

116TH CONGRESS
1ST SESSION

S. 1850

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 SENATE OF THE UNITED STATES

JUNE 13, 2019

Mr. BLUMENTHAL introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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 2019”.

7 **SEC. 2. DEFINITIONS.**

8 As used in this Act, the following definitions apply:

1 (1) The term “ancillary charges” means all fees
2 that must be paid in order to secure a ticket from
3 a primary ticket seller or secondary ticket market-
4 place, including service fees, convenience charges,
5 parking fees, taxes and other charges.

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

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

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

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

21 (6) The term “primary sale”, with regards to a
22 ticket, means the initial sale of a ticket that has not
23 been sold previous to such sale, by a primary ticket
24 seller to the general public on or after the advertised
25 date of such sale.

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

8 (8) The term “purchaser” means any person
9 who purchases a ticket from a primary ticket seller
10 or a secondary ticket sales marketplace.

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

14 (10) The term “secondary ticket sales market-
15 place” means a business, including a website, soft-
16 ware application for a mobile device, any other dig-
17 ital platform, or portion thereof, of a physical seller
18 whose primary purpose is to facilitate the resale of
19 tickets to purchasers.

20 (11) The term “ticket” means a ticket of ad-
21 mission to a sporting event, theater, musical per-
22 formance, or place of public amusement of any kind,
23 including bundled series tickets.

1 **SEC. 3. RULES ON TRANSPARENCY OF TICKET MARKETING,**
2 **DISTRIBUTION, AND PRICING BY PRIMARY**
3 **TICKET SELLERS.**

4 Not later than 180 days after the date of enactment
5 of this Act, the Federal Trade Commission shall promul-
6 gate rules in accordance with section 553 of title 5, United
7 States Code, that include the following requirements and
8 prohibitions with regard to the primary sale, distribution,
9 and pricing of tickets:

10 (1) A requirement that a primary ticket seller
11 disclose and display on the website and at the box
12 office of such primary ticket seller the total number
13 of tickets offered for sale to the general public by
14 such primary ticket seller not less than 7 days be-
15 fore the date on which tickets shall be available for
16 primary sale.

17 (2) A requirement that the primary ticket seller
18 clearly and conspicuously disclose all ancillary
19 charges to purchasers at the beginning of a trans-
20 action before a ticket is selected for purchase. A pri-
21 mary ticket seller shall display the total cost of the
22 ticket including all ancillary charges in all price
23 quotes and advertisements. The price of the ticket
24 may not change during the purchase process.

25 (3) A requirement that a primary ticket seller
26 include the total cost of a ticket in including all an-

1 cillary charges in any refund of a ticket that is pro-
 2 vided for in the primary ticket seller's refund poli-
 3 cies.

4 (4) A prohibition on restricting the ability of a
 5 purchaser who has purchased tickets from a primary
 6 ticket seller to resell any such tickets.

7 (5) A prohibition on requiring a minimum price
 8 for the resale of any tickets purchased from a pri-
 9 mary ticket seller.

10 (6) A requirement that the primary ticket seller
 11 shall disclose any guarantee or refund policy before
 12 the completion of the sale of a ticket.

13 **SEC. 4. RULES FOR SECONDARY TICKET SALES MARKET-**
 14 **PLACES.**

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

21 (1) A requirement that if the secondary ticket
 22 sales marketplace does not possess the ticket at the
 23 time of the sale that such secondary ticket sales
 24 marketplace provide—

1 (A) a clear and conspicuous statement that
2 the secondary ticket sales marketplace does not
3 possess the ticket; and

4 (B) an explanation of how to obtain a re-
5 fund from the secondary ticket sales market-
6 place if the purchaser receives a ticket that does
7 not match the description of the ticket by the
8 secondary ticket sales marketplace.

9 (2) A requirement that a secondary ticket sales
10 marketplace disclose to a purchaser when the sec-
11 ondary ticket sales marketplace is also the primary
12 ticket seller, venue, team, or artist associated with
13 the event.

14 (3) A requirement that a secondary ticket sales
15 marketplace disclose all ancillary charges to pur-
16 chasers at the beginning of a transaction before a
17 ticket is selected for purchase. A secondary ticket
18 sales marketplace shall display the total cost of the
19 ticket including all ancillary charges in all price
20 quotes and advertisements. The price of the ticket
21 may not change in the selection or during the pur-
22 chase process.

23 (4) A requirement that a secondary ticket sales
24 marketplace disclose upon offering a ticket for re-
25 sale—

1 (A) the distribution method and the total
2 cost of each ticket including all ancillary
3 charges;

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

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

17 (5) A requirement that, if a secondary ticket
18 sales marketplace guarantees delivery of tickets to a
19 purchaser and fails to deliver such tickets, the sec-
20 ondary ticket sales marketplace shall provide a full
21 refund for the total cost of the ticket, including all
22 ancillary charges, barring non-delivery due to causes
23 beyond reasonable control of the seller including a
24 natural disaster, civil disturbance, or otherwise un-
25 foreseeable impediment.

1 (6) A requirement that the secondary ticket
2 sales marketplace disclose to a person purchasing a
3 ticket any delivery guarantee policy described in
4 paragraph (5) before completion of the sale of the
5 ticket.

