport-
2 edly imposed by the ticket issuer, or treating such
3 a purchaser in any material way less favorably than
4 a similarly situated purchaser who does not resell or
5 offer to resell an event ticket, or who complies with
6 resale restrictions purportedly imposed by the ticket
7 issuer;

8 (5) employing technological means, including
9 any means of promoting, carrying out, documenting
10 or verifying sales of event tickets, or of controlling
11 entry to venues by lawful possessors of event tickets,
12 that have the effect of prohibiting or restricting the
13 ability of purchasers to resell such tickets; or

14 (6) seeking to limit or restrict the price, or to
15 impose a minimum or maximum price, at which an
16 event ticket may be resold.

17 **SEC. 5. CONSUMER PROTECTION MINIMUM STANDARDS.**

18 (a) UNLAWFUL CONDUCT.—It shall be unlawful for
19 any person to engage in the primary or resale market for
20 event ticket sales in any manner specified in subsection
21 (b) without complying with the consumer protection min-
22 imum standards specified in this section with regard to
23 event ticket sales.

24 (b) APPLICATION.—This section applies to all per-
25 sons engaged in the trade or business of—

1 (1) acting as a ticket issuer;

2 (2) engaging in the resale of event tickets, ex-
3 cept in the case of an individual engaged in resales
4 of no more than 25 tickets in any one year; or

5 (3) providing a physical or electronic market-
6 place for the sale or resale of event tickets by other
7 persons.

8 (c) COMPLIANCE.—A person subject to this section
9 may comply with its provisions by conducting its sales or
10 resales of event tickets in a physical or electronic market-
11 place that provides the consumer protection minimum
12 standards specified in this section.

13 (d) GENERAL REQUIREMENTS.—All persons subject
14 to this section shall—

15 (1) maintain a toll-free telephone number for
16 complaints and inquiries regarding its activities in
17 the sale or resale of event tickets; and

18 (2) implement and reasonably publicize a stand-
19 ard refund policy that meets the minimum standards
20 stated in subsection (d).

21 (e) REQUIREMENTS OF REFUND POLICY.—The
22 standard refund policy described in subsection (c)—

23 (1) shall provide a consumer who purchases an
24 event ticket from the person a full refund if—

1 (A) the event is canceled before the sched-
2 uled occurrence of the event, and is not re-
3 scheduled;

4 (B) the event ticket sold by the person and
5 received by the purchaser is counterfeit;

6 (C) the event ticket has been canceled by
7 the ticket issuer for nonpayment by the original
8 purchaser, or for any reason other than an act
9 or omission of the consumer;

10 (D) the event ticket materially and to the
11 detriment of the consumer fails to conform to
12 the description provided by the seller; or

13 (E) the event ticket was not delivered to
14 the consumer prior to the occurrence of the
15 event, unless such failure of delivery was due to
16 any act or omission of the consumer;

17 (2) shall include in a full refund the full price
18 paid by the consumer for the event ticket, together
19 with any fees charged in connection with that pur-
20 chase, including convenience fees, processing fees,
21 at-home printing charges, shipping and handling
22 charges, or delivery fees; and

23 (3) may condition entitlement to a refund upon
24 timely return of the ticket purchased, and may in-

1 clude reasonable safeguards against abuse of the
2 policy.

3 (f) REQUIREMENTS AS MINIMUM REQUIREMENTS.—

4 Nothing in this section shall be construed to prohibit any
5 person subject to this section from implementing con-
6 sumer protection policies that exceed the minimum stand-
7 ard set forth in this section, and that are otherwise compli-
8 ant with this Act.

9 **SEC. 6. ENFORCEMENT.**

10 (a) UNFAIR AND DECEPTIVE ACT OR PRACTICE.—

11 Any violation of section 4 or 5 shall be treated as a viola-
12 tion of a rule under section 18 of the Federal Trade Com-
13 mission Act regarding unfair or deceptive acts or prac-
14 tices.

15 (b) ENFORCEMENT BY THE FEDERAL TRADE COM-

16 MISSION.—The Commission shall enforce this Act in the
17 same manner, by the same means, and with the same ju-
18 risdiction, powers and duties, as though all applicable pro-
19 visions of the Federal Trade Commission Act were incor-
20 porated into and made a part of this Act.

21 (c) ENFORCEMENT BY STATES.—

22 (1) CIVIL ACTION.—In any case in which the
23 attorney general of a State, or an agency of a State
24 responsible for consumer protection, has reason to
25 believe that an interest of the residents of that State

1 has been or is adversely affected by any person who
2 violates section 4 or 5 of this Act, the attorney gen-
3 eral or the State agency, as *parens patriae*, may
4 bring a civil action on behalf of the residents of the
5 State in a district court of the United States of ap-
6 propriate jurisdiction—

7 (A) to enjoin further violation of section 4
8 or 5 by the defendant; or

9 (B) to obtain damages on behalf of resi-
10 dents of the State, in an amount equal to the
11 greater of—

12 (i) the actual monetary loss suffered
13 by such residents; or

14 (ii) the amount determined under
15 paragraph (2).

