

“GET YOUR TICKETS!” FROM A LEGITIMATE SOURCE: PRIMARY
AND SECONDARY TICKETING MARKETS IN NEVADA

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I. INTRODUCTION

Imagine you just arrived in Las Vegas, Nevada as a tourist from London, England. Back in London, England, you did a Google search and clicked on the first website that contained some version of “Celine Dion,” “Final Shows,” “Las Vegas,” and “show tickets.” You purchased your tickets on the top balcony and paid roughly \$1,000.00 to see Celine Dion’s Final Shows at the Colosseum at Caesars Palace Hotel and Casino. In Las Vegas, Nevada, you get ready in your hotel room, excited for the night out. You’re running late to the show because the traffic on the Strip is stop and go. You run through mazes of slot machines and people and finally arrive at the showroom. Up the stairs and through security, you finally make it to the usher scanning tickets only to be stopped as the usher’s scanner reads either “Invalid Ticket” or “Already Entered.” The usher sends you to the box office, where the agent at the counter looks at your phone and informs you that your tickets are fraudulent because either the barcode is unrecognizable or someone else with the exact same seats is already in the theater; the agents can only sell you another pair of tickets for \$1,000.00. You ask yourself what went wrong; you thought the website was a legitimate website since it made no mention of secondary ticketing.

Unfortunately, this happens at almost all theaters on the Las Vegas Strip, including sporting events, such as Vegas Golden Knights games. Countless websites on Google purport to sell valid tickets to events all around the world. In most cases, it is not the website that is selling fraudulent tickets, but instead, the sellers who upload their tickets for sale on these websites. To combat fraudulent secondary ticketing markets, the Nevada Legislature passed Senate Bill 131

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(hereinafter “the Bill”) on May 23, 2019.¹ The Bill went into effect on July 1, 2019.² The Bill, titled:

An Act relating to trade practices; establishing additional requirements related to the resale of tickets to an athletic contest or live entertainment event; revising provisions governing civil actions for a violation of certain requirements related to the resale of tickets to an athletic contest or live entertainment event; providing penalties; and providing other matters properly relating thereto.

This bill was introduced by Senator Joyce Woodhouse and Assemblyman Steve Yeager in the 80th Legislative Session.³ The Bill amended Chapter 598 of the Nevada Revised Statutes.⁴

This Note first discusses the history of SB131 and its journey through the Nevada legislature. Second, this Note analyzes secondary ticketing market legislation in other states and countries. Third, this Note discusses ways primary rights holders and artists have attempted to combat the secondary ticketing market. Fourth, this Note discusses the impact of the ticketing market on the Las Vegas casino industry. Finally, this Note concludes with the impact SB 131 has had on the Las Vegas ticketing industry and possible improvements to the legislation.

II. THE HISTORY OF SENATE BILL 131

During the 79th Session, Senator Joyce Woodhouse sponsored Senate Bill 235, which revised existing deceptive trade laws to include resellers of tickets to a sports or entertainment event.⁵ The bill was passed in 2017. Although the Bill helped primary ticket sellers, it lacked the necessary deterrence to secondary ticket market resellers because the penalties and fines were less than the profit the resellers received from reselling tickets.⁶ Thus, during the 80th Session, Senator Woodhouse proposed Senate Bill 131.

The Bill imposes new requirements on secondary ticketing markets. Section 3 of the Bill prohibits “a reseller, a secondary ticket exchange or any affiliate of a reseller or secondary ticket exchange” (hereinafter “resellers”) from reselling a ticket without first disclosing the total amount of the ticket, including all fees associated with the charge.⁷ Additionally, Section 6 of the Bill requires resellers

¹ *SB131*, NELIS, <https://www.leg.state.nv.us/App/NELIS/REL/80th2019/Bill/6142/Overview> (last visited Feb. 05, 2021).

² S. B. 131, 2019 Leg., 80th Sess. (Nv. 2019) (codified as NRS 598.397–.3984).

³ *Id.* at 1.

⁴ *Id.* at 2.

⁵ *Senate Bill 131 (1st Reprint): Revises provisions relating to the resale of tickets to an athletic contest or live entertainment event. (BDR 52-64): Hearing on S. B. 131 Before the Assem. Comm. on Judiciary May 6, 2019*, 2019 Leg., 80th Sess. 3 (Nv. 2019) (statement of Sen. Joyce Woodhouse, Senate District No. 5).

⁶ *Id.* at 5 (statement of Myron G. Martin, President and Chief Executive Officer, The Smith Center).