6 (7) A requirement that a secondary ticket sales
7 marketplace—

8 (A) not make any representation of affili-
9 ation or endorsement with a venue, team, or
10 artist, as the case may be, without the express
11 written consent of the venue, team, or artist, as
12 applicable, except when it constitutes fair use
13 and is consistent with applicable laws; and

14 (B) in the case of an online secondary tick-
15 et sales marketplace, post a clear and con-
16 spicuous notice that the website or mobile appli-
17 cation is engaged in the secondary sale of tick-
18 ets and require purchasers to confirm having
19 read such notice before registering for an ac-
20 count with the secondary ticket sales market-
21 place or starting a transaction.

22 (8) A prohibition on the secondary sale of a
23 ticket by an individual employee of any venue, pri-
24 mary ticket seller, team, artist, online resale market-
25 place, or box office that is involved in hosting, pro-

1 moting, performing in, or selling tickets if such sec-
2 ondary sale—

3 (A) is for a higher price than the primary
4 sale of the ticket; or

5 (B) is made to any third party and the em-
6 ployee has actual knowledge, or knowledge fair-
7 ly implied on the basis of objective cir-
8 cumstances, that the third party intends to sell
9 the ticket for a higher price than total cost of
10 the ticket, including all ancillary charges.

11 (9) A prohibition on the secondary sale of a
12 ticket for the same seat to more than one person at
13 the same time.

14 (10) A requirement that no purchaser shall be
15 sanctioned or denied admission to an event on the
16 basis that such purchaser resold a ticket, gifted, or
17 purchased a resold ticket.

18 **SEC. 5. ENFORCEMENT.**

19 (a) **FEDERAL TRADE COMMISSION.**—A violation of a
20 rule prescribed pursuant to section 3 or 4 shall be treated
21 as a violation of a rule defining an unfair or deceptive
22 act or practice prescribed under section 18(a)(1)(B) of the
23 Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).
24 The Federal Trade Commission shall enforce this Act in
25 the same manner, by the same means, and with the same

1 jurisdiction as though all applicable terms and provisions
2 of the Federal Trade Commission Act were incorporated
3 into and made a part of this Act.

4 (b) STATE ATTORNEYS GENERAL.—

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

16 (A) enjoin that practice;

17 (B) enforce compliance with the rule;

18 (C) obtain damages, restitution, or other
19 compensation on behalf of residents of the
20 State; and

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

23 (2) NOTICE.—The State shall serve written no-
24 tice to the Commission of any civil action under
25 paragraph (1) at least 60 days prior to initiating

1 such civil action. The notice shall include a copy of
2 the complaint to be filed to initiate such civil action,
3 except that if it is not feasible for the State to pro-
4 vide such prior notice, the State shall provide notice
5 immediately upon instituting such civil action.

6 (3) INTERVENTION BY FTC.—Upon receiving
7 the notice required by paragraph (2), the Commis-
8 sion may intervene in such civil action and upon in-
9 tervening—

10 (A) be heard on all matters arising in such
11 civil action;

12 (B) remove the action to the appropriate
13 United States district court; and

14 (C) file petitions for appeal of a decision in
15 such civil action.

16 (4) SAVINGS CLAUSE.—Nothing in this sub-
17 section shall prevent the attorney general of a State
18 from exercising the powers conferred on the attorney
19 general by the laws of such State to conduct inves-
20 tigations or to administer oaths or affirmations or to
21 compel the attendance of witnesses or the production
22 of documentary and other evidence. Nothing in this
23 section shall prohibit the attorney general of a State,
24 or other authorized State officer, from proceeding in

1 State or Federal court on the basis of an alleged vio-
2 lation of any civil or criminal statute of that State.

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

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

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

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

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

18 (6) PREEMPTIVE ACTION BY FTC.—Whenever a
19 civil action or an administrative action has been in-
20 stituted by or on behalf of the Commission for viola-
21 tion of any rule described under paragraph (1), no
22 State may, during the pendency of such action insti-
23 tuted by or on behalf of the Commission, institute
24 a civil action under paragraph (1) against any de-

1 fendant named in the complaint in such action for
 2 violation of any rule as alleged in such complaint.

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

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

16 **SEC. 6. NONPREEMPTION.**

17 Nothing in this Act shall affect the authority of any
 18 State or local government to establish or continue in effect
 19 a provision of law of the State or local government relating
 20 to the regulation of the resale of tickets to events or the
 21 pricing of such tickets for resale, except to the extent that
 22 such provision is inconsistent with this Act or a regulation
 23 promulgated under this Act, and then only to the extent
 24 of the inconsistency. A provision of law of a State or local
 25 government is not inconsistent with this Act or a regula-

1 tion promulgated under this Act if such provision provides
2 equal or greater protection to purchasers than the protec-
3 tion provided under this Act or such regulation.

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

5 The Federal Trade Commission shall conduct a study
6 of the ticket market to determine the effect of the
7 Commission's enforcement actions of the BOTS Act
8 (Public Law 114–274) since it was enacted on December
9 14, 2016. The Commission shall transmit a report to Con-
10 gress that details all enforcement actions taken since the
11 enactment of the BOTS Act (Public Law 114–274) and
12 assesses the use of fraudulent identities to circumvent se-
13 curity measures of a ticket selling website in violation of
14 such Act.

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