16 (2) STATUTORY DAMAGES.—

17 (A) IN GENERAL.—For purposes of para-
18 graph (1)(B)(ii), the amount determined under
19 this paragraph is the amount calculated by mul-
20 tiplying the number of violations by up to \$100,
21 with each ticket subject to an unlawful prohibi-
22 tion or restriction, or sold or offered to be sold
23 in violation of section 5, counted as a separate
24 violation.

1 (B) LIMITATION.—For any violation of
2 section 4 or 5 with respect to any one event, the
3 amount determined under subparagraph (A)
4 may not exceed \$1,000,000.

5 (3) ATTORNEY FEES.—In the case of any suc-
6 cessful action under paragraph (1), the court, in its
7 discretion, may award the costs of the action and
8 reasonable attorney fees to the State.

9 (4) RIGHTS OF FEDERAL REGULATORS.—The
10 State shall serve prior written notice of any action
11 under paragraph (1) upon the Federal Trade Com-
12 mission and provide the Commission with a copy of
13 its complaint, except in any case in which such prior
14 notice is not feasible, in which case the State shall
15 serve such notice immediately upon instituting such
16 action. The Federal Trade Commission shall have
17 the right—

18 (A) to intervene in the action;

19 (B) upon so intervening, to be heard on all
20 matters arising therein;

21 (C) to remove the action to the appropriate
22 United States district court; and

23 (D) to file petitions for appeal.

24 (5) CONSTRUCTION.—For purposes of bringing
25 any civil action under paragraph (1), nothing in this

1 Act shall be construed to prevent an attorney gen-
2 eral of a State from exercising the powers conferred
3 on the attorney general by the laws of that State
4 to—

5 (A) conduct investigations;

6 (B) administer oaths or affirmations; or

7 (C) compel the attendance of witnesses or
8 the production of documentary and other evi-
9 dence.

10 (6) VENUE; SERVICE OF PROCESS.—

11 (A) VENUE.—Any action brought under
12 paragraph (1) may be brought in the district
13 court of the United States that meets applicable
14 requirements relating to venue under section
15 1391 of title 28, United States Code.

16 (B) SERVICE OF PROCESS.—In an action
17 brought under paragraph (1), process may be
18 served in any district in which the defendant—

19 (i) is an inhabitant; or

20 (ii) maintains a physical place of busi-
21 ness.

22 (7) LIMITATION ON STATE ACTION WHILE FED-
23 ERAL ACTION IS PENDING.—If the Commission has
24 instituted a civil action or an administrative action
25 for violation of this Act, no State attorney general,

1 or official or agency of a State, may bring an action
2 under this subsection during the pendency of that
3 action against any defendant named in the com-
4 plaint of the Commission for any violation of this
5 Act alleged in the complaint.

6 **SEC. 7. EFFECT ON STATE LAW.**

7 (a) PREEMPTION IN GENERAL.—Except as otherwise
8 provided in this section, this Act preempts and supersedes
9 any inconsistent statute, regulation, or rule of a State or
10 political subdivision of a State that purports to permit any
11 action prohibited by this Act, but only to the extent of
12 such inconsistency.

13 (b) PREEMPTION OF ANTISCALPING LAWS.—This
14 Act preempts and supersedes any statute, regulation, or
15 rule of a State or political subdivision of a State that lim-
16 its the price at which an event ticket may be resold.

17 (c) SAVINGS.—Nothing in this Act shall be construed
18 to preempt the applicability of the law of a State or polit-
19 ical subdivision of a State that—

20 (1) regulates or prohibits the sale or resale of
21 event tickets—

22 (A) based on proximity of the location of
23 sale to the location of a venue; or

24 (B) in a manner that constitutes disorderly
25 conduct or breach of the peace;

1 (2) empowers the operator of a venue or its
2 agent to deny admission to any person, or to eject
3 any person from an event, in order to preserve pub-
4 lic safety or order, or to prevent or restrict the ad-
5 mission of minors;

6 (3) prohibits fraud, deception, or similar prac-
7 tices in connection with the sale or resale of tickets,
8 or prohibits the sale or resale of counterfeit tickets;

9 (4) treats a ticket as a license for any purpose
10 other than the prohibition or restriction of resale;

11 (5) regulates the initial sale of event tickets by
12 limiting the number of tickets that may be pur-
13 chased from a ticket issuer by a single person; or

14 (6) prohibits the intentional circumvention of
15 technological means employed by ticket issuers to
16 enforce limitations on the number of tickets that
17 may be purchased by a single person, or the sale or
18 distribution of devices, computer programs, or other
19 tools for the purpose of such circumvention.

20 **SEC. 8. EXCEPTIONS.**

21 Nothing in this Act shall be interpreted to invalidate
22 restrictions on the resale of tickets imposed by—

23 (1) sponsors or promoters of events intended
24 solely to benefit charitable endeavors, for which all
25 tickets are distributed free of charge;

1 (2) not-for-profit educational institutions, with
2 respect to athletic events involving athletes or teams
3 of such institutions, to the extent that such restric-
4 tions apply to tickets initially distributed by the in-
5 stitution to—

6 (A) students, faculty, staff members, or
7 alumni without charge; or

8 (B) members of bona fide booster organi-
9 zations consisting of those making substantial
10 financial contributions to the institution.

11 **SEC. 9. EFFECTIVE DATE.**

12 This Act shall take effect 1 year after the date of
13 enactment, and shall apply to tickets for all events which
14 occur on or after the effective date.

○