⁷ S. B. 131, *supra* note 2.

to display a notice at the top of their website, stating that they are resellers or a secondary ticket exchange.⁸ Section 7 of the Bill restricts resellers from reselling tickets without first disclosing to the purchaser the location of the seat or general admission area in the facility. It also prohibits the reseller from reselling a ticket or “advertising a ticket” unless the reseller has the ticket in “his or her possession or constructive possession, or has a written contract to obtain the ticket from a person who has the initial ownership rights to sell a ticket prior to its public sale.”⁹ Moreover, Section 7 prohibits a reseller *and a primary ticket provider* from selling a ticket before it has been made available to the public by the person who has the initial ownership rights to the ticket.¹⁰

Furthermore, Section 8 of the Bill prohibits resale of tickets obtained in violation of the provisions on the misuse of internet robots if “the person participated in or had the ability to control the conduct which constituted the violation or knew that the ticket was acquired in violation of the prohibition on the misuse of Internet robots.”¹¹ Section 10 amended the provision relating to relief arising out of violations by allowing civil suits to be brought in district court, for actual damages or \$1,000.00 for first violations, whichever is greater, and increased damages and penalties for each subsequent violation.¹² The Bill makes violation of the statute a deceptive trade practice, a misdemeanor punishable by up to six months or less in county or city jail or detention facility, a drastic change from the previous penalty in SB 235 of actual damages or \$100, whichever was greater.¹³ Additionally, the Nevada Attorney General’s office General Consumer Complaint Form now includes “ticket sales” as a type of complaint.¹⁴

During the hearing before the Assembly Committee, Senator Woodhouse presented the Bill along with supporters who spoke to the Committee.¹⁵ The presenters included former Senator Mike Schneider; Myron G. Martin, President and Chief Executive Officer of The Smith Center; Alfredo T. Alonso, representing Ultimate Fighting Championship, Black Knight Sports and Entertainment LLC, and Vegas Golden Knights; Mike Newquist, Vice President of Event Marketing and Ticketing for Ultimate Fighting Championship; Kerry

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* (emphasis added).

¹¹ *Id.* at 2.

¹² *Id.* at 6.

¹³ *Id.*

¹⁴ Bureau of Consumer Protection, NEVADA ATTORNEY GENERAL AARON FORD, http://ag.nv.gov/About/Consumer_Protection/Bureau_of_Consumer_Protection/ (last visited Feb. 05, 2021) (“Ticket Sales / Ticket Resellers”).

¹⁵ *Senate Bill 131*, *supra* note 5, at 2.

W. Bubolz, President of Vegas Golden Knights, and Todd Pollock, Vice President of Ticketing and Suites for Vegas Golden Knights.¹⁶

The general sentiment of these large organizations and rights holders, both for profit and non-profit, is that they are not opposed to the secondary market or ticket resale.¹⁷ They claim that they are “pro-resale” because resellers are valuable to the rights holders if they are working with them.¹⁸ The rights holders believe that the bill protects the integrity of the secondary markets and helps them thrive.¹⁹ They merely want to prevent “deceptive, fraudulent, and dubious practices” of some ticket resellers.²⁰ They argue that the consumers are negatively impacted because they have no guarantee that they will actually receive the ticket they purchased or any ticket at all; the resale drives up ticket prices for consumers; consumers miss opportunities “to be integrated into the ecosystems” of sports teams; and consumers potentially lose money, time, and have an overall bad event experience.²¹ The rights holders, event owners and promoters, or their agents, are also experiencing the negative impact, such as Ultimate Fighting Championship, Vegas Golden Knights, The Oakland Raiders, and Cirque du Soleil, who lose revenue. The resellers eliminate their ability to acquire new customers into existing databases; they experience animosity from the fans, who believe that the scam is perpetrated by the rights holders.²² The Committee also heard opposition testimony, which reiterated that the opposition is not against deceptive trade practices; they merely want to differentiate between what speculative ticketing is and what a ticket broker does.²³ David Goldwater, on behalf of the Nevada Ticket Brokers Association, provided examples of speculative ticketing, including:

¹⁶ *Id.* (others include Joshua J. Hicks, representing Oakland Raiders, Victoria von Szeliski, Senior Vice President and General Counsel, AXS, Lou D’Angeli, Vice President of Marketing and Public Relations, Resident Shows Division, Cirque du Soleil, Jonathan P. Leleu, representing Live Nation Entertainment, Greg Ferraro, representing Nevada Resort Association, David Goldwater, representing Nevada Ticket Brokers Association, Michael O’Neil, representing Vivid Seats LLC, Ken Solky, President, LasVegasTickets.com; and President, Nevada Ticket Brokers Association, William C. Horne, representing StubHub, and Ryan Johnson, Owner, Rebel Tickets).

