

NetChoice *Promoting Convenience, Choice, and Commerce on the Net*

Carl M. Szabo, Vice President and General Counsel
1401 K St NW, Suite 502
Washington, DC 20005
202-420-7485
www.netchoice.org

NetChoice

March 25, 2021

RE: Opposition to SB 186, Relating to the Right to Resell Tickets

NetChoice respectfully asks you to **not advance SB 186** as it rolls back the protections and rights of Colorado fans. It will deny Colorado fans their current rights to buy, sell, and give away their sports and concert tickets. This bill would deny fans enjoy choice, convenience, and competition in the primary and secondary markets for event tickets.

This bill represents a transfer of rights from Colorado fans to corporations like Ticketmaster. SB 186 strips away protections from Colorado residents that represent the very protections that were recently passed by Utah and Virginia.

SB 186 would:

- Criminalize a person who bought a ticket for a friend and the friend pays them back.
 - Bill prohibits purchasing with the intent to resell, which is what “grabbing a ticket” for a friend is.
- Criminalize search results in Colorado as they often display “trademarks” in the URL.
- Transfer consumers’ power to Ticketmaster and enables Ticketmaster to prevent Colorado fans from giving away tickets to friends.
 - Empowers Ticketmaster to determine what fans can do with their tickets.
- Return power to Ticketmaster to deny reselling a ticket for the total amount the fan paid – cost of the ticket and the Ticketmaster fees.

SB 186 **denies** consumer choice, convenience, and market competition. SB 186:

- Allows Ticketmaster to deny Colorado fans from freely giving a ticket to a friend, client, or family member.
- Allows Ticketmaster to deny admission to anyone using a transferred ticket.
- Allows Ticketmaster to deny fans from selling tickets they are not going to use.
- Allows Ticketmaster to deny fans from choosing among competing secondary markets to buy and sell tickets.
- Allows Ticketmaster to deny fans from easily recouping service fees and other costs by imposing archaic restrictions.

With SB 186, Ticketmaster can restrict fans to restricted Tickets.

Ticketmaster’s “Restricted transfer” tickets prevent fans from easily giving away their tickets to friends and family. Ticketmaster has been increasing this practice of limiting fans’ ability to control their tickets.

With SB 186, Ticketmaster can use “Restricted Tickets” to deny citizens and businesses from giving away tickets to friends, family, or clients, because the purchaser’s name won’t match the ticketholder. While Ticketmaster sometimes gives the option to transfer a ticket, it requires a complex interaction with Ticketmaster and may require payment of yet another “convenience fee.”

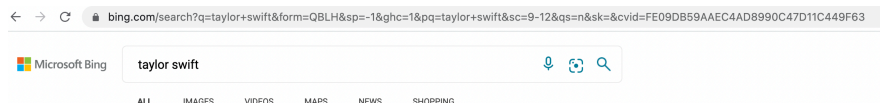
With restricted tickets, fans who give their tickets to family or friends have to escort them to the venue doors. And a ticketholder who cannot attend cannot easily sell or even give away his tickets.

Finally, SB 186 allows Ticketmaster and venues to deny entry to ticket holders that give away their tickets to friend like the can do today.

Unintended Consequences for Search Engines and Websites

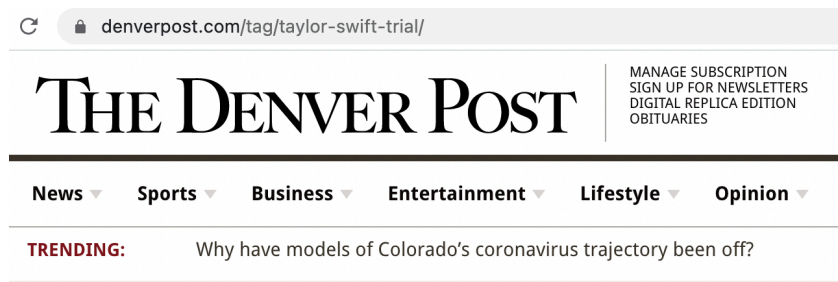
SB 186 makes it a crime to do something that search engines and web marketplaces do every day: use trademarked terms in page addresses for content related to ticket resale -- without obtaining written consent of the trademark owner.

