

BILL ANALYSIS

Senate Research Center

S.B. 1639
By: Zaffirini
Business & Commerce
5/31/2023
Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

A "bot"—short for robot and also called an Internet bot—is a software application that automatically completes programmed tasks in the same manner as humans would have done. Normally bots are created to do repetitive tasks to increase efficiency. Some bots, however, called "scalper" or "scalping" bots, use automated methods to obtain event tickets quicker than any legitimate customer could. In 2015 and 2016, for example, one person using scalping bots obtained more than 1,000 tickets to a U2 concert in less than a minute. The tickets are then re-sold by the bot's operator in either a private transaction or on a third-party platform, often for an exorbitant markup.

This practice not only negatively impacts consumers and concert-holders, but it also is pervasive, with up to 40 percent of all event ticket traffic generated by scalping bots. Although the 2016 federal Stop BOTS Act outlawed ticket scalping bots, the Federal Trade Commission has only brought one action under the law against persons using scalping bots.

To address this lack of enforcement at the federal level, S.B. 1639 would prohibit the use of any method, technology, device, or software that bypasses ticketing purchasing processes to purchase a quantity of event tickets that exceeds the maximum number of tickets allowed per legitimate buyer. The attorney general would enforce the provisions under this bill. The changes would prevent ticket scalping from causing market distortion via inflated prices and unfair access to tickets for the general public.

As substituted in committee, S.B. 1639 would clarify the definition of a bot and establish civil penalties for a person who creates or uses a bot in violation of S.B. 1639. The committee substitute also removed a provision prohibiting decrypting or deconstructing an algorithm on a ticket issuer's website to ensure the bill would not unintentionally prevent persons from using software to protect privacy or to provide accessible browsing for persons with disabilities.

S.B. 1639 amends current law relating to prohibitions in connection with ticket sales on an Internet website and provides a civil penalty.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle B, Title 10, Business and Commerce Code, by adding Chapter 328, as follows:

CHAPTER 328. ONLINE SALE OF EVENT TICKETS

Sec. 328.001. DEFINITIONS. Defines "bot," "event," and "ticket."

Sec. 328.002. PROHIBITION ON USE OR CREATION OF BOTS TO ENGAGE IN CERTAIN ONLINE TICKET ACTIVITY. Prohibits a person from using or creating a bot to:

- (1) purchase tickets in excess of posted limits for an online ticket sale;
- (2) use multiple Internet Protocol (IP) addresses, multiple purchaser accounts, or multiple e-mail addresses to purchase tickets in excess of posted limits for an online ticket sale;
- (3) circumvent or disable an electronic queue, waiting period, presale code, or other sales volume limitation system associated with an online ticket sale; or
- (4) circumvent or disable a security measure, access control system, or other control or measure that is used to facilitate authorized entry to an event.

Sec. 328.003. ENFORCEMENT BY ATTORNEY GENERAL; INJUNCTION; CIVIL PENALTY. (a) Authorizes the attorney general to investigate a claim that a person violated this chapter.

(b) Authorizes the attorney general to bring an action in the name of the state to restrain or enjoin the person from violating this chapter if the attorney general concludes that a person is violating this chapter.

(c) Authorizes the attorney general to seek restitution and petition a district court for the assessment of a civil penalty as provided by this section in addition to bringing an action for injunctive relief under this chapter.

(d) Provides that a person who knowingly violates Section 328.002 is liable for a civil penalty of not more than \$10,000 for each violation.

(e) Provides that every ticket transaction in which a ticket is acquired to be sold in violation of Section 328.002 constitutes a separate violation for purposes of assessing a civil penalty.

(f) Prohibits the civil penalty for a violation of a court order or injunction issued to enforce this section from exceeding \$100,000.

(g) Authorizes the attorney general to recover all reasonable costs of bringing an action under this section, including court costs, reasonable attorney's fees, and investigation costs.

SECTION 2. Makes application of Section 328.002, Business and Commerce Code, as added by this Act, prospective.

SECTION 3. Effective date: September 1, 2023.