

114TH CONGRESS
2D SESSION

H. R. 5245

To direct the Federal Trade Commission to prescribe rules to protect consumers from unfair and deceptive acts and practices in connection with primary and secondary ticket sales, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 16, 2016

Mr. PASCRELL introduced the following bill; which was referred to the
Committee on Energy and Commerce

A BILL

To direct the Federal Trade Commission to prescribe rules to protect consumers from unfair and deceptive acts and practices in connection with primary and secondary ticket sales, and for other purposes.

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 “Better Oversight of
5 Secondary Sales and Accountability in Concert Ticketing
6 Act of 2016”.

7 **SEC. 2. DEFINITIONS.**

8 As used in this Act the following definitions apply:

1 (1) The term “ancillary charges” means service
2 fees, convenience charges, parking fees, and other
3 charges associated with the purchase of a ticket and
4 not included in the base price of the ticket.

5 (2) The term “base price” means the price
6 charged for a ticket other than any ancillary
7 charges.

8 (3) The term “box office” means a physical lo-
9 cation where tickets are offered for primary sale.

10 (4) The term “bundled series tickets” means
11 packages of tickets for multiple events that are part
12 of the same entertainment series.

13 (5) The term “distribution method” means the
14 manner in which a primary ticket seller distributes
15 tickets to a particular event, whether through pri-
16 mary sale, limited presale promotions, donations to
17 charity, reservations of season ticket holders, or allo-
18 cated to the primary ticket seller, team, artist, or
19 venue.

20 (6) The term “face value” means the total price
21 of a ticket including both the base price and any an-
22 cillary charges.

23 (7) The term “primary sale”, with regards to a
24 ticket, means the initial sale of a ticket that has not
25 been sold previous to such sale, by a primary ticket

1 seller to the general public on or after the date ad-
2 vertised such sale.

3 (8) The term “primary ticket seller” means an
4 owner or operator of a venue or a sports team, a
5 manager or provider of an event, or a provider of
6 ticketing services (or an agent of such owner, oper-
7 ator, manager, or provider) that engages in the pri-
8 mary sale of tickets for an event or retains the au-
9 thority to otherwise distribute tickets.

10 (9) The terms “resale” or “secondary sale”,
11 with regards to a ticket, mean any sale of a ticket
12 that occurs after the initial sale of the ticket.

13 (10) The term “secondary ticket sales market-
14 place” means a website, software application for a
15 mobile device, any other digital platform, or portion
16 thereof, whose primary purpose is to facilitate the
17 resale of tickets to consumers.

18 (11) The term “ticket” means a ticket of ad-
19 mission to a sporting event, theater, musical per-
20 formance, or place of public amusement of any kind.

21 **SEC. 3. RULES ON TRANSPARENCY OF TICKET MARKETING,**
22 **DISTRIBUTION, AND PRICING BY PRIMARY**
23 **TICKET SELLERS.**

24 Not later than 180 days after the date of enactment
25 of this Act, the Federal Trade Commission shall promul-

1 gate rules in accordance with section 553 of title 5, United
2 States Code, that include the following requirements and
3 prohibitions with regard to the primary sale, distribution,
4 and pricing of tickets:

5 (1) A requirement that a primary ticket seller
6 disclose and display on the website of such primary
7 ticket seller the total number of tickets offered for
8 sale by such primary ticket seller not less than 7
9 days before the date on which tickets shall be avail-
10 able for primary sale.

11 (2) A requirement that a primary ticket seller
12 make publicly available, not less than 7 days before
13 the day on which tickets shall be available for pri-
14 mary sale, the total number and distribution method
15 of all tickets not made available for sale to the gen-
16 eral public, the distribution of which is the responsi-
17 bility of that primary ticket seller.

18 (3) A requirement that the distribution method
19 for each particular ticket and the date and time of
20 the primary sale be printed on each such ticket.

21 (4) A requirement that the primary ticket seller
22 include, with any listing of the price of a ticket on
23 the primary ticket seller's website or in any pro-
24 motional material where the ticket price is listed, all
25 ancillary charges related to the purchase of a ticket,

1 and include such charges and the total cost to the
2 consumer on each individual ticket.

3 (5) A requirement that a primary ticket seller
4 include all ancillary charges in any refund of a ticket
5 that is provided for in the primary ticket seller's re-
6 fund policies.

7 (6) A prohibition on requiring that a consumer
8 who has purchased tickets from a primary ticket
9 seller only be permitted to resell such tickets in a
10 manner determined by the primary ticket seller.

11 (7) A requirement that a primary ticket seller
12 provide a full refund to any consumer who purchases
13 a nontransferable ticket if requested by the con-
14 sumer not later than 1 week prior to the event.

