

Representative Stephen G. Handy proposes the following substitute bill:

CONSUMER TICKET PROTECTION MODIFICATIONS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephen G. Handy

Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill enacts provisions related to the Division of Consumer Protection and the sale of event tickets.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ addresses the process related to a request to review a citation issued by the Division of Consumer Protection;
- ▶ requires a person who resells event tickets to provide certain disclosures on the person's website, including a statement that the ticket website is a secondary market and an itemized breakdown of the price of each ticket;
- ▶ prohibits a person who resells event tickets from representing that the person is the primary, rather than a secondary, ticket seller;
- ▶ provides that the provisions of this bill do not apply to a religious organization or an individual consumer; and
- ▶ addresses enforcement of the provisions of this bill.

Money Appropriated in this Bill:

None



26 **Other Special Clauses:**

27 None

28 **Utah Code Sections Affected:**

29 AMENDS:

30 **13-2-1**, as last amended by Laws of Utah 2018, Chapters 252 and 290

31 **13-2-6**, as last amended by Laws of Utah 2018, Chapter 276

32 ENACTS:

33 **13-54-101**, Utah Code Annotated 1953

34 **13-54-102**, Utah Code Annotated 1953

35 **13-54-103**, Utah Code Annotated 1953

36 **13-54-201**, Utah Code Annotated 1953

37 **13-54-202**, Utah Code Annotated 1953

38 **13-54-301**, Utah Code Annotated 1953



40 *Be it enacted by the Legislature of the state of Utah:*

41 Section 1. Section **13-2-1** is amended to read:

42 **13-2-1. Consumer protection division established -- Functions.**

43 (1) There is established within the Department of Commerce the Division of Consumer
44 Protection.

45 (2) The division shall administer and enforce the following:

- 46 (a) Chapter 5, Unfair Practices Act;
- 47 (b) Chapter 10a, Music Licensing Practices Act;
- 48 (c) Chapter 11, Utah Consumer Sales Practices Act;
- 49 (d) Chapter 15, Business Opportunity Disclosure Act;
- 50 (e) Chapter 20, New Motor Vehicle Warranties Act;
- 51 (f) Chapter 21, Credit Services Organizations Act;
- 52 (g) Chapter 22, Charitable Solicitations Act;
- 53 (h) Chapter 23, Health Spa Services Protection Act;
- 54 (i) Chapter 25a, Telephone and Facsimile Solicitation Act;
- 55 (j) Chapter 26, Telephone Fraud Prevention Act;
- 56 (k) Chapter 28, Prize Notices Regulation Act;

- 57 (l) Chapter 32a, Pawnshop and Secondhand Merchandise Transaction Information Act;
- 58 (m) Chapter 34, Utah Postsecondary Proprietary School Act;
- 59 (n) Chapter 34a, Utah Postsecondary School State Authorization Act;
- 60 (o) Chapter 39, Child Protection Registry;
- 61 (p) Chapter 41, Price Controls During Emergencies Act;
- 62 (q) Chapter 42, Uniform Debt-Management Services Act;
- 63 (r) Chapter 49, Immigration Consultants Registration Act;
- 64 (s) Chapter 51, Transportation Network Company Registration Act;
- 65 (t) Chapter 52, Residential Solar Energy Disclosure Act; [~~and~~]
- 66 (u) Chapter 53, Residential, Vocational and Life Skills Program Act[-]; and
- 67 (v) Chapter 54, Ticket Sales Act.

68 Section 2. Section 13-2-6 is amended to read:

69 **13-2-6. Enforcement powers.**

70 (1) In accordance with Title 63G, Chapter 4, Administrative Procedures Act, the
71 division shall have authority to convene administrative hearings, issue cease and desist orders,
72 and impose fines under all the chapters identified in Section 13-2-1.

73 (2) Any person who intentionally violates a final cease and desist order entered by the
74 division of which the person has notice is guilty of a third degree felony.

75 (3) If the division has reasonable cause to believe that any person has violated or is
76 violating any chapter listed in Section 13-2-1, the division may promptly issue the alleged
77 violator a citation signed by the division's director or the director's designee.

78 (a) Each citation shall be in writing and shall:

79 (i) set forth with particularity the nature of the violation, including a reference to the
80 statutory or administrative rule provision violated;

81 (ii) state that any request for review of the citation shall be made in writing and be
82 received by the division no more than 20 calendar days following issuance;

83 (iii) state the consequences of failing to make a timely request for review; and

84 (iv) state all other information required by Subsection 63G-4-201(2).

85 (b) In computing any time period prescribed by this section, the following days may
86 not be included:

87 (i) the day on which the division issues a citation; and

88 (ii) the day on which the division receives a request for review of a citation.