Under SB 186, Colorado would make it a crime for online portals and search engines that fail to get permission from trademark owners, just for responding to user inquiries like this:



A Bing search for "Taylor Swift" generates a URL that includes the trademarked term "Taylor+Swift."

Or consider a search for “Taylor Swift” on the Denver Post. You get “Taylor-Swift” in the URL:



Under SB 186, it could result in Denver Post and other news sites breaking the law.

We’re sure that this is not what the bill’s author originally intended, and this shows that SB 186 is not the right law for Colorado.

Other states are protecting their fans from restricted tickets – Why would Colorado deny them?

Fans don’t suffer these restrictions when artists perform Colorado, Connecticut, New York, Utah, or Virginia. But Colorado would lose these rights under SB 186.

Recently Utah,¹ and Virginia² enacted laws similar to those in Connecticut,³ New York,⁴ and Colorado⁵. These legislators protected their state's fans' ability to freely transfer, resell, and give away their tickets.

Do Not Advance SB 186

Ticketmaster is aggressively expanding its Credit Card Entry ticket program. This will limit fan choice and could impose a new battery of "convenience fees" just to give a ticket to a friend.

Now is the time to protect Colorado fans and not advance SB 186 and help Colorado consumers to continue enjoying the choice and convenience of an open tickets marketplace.

Sincerely,

Carl Szabo
Vice President and General Counsel, NetChoice

¹ UT Code §§ 13-54-102 (2019). "(1) Except as provided in Subsection (2), each ticket issued for an event shall be a transferrable ticket."

² VA Stat. §§ 59.1-466.5-.7. "No person that issues tickets for admission to an event shall issue any such ticket solely through a delivery method that substantially prevents the purchaser of the ticket from lawfully reselling the ticket on the Internet ticketing platform of the ticket purchaser's choice... No person shall be discriminated against or denied admission to an event solely on the basis that the person resold a ticket, or purchased a resold ticket, on a specific Internet ticketing platform."

³ CT Pub Act. 17-28 (2017). "No person shall employ an entertainment event ticketing sales system that fails to give the purchaser an option to purchase tickets that the purchaser may transfer to any party, at any price and at any time, without additional fees and without the consent of the person employing such ticketing system."

⁴ NY Arts & Cult Aff L § 25.30 "[I]t shall be prohibited for any operator of a place of entertainment, or operator's agent, to: (a) restrict by any means the resale of any tickets...(b) deny access to a ticket holder who possesses a resold subscription or season ticket to a performance based solely on the grounds that such ticket has been resold...(c) employ a paperless ticketing system unless the consumer is given an option to purchase paperless tickets that the consumer can transfer at any price, and at any time, and without additional fees, independent of the operator or operator's agent." (emphasis added).

⁵ Colorado Rev. Stat. § 6-1-718(3) "It is void as against public policy to apply a term or condition to the original sale to the purchaser to limit the terms or conditions of resale... A person or entity, including an operator, that regulates admission to an event shall not deny access to the event to a person in possession of a valid ticket to the event...based solely on the ground that such ticket was resold through a reseller that was not approved by the operator." (emphasis added).

Colorado General Assembly
200 E Colfax Avenue
Denver, CO 80203
Business, Labor & Technology Committee
Senator Robert Rodriguez - Chair
Senator Jessie Danielson – Vice Chair

Re: Senate Bill 21-186

Dear Senator Rodriguez, Senator Danielson, and Members of the Business, Labor & Technology Committee:

My name is Bruce Morris, and I am Director of Government Relations for TicketNetwork, Inc., a leading resale marketplace that facilitates transactions between third-party event ticket buyers and sellers. As a marketplace that has been at the forefront of implementing customer-friendly policies since 2002, we wanted to take this opportunity to discuss Senate Bill 21-186 A Bill for An Act Concerning Modifications to Laws Regulating Ticket Sales, some issues we see with the proposed Bill, and explain our viewpoint.