15 **SEC. 4. RULES FOR SECONDARY TICKET SALES MARKET-**
16 **PLACES.**

17 Not later than 180 days after the date of enactment
18 of this Act, the Federal Trade Commission shall promul-
19 gate rules in accordance with section 553 of title 5, United
20 States Code, that include the following requirements and
21 prohibitions with regard to the secondary sale, distribu-
22 tion, and pricing of tickets:

23 (1) A requirement that if the secondary ticket
24 sales marketplace does not possess the ticket at the

1 time of the sale that such secondary ticket sales
2 marketplace provide—

3 (A) a clear statement that the secondary
4 ticket sales marketplace does not possess the
5 ticket; and

6 (B) an explanation of procedures to be fol-
7 lowed by the purchaser to obtain a refund from
8 the secondary ticket sales marketplace if the
9 ticket the purchaser ultimately receives does not
10 match the description of the ticket by the sec-
11 ondary ticket sales marketplace.

12 (2) A prohibition on the use of software to cir-
13 cumvent a security measure, access control system,
14 or other control or measure on a primary ticket sell-
15 er's Internet website that is used by the primary
16 seller to ensure equitable consumer access to tickets
17 for any given event;

18 (3) A prohibition on the sale of any ticket
19 knowingly obtained by a secondary seller in violation
20 of paragraph (2).

21 (4) A requirement that a secondary ticket sales
22 marketplace and online resale marketplace disclose
23 upon offering a ticket for resale—

24 (A) the distribution method and face value
25 of each ticket;

1 (B) the precise location of the seat or
2 space to which the ticket would entitle the bear-
3 er, or, if information about the precise location
4 of the seat or space is not available, descriptive
5 information about the location of the seat or
6 space, such as a description of a section or
7 other area within the venue where the seat or
8 space is located; and

9 (C) if the secondary ticket sales market-
10 place purchased the ticket during a public sale
11 of tickets to the event, the date and time of the
12 purchase of the ticket by the secondary ticket
13 sales marketplace.

14 (5) A requirement that an online resale market-
15 place—

16 (A) not make any representation of affili-
17 ation or endorsement with a venue, team, or
18 artist, as the case may be, without the express
19 written consent of the venue, team, or artist, as
20 applicable, except when it constitutes fair use
21 and is consistent with applicable laws; and

22 (B) post clear and conspicuous notice on
23 the website of such online resale marketplace
24 that the website is for the secondary sale of
25 tickets and a requirement that the user confirm

1 having read such notice before starting any
2 transaction.

3 (6) A prohibition on the resale of a ticket by an
4 individual employee of any venue, primary ticket
5 seller, team, artist, online resale marketplace, or box
6 office that is involved in hosting, promoting, per-
7 forming in, or selling tickets if such resale—

8 (A) is for a higher price than face value of
9 the ticket; or

10 (B) is made to any third party and the em-
11 ployee has actual knowledge, or knowledge fair-
12 ly implied on the basis of objective cir-
13 cumstances, that the third party intends to sell
14 the ticket for a higher price than face value of
15 the ticket.

16 (7) A requirement that an online resale market-
17 place disclose to the consumer when the secondary
18 ticket sales marketplace of a ticket is the primary
19 ticket seller, venue, team, or artist associated with
20 the event to which the ticket relates.

21 **SEC. 5. ENFORCEMENT.**

22 (a) **FEDERAL TRADE COMMISSION.**—A violation of a
23 rule prescribed pursuant to section 3 or 4 or a violation
24 of section 5(a)(1) shall be treated as a violation of a rule
25 defining an unfair or deceptive act or practice prescribed

1 under section 18(a)(1)(B) of the Federal Trade Commis-
2 sion Act (15 U.S.C. 57a(a)(1)(B)). The Federal Trade
3 Commission shall enforce this Act in the same manner,
4 by the same means, and with the same jurisdiction as
5 though all applicable terms and provisions of the Federal
6 Trade Commission Act were incorporated into and made
7 a part of this Act.

8 (b) STATE ATTORNEYS GENERAL.—

9 (1) IN GENERAL.—Except as provided in para-
10 graph (6), in any case in which the attorney general
11 of a State has reason to believe that an interest of
12 the residents of that State has been or is threatened
13 or adversely affected by the engagement of any per-
14 son in a practice that violates a rule prescribed
15 under section 3 or 4, the State, as *parens patriae*,
16 may bring a civil action on behalf of the residents
17 of the State in an appropriate district court of the
18 United States or other court of competent jurisdic-
19 tion to—

20 (A) enjoin that practice;

21 (B) enforce compliance with the rule;

22 (C) obtain damages, restitution, or other
23 compensation on behalf of residents of the
24 State; and

1 (D) obtain such other relief as the court
2 may consider to be appropriate.