89 ~~[(e) If the recipient of a citation makes a timely request for review, within 20 calendar~~
90 ~~days after receiving the request, the division shall initiate an adjudicative proceeding in~~
91 ~~accordance with Title 63G, Chapter 4, Administrative Procedures Act.]~~

92 ~~[(d)] (c) (i) If the presiding officer finds that there is not substantial evidence that the~~
93 ~~recipient violated a chapter listed in Section 13-2-1, the citation may not become final, and the~~
94 ~~division shall immediately vacate the citation and promptly notify the recipient in writing.~~

95 (ii) If the presiding officer finds that there is substantial evidence that the recipient
96 violated a chapter listed in Section 13-2-1, the citation shall become final and the division may
97 enter a cease and desist order against the recipient.

98 ~~[(e)] (d) A citation issued under this chapter may be personally served upon any person~~
99 ~~upon whom a summons may be served in accordance with the Utah Rules of Civil Procedure.~~
100 ~~A citation also may be served by first-class mail, postage prepaid.~~

101 ~~[(f)] (e) If the recipient fails to make a [timely] request for review within 20 calendar~~
102 ~~days after the day on which the division issues the citation, the citation shall become the final~~
103 ~~order of the division. The period to contest the citation may be extended by the director for~~
104 ~~good cause shown.~~

105 ~~[(g)] (f) If the chapter violated allows for an administrative fine, after a citation~~
106 ~~becomes final, the director may impose the administrative fine.~~

107 (4) (a) A person who has violated, is violating, or has attempted to violate a chapter
108 identified in Section 13-2-1 is subject to the division's jurisdiction if:

109 (i) the violation or attempted violation is committed wholly or partly within the state;

110 (ii) conduct committed outside the state constitutes an attempt to commit a violation
111 within the state; or

112 (iii) transactional resources located within the state are used by the offender to directly
113 or indirectly facilitate a violation or attempted violation.

114 (b) As used in this section, "transactional resources" means:

115 (i) any mail drop or mail box, regardless of whether the mail drop or mail box is
116 located on the premises of a United States Post Office;

117 (ii) any telephone or facsimile transmission device;

118 (iii) any Internet connection by a resident or inhabitant of this state with a resident- or

119 nonresident-maintained internet site;

120 (iv) any business office or private residence used for a business-related purpose;

121 (v) any account with or services of a financial institution;

122 (vi) the services of a common or private carrier; or

123 (vii) the use of any city, county, or state asset or facility, including any road or
124 highway.

125 (5) The director or the director's designee, for the purposes outlined in any chapter
126 administered by the division, may administer oaths, issue subpoenas, compel the attendance of
127 witnesses, or compel the production of papers, books, accounts, documents, or evidence.

128 (6) (a) An administrative action filed under this chapter or a chapter listed in Section
129 13-2-1 shall be commenced no later than 10 years after the day on which the alleged violation
130 occurs.

131 (b) A civil action filed under this chapter or a chapter listed in Section 13-2-1 shall be
132 commenced no later than five years after the day on which the alleged violation occurs.

133 (c) The provisions of this Subsection (6) control over the provisions of Title 78B,
134 Chapter 2, Statutes of Limitations.

135 Section 3. Section 13-54-101 is enacted to read:

136 **CHAPTER 54. TICKET SALES ACT**

137 **Part 1. General Provisions**

138 **13-54-101. Title.**

139 This chapter is known as the "Ticket Sales Act."

140 Section 4. Section 13-54-102 is enacted to read:

141 **13-54-102. Definitions.**

142 (1) "Consumer" means a person who purchases a ticket for use by the person or the
143 person's invitee.

144 (2) "Division" means the Division of Consumer Protection in the Department of
145 Commerce.

146 (3) "Domain" means the portion of text in a URL that is to the left of the top-level
147 domain.

148 (4) "Event" means a single, specific occurrence of one of the following, that takes place
149 at a venue:

- 150 (a) a concert;
151 (b) a game;
152 (c) a performance;
153 (d) a show; or
154 (e) an occasion similar to the occasions described in Subsections (4)(a) through (d).
155 (5) "Event participant" means any of the following persons who is associated with an
156 event or on behalf of whom a person sells a ticket to an event:
157 (a) an artist;
158 (b) a league;
159 (c) a team;
160 (d) a tour group;
161 (e) a venue; or
162 (f) any person similar to the persons described in Subsections (5)(a) through (e).
163 (6) "Person" does not include a government entity.
164 (7) "Primary ticket seller" means the person who first sells a particular ticket.
165 (8) (a) "Reseller" means a person who sells or offers for sale a ticket after it is sold by a
166 primary ticket seller.
167 (b) "Reseller" includes a person who engages in conduct described in Subsection
168 (8)(a), regardless of whether the person is also the primary ticket seller of the ticket or the
169 primary ticket seller of another ticket to the same event.
170 (c) "Reseller" does not include a person who transfers a ticket to another person
171 without reimbursement or consideration.
172 (9) "Ticket" means evidence of an individual's right of entry to an event.
173 (10) "Ticket aggregator" means a person who aggregates the prices for which other
174 persons offer tickets for sale or resale.
175 (11) "Ticket website" means:
176 (a) with respect to a reseller, a website on which the reseller sells or offers for sale or
177 resale one or more tickets; or
178 (b) with respect to a ticket aggregator, a website on which the ticket aggregator
179 aggregates the prices for which other persons offer tickets for sale or resale.
180 (12) "Top-level domain" includes .com, .net, and .org.