We do not support Senate Bill 21-186 because it will restrict consumer rights in the tickets they purchased, will hinder a consumer's ability to find the most competitive price for online ticket purchases. Most importantly, the Bill rolls back consumer protections that exist in current Colorado law and have put Colorado at the forefront of protecting consumer's rights when purchasing tickets.

Section 1 of the Bill will strip consumers of the protections in the current law. The current law ensures that if the consumer chooses to resell, transfer, or give away their tickets, no person or entity can unfairly restrict that consumer's right to do so and it prohibits denying a person in possession of a valid ticket entry to an event because the ticket was resold through a reseller that was not approved by the operator of the event. When consumers purchase a ticket, they own that ticket and they should have the right to do with it whatever they choose – use it, resell it, transfer it, give it away, or anything they wish; equally important to consumers' ownership rights to use the tickets they purchased is that if a consumer decides to give away or transfer their tickets, no person or entity should be able to discriminate against the consumer who acquired those tickets by denying them entry to an event simply because they are not the original purchaser. Existing laws in New York, Virginia, Illinois, and Connecticut provide consumers with protections from ticket sellers placing restrictions on their ability to resell, transfer or give away their tickets, Colorado should continue to be in this group of states. Laws in New York, Virginia and Connecticut prohibit discrimination against consumers with resold or transferred tickets and pending legislation in Massachusetts would provide consumers with similar protection. Colorado should continue to provide this protection rather than taking it away.

Section 2 of the Bill proposes deleting language clarifying that the law regarding the use of the names of events and venues in a website's URL does not prohibit the resale of tickets in a secondary market by a person other than the event sponsor or promoter, this language should remain in the law because it is also an important consumer protection. Removing this language places an inherent restriction on the resale of tickets in a secondary market by a person other than the event sponsor or promoter which will hinder that person's ability to accurately describe the products they are selling, it inhibits a consumer's ability to quickly and effectively find the tickets they would like to purchase, and it limits the

consumer's ability to quickly and efficiently locate all sources for the tickets. Ticket sellers using the names of events and venues in a website's URL allows a buyer to click on a website link and quickly be taken to a web page where they can purchase tickets for their desired event. Furthermore, such restrictions on the use of names of events and venues in ticket selling website URLs are not in line with the fair use rights ticket sellers have pursuant to US trademark law. Section 2 of the Bill will create restrictions on the use of names of events and venues in website's URLs and will minimize competition and raise consumer prices. If the intent of this modification is to ensure that consumers are aware that they are purchasing from a ticket resale website we suggest an addition to the law requiring that all resale websites include a prominent disclaimer that the ticket selling website is a secondary or resale website, Connecticut, New York, and Utah have such laws and the FTC has recognized this type of disclosure as sufficient.

We applaud the proposed modification in Section 2 of the Bill which would enhance consumer protections by placing further restrictions on unscrupulous ticket sellers who use software to unfairly purchase event tickets. If Colorado would like to change the existing law, we suggest more modifications like that one. To that end, in addition to adding a requirement for a prominent secondary or resale website disclaimer we suggest removing the requirement that a reseller have a written contract to obtain tickets in order to offer them for sale currently in Subsection 3(b) (b) of Colorado Revised Statute 6-1-718. Many ticket sellers are small business owners. There are many occasions where tickets are not yet printed, agreements have not yet been memorialized in writing or deals are in progress, yet the parties have an agreement that the seller will have access to the tickets. Not permitting resellers to sell those tickets reduces the supply of ticket inventory available for sale artificially reducing the supply of tickets potentially resulting in price increase on both the primary and secondary markets. We propose modifying the law to state, "contract or other types of agreements" and removing the word "written." Precedent for this language permitting "or other types of agreements" and not just a written contract exists in Tennessee law.