3 (2) NOTICE.—The State shall serve written no-
4 tice to the Commission of any civil action under
5 paragraph (1) at least 60 days prior to initiating
6 such civil action. The notice shall include a copy of
7 the complaint to be filed to initiate such civil action,
8 except that if it is not feasible for the State to pro-
9 vide such prior notice, the State shall provide notice
10 immediately upon instituting such civil action.

11 (3) INTERVENTION BY FTC.—Upon receiving
12 the notice required by paragraph (2), the Commis-
13 sion may intervene in such civil action and upon in-
14 tervening—

15 (A) be heard on all matters arising in such
16 civil action;

17 (B) remove the action to the appropriate
18 United States district court; and

19 (C) file petitions for appeal of a decision in
20 such civil action.

21 (4) SAVINGS CLAUSE.—Nothing in this sub-
22 section shall prevent the attorney general of a State
23 from exercising the powers conferred on the attorney
24 general by the laws of such State to conduct inves-
25 tigations or to administer oaths or affirmations or to

1 compel the attendance of witnesses or the production
2 of documentary and other evidence. Nothing in this
3 section shall prohibit the attorney general of a State,
4 or other authorized State officer, from proceeding in
5 State or Federal court on the basis of an alleged vio-
6 lation of any civil or criminal statute of that State.

7 (5) VENUE; SERVICE OF PROCESS; JOINDER.—

8 In a civil action brought under paragraph (1)—

9 (A) the venue shall be a judicial district in
10 which the defendant or a related party is found,
11 is an inhabitant, or transacts business, or wher-
12 ever venue is proper under section 1391 of title
13 28, United States Code;

14 (B) process may be served without regard
15 to the territorial limits of the district or of the
16 State in which the civil action is instituted; and

17 (C) a person who participated with a de-
18 fendant or related party in an alleged violation
19 that is being litigated in the civil action may be
20 joined in the civil action without regard to the
21 residence of the person.

22 (6) PREEMPTIVE ACTION BY FTC.—Whenever a
23 civil action or an administrative action has been in-
24 stituted by or on behalf of the Commission for viola-
25 tion of any rule described under paragraph (1), no

1 State may, during the pendency of such action insti-
2 tuted by or on behalf of the Commission, institute
3 a civil action under paragraph (1) against any de-
4 fendant named in the complaint in such action for
5 violation of any rule as alleged in such complaint.

6 (7) AWARD OF COSTS AND FEES.—If a State
7 prevails in any civil action under paragraph (1), the
8 State can recover reasonable costs and attorney fees
9 from the lender or related party.

10 (c) PRIVATE RIGHT OF ACTION.—Any person who
11 suffers injury as a result of another person's violation of
12 a rule prescribed pursuant to section 3 or 4, may bring
13 a civil action against such person in a United States dis-
14 trict court and may recover from such person damages
15 for such injury plus \$1,000 for each requirement or pro-
16 hibited act set forth in such sections that such person vio-
17 lated with respect to a ticket sold to the person bringing
18 such action, and reasonable attorneys' fees and costs.

19 **SEC. 6. NONPREEMPTION.**

20 Nothing in this Act shall affect the authority of any
21 State or local government to establish or continue in effect
22 a provision of law of the State or local government relating
23 to the regulation of the resale of tickets to events or the
24 pricing of such tickets for resale, except to the extent that
25 such provision is inconsistent with this Act or a regulation

1 promulgated under this Act, and then only to the extent
2 of the inconsistency. A provision of law of a State or local
3 government is not inconsistent with this Act or a regula-
4 tion promulgated under this Act if such provision provides
5 equal or greater protection to consumers than the protec-
6 tion provided under this Act or such regulation.

7 **SEC. 7. FTC STUDY OF TICKET MARKET.**

8 (a) STUDY.—The Federal Trade Commission shall
9 conduct a study of the ticket market to determine—

10 (1) who is purchasing tickets from primary
11 ticket sellers and how many of these tickets are later
12 resold by secondary ticket sales marketplaces;

13 (2) the impact on consumers of nontransferable
14 tickets and whether all tickets should be required to
15 be transferable; and

16 (3) the extent to which automated ticketing-
17 purchasing programs and other computer software is
18 used to purchase tickets or circumvent ticketing
19 website safeguards used by primary ticket sellers.

20 (b) REPORT.—Not later than one year after the date
21 of enactment of this Act, the Commission shall transmit
22 a report to Congress containing the findings of the study.

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