181 (13) "URL" means the uniform resource locator for a website on the Internet.

182 (14) (a) "Venue" means real property located in the state where one or more persons
183 host a concert, game, performance, show, or similar occasion.

184 (b) "Venue" includes an arena, a stadium, a theater, a concert hall, an amphitheater, a
185 fairground, a club, a convention center, a public assembly facility, or a mass gathering location.

186 Section 5. Section **13-54-103** is enacted to read:

187 **13-54-103. Exemptions.**

188 (1) This chapter does not apply to:

189 (a) an entity that is owned, controlled, operated, or maintained by a bona fide church or
190 religious organization that is exempt from property taxation under the laws of the state; or

191 (b) a consumer reselling a ticket that the consumer purchased as a consumer.

192 (2) A person who claims an exemption under this section has the burden of proving
193 that the person is entitled to the exemption.

194 Section 6. Section **13-54-201** is enacted to read:

195 **Part 2. Requirements and Prohibited Practices**

196 **13-54-201. Disclosure requirements.**

197 (1) A reseller or ticket aggregator shall clearly and conspicuously disclose on each of
198 its ticket websites that:

199 (a) the website is a secondary market and is not the primary ticket seller; and

200 (b) the price of a ticket on the website may be higher than face value.

201 (2) A reseller shall clearly and conspicuously disclose during the checkout process an
202 itemization of the total price for which the reseller is offering the ticket for sale or resale,
203 including taxes and each fee.

204 Section 7. Section **13-54-202** is enacted to read:

205 **13-54-202. Prohibited practices.**

206 (1) (a) It is unlawful for any person who is not a primary ticket seller to represent,
207 directly or indirectly, that the person is a primary ticket seller.

208 ~~Ĥ→ [(b) There is a rebuttable presumption that a person violates Subsection (1)(a) if the~~
209 ~~person includes either of the following in the domain of the person's ticket website:~~

210 ~~—— (i) the name of an event, unless the person has written authorization from an agent of~~
211 ~~the event; or] ←Ĥ~~

212 ~~Ĥ→ [(ii) the name of an event participant, unless the person has written authorization from~~
 213 ~~the event participant or an agent of the event participant.]~~

213a **(b) If a presiding officer or court determines appropriate after considering other relevant**
 213b **factors, the following actions by a person who is not a primary ticket seller establish a**
 213c **presumption that the person is representing that the person is a primary ticket seller in**
 213d **violation of Subsection (1)(a):**

213e **(i) using the name of an event in the domain of the person's ticket website, unless the**
 213f **person has written authorization from an agent of the event;**

213g **(ii) using the name of an event participant in the domain of the person's ticket website,**
 213h **unless the person has written authorization from the event participant or an agent of the event**
 213i **participant; or**

213j **(iii) using, in paid search results, the name of an event or event participant in a manner**
 213k **described in Subsection (1)(b)(i) or (ii).** ←Ĥ

214 (2) It is unlawful for a person to fail to comply with a provision of Section [13-54-201](#).

215 (3) Nothing in this section prohibits a person from including the name of an event or an
 216 event participant in a URL after the top-level domain.

217 Section 8. Section **13-54-301** is enacted to read:

218 **Part 3. Enforcement**

219 **13-54-301. Enforcement powers.**

220 (1) The division may enforce the provisions of this chapter in accordance with Chapter
 221 2, Division of Consumer Protection.

222 (2) (a) In addition to the division's enforcement powers under Chapter 2, Division of
 223 Consumer Protection:

224 (i) the division director may impose an administrative fine of up to \$2,500 for each
 225 violation of this chapter; and

226 (ii) the division may bring an action in a court of competent jurisdiction to enforce the
 227 provisions of this chapter.

228 (b) In a court action by the division to enforce a provision of this chapter, the court
 229 may:

230 (i) find that an act or practice violates a provision of this chapter; and

231 (ii) award, for each violation of this chapter:

232 (A) actual damages on behalf of each consumer who complained to the division within
 233 a reasonable time after the division initiated the court action; and

234 (B) a fine of up to \$2,500. ✪

- 235 ☛ (c) For any judgment in favor of the division under this section, the court may award:
- 236 (i) costs, including the costs of investigation; and
- 237 (ii) reasonable attorney fees.
- 238 (3) Each ticket sold or offered for sale while a person is in violation of a provision of
- 239 this chapter constitutes a separate violation of this chapter.
- 240 (4) Nothing in this chapter affects:
- 241 (a) a remedy available to a person independent of this chapter; or
- 242 (b) the division's ability or authority to enforce any other law.