If you have any questions or if I can be of assistance in explaining our position on the language in Senate Bill 21-186 and why TicketNetwork's proposed modifications would serve the interests of Colorado consumers and businesses, please contact me.

Sincerely,
Bruce V. Morris
Director of Government Relations
TicketNetwork, Inc.
bruce.morris@ticketnetwork.com
(203)979-9261 (C)



**TESTIMONY OF THE NATIONAL ASSOCIATION OF TICKET BROKERS IN
OPPOSITION TO SB 21-186**

My name is Gary Adler and I am Executive Director and General Counsel of the National Association of Ticket Brokers (“NATB”). NATB is a not-for-profit organization that represents professional ticket resellers. NATB has long advocated for the rights of ticket buyers and its membership which, importantly, is comprised of brokers that conduct their businesses under a set of consumer protection measures and Code of Ethics that are in the interest of operating a reputable professional business and serving customers well. NATB is a National Partner of the Council of Better Business Bureaus (“BBB”). I am submitting this written testimony in opposition to SB 21-186 which would roll back measures that protect consumers.

Since its inception, NATB has strenuously advocated for an open secondary marketplace. In turn, NATB and its Members (including those in Colorado) have always recognized that such a market must be free from fraud and deceit to operate properly. Indeed, one of the organizational steps taken by NATB was to establish a Code of Ethics that includes numerous consumer protection measures. The NATB Code of Ethics forbids the use of automated software bots that purchase large blocks of tickets and bump average consumers out of virtual waiting lines, and we have long supported laws at the state and federal level to ban the use of bots. The Code provides a 200% guarantee if tickets are not delivered. It also mandates that each NATB Member shall not use deception to create the false perception of an affiliation with any promoter, team, theater, venue or box office.

As professional ticket sellers in the secondary resale market, we have observed the primary market (teams, venues and artists) seeking to assert more control over the resale marketplace. Hold-backs where tickets are secretly never made available to the public, paperless or digital tickets that cannot be freely transferred, and efforts to limit and funnel resale

to only their own website all fall under this umbrella. These original ticket issuers do not want to end resale, instead they want to control it. Unfortunately, fans are the ones that suffer as a result with fewer tickets available as well as higher fees and restrictions on how they can use their ticket after purchase.

SB 21-186 will make it legal for companies to provide tickets solely through a delivery method that allows the original seller to control and monopolize the resale market by preventing customers from lawfully reselling tickets as they see fit. The Institute for Policy Innovation reports that: “these restrictions reduce consumer choice, degrades the product that consumers purchase, and causes harm to competition, which forces consumers to either pay higher prices, enjoy less value, or (most likely) both.” In addition, according to the American Antitrust Institute, “transferability restrictions on tickets unjustifiably limit consumer choice and depart from bedrock competitive market principles.”

Let’s consider what limiting ticket transferability can mean for consumer prices. In 2016, the *Minneapolis Star Tribune* conducted its own analysis comparing restricted and unrestricted secondary tickets to Beyoncé and Adele concerts. This analysis showed that for two very popular shows in high demand, secondary market tickets in an unrestricted mode were available for \$165 compared to the restricted model at \$699.

Importantly, when you consider policies and practices developed by large powerful players in the primary market to constrain the function of the open secondary market for the purpose of commandeering it to control it and profit more from it, keeping the current Colorado law in place is vital to protect the market and to protect consumers and ticketholders. In many ways the existence of a secondary resale market for tickets, and an abundance of more than one source from which consumers can purchase tickets, helps to keep in check the large and powerful forces in the primary market so that consumers have robust options when it comes to shopping for tickets.

Respectfully submitted,



Gary Adler, Executive Director and Counsel