¹⁷ *Id.* at 6 (statement of Mike Newquist, Vice President of Event Marketing and Ticketing, Ultimate Fighting Championship).

¹⁸ *Id.* at 8.

¹⁹ *Id.* at 9 (statement of Joshua J. Hicks, representing Oakland Raiders).

²⁰ *Id.* at 6.

²¹ *Id.* at 6–7.

²² *Id.* at 7.

²³ *Id.* at 16, 19 (statements of David Goldwater, representing Nevada Ticket Brokers Association, and Michael O’Neil, representing Vivid Seats LLC).

Listing a Row T when the arena only goes up to a Row M, listing a ticket that does not exist, listing a ticket that is not offered to the public, listing a ticket from a primary website... or listing a ticket without the owner's specific knowledge.²⁴

In some situations, a ticket is posted on a secondary market for resale at a mark-up. Once the ticket is sold, the reseller will then purchase a ticket at face-value from a right holder to provide to the buyer and profit the difference in price.²⁵

On the other hand, as Goldwater points out, a ticket broker "does not do these things. A broker, like a real estate agent, sells something."²⁶ A broker is very often a "distribution channel for the primary rights holder."²⁷ Goldwater, and others, argued that this regulation would impact the legitimate brokers who would be in violation of the regulation because they would not have express permission from the rights holders, such as promoters of the events, even though they have legitimate tickets to sell through their distribution channels.²⁸

Some opponents to the Bill argued the regulation is merely "written by certain special interests that are meant to further their business models masquerading as consumer protection."²⁹ They argue that ticket sales are merely contracts between the customers and the suppliers and that, like other similar transactions, they should be governed by contract law.³⁰ The opposition provided several recommendations to amending the regulation, one of which included comparing secondary ticket marketing legislation in other states.

There were some concerns brought up by the Senate in regard to amending the Bill that could have had a beneficial impact on the legislation. Assemblywoman Shea Backus suggested that the legislation would benefit from a long-arm statute that would give Nevada courts personal jurisdiction over resellers who are causing harm to the citizens of the state.³¹ The concern is bolstered by the invention of the Internet, where online ticket sales are increasingly popular. A long-arm statute would be beneficial in the text of the legislation because it would provide the courts with guidance on analyzing personal jurisdiction and whether the Nevada courts would have jurisdiction over companies conducting ticket transactions online. Section 10 of the Bill provides that a civil action may be brought in any district court in any county in which the

²⁴ *Id.* at 16.

²⁵ Eric T. Schneiderman, *Obstructed View: What's Blocking New Yorkers From Getting Tickets*, 26 (2016).

²⁶ *Senate Bill 131*, *supra* note 5, at 16.

²⁷ *Id.*

²⁸ *Id.* at 18.

²⁹ *Id.* at 23 (statement by Ryan Johnson, Owner, Rebel Tickets).

³⁰ *Id.* (Other examples of transactions included overbooked planes bumping customers off flights due to short selling, rental companies regularly having issues with supply of rented cars, as well as hotel rooms).

³¹ *Id.* at 10 (statement by Assemblywoman Shae Backus).

case accrued, in which the defendant resides or may be found, where the plaintiff resides, or where the event takes place.³²

Nevada Revised Statute § 14.065, Nevada's long-arm statute, reaches: The constitutional limits of due process under the Fourteenth Amendment, which requires that the nonresident defendant have such minimum contacts with the state that the nonresident defendant could reasonably anticipate being hauled into court in Nevada, thereby, complying with traditional notions of fair play and substantial justice.³³

An issue might arise in situations where consumers are suing companies such as StubHub and Ticketmaster, who are essentially "middlemen" in facilitating transactions between ticket resellers and Nevada consumers, and how jurisdiction over those large business will be assessed. Under its purchase policy, Ticketmaster claims that it is an "agent" to event producers such as venues, teams, and artists, and as an agent, its contacts would be attributable to the principle, the "Event Producers" in assessing jurisdiction over the principal.³⁴ But issues might arise when determining whether the agents' actions themselves would subject them to jurisdiction in Nevada. A long-arm statute addressing situations such as these might further the goal of combating fraud and deception of Nevada consumers.

Another issue of concern was voiced by Assemblywoman Jill Tolles and addressed language in provision seven of the statute, which states, "In addition to any other restrictions imposed by the rights holder, a reseller, a secondary ticket exchange or any affiliate of a reseller or secondary ticket exchange shall not..."³⁵ The issue addressed by Assemblywoman Tolles is that governments should not allow businesses to restrict other businesses who are their competitors, as it could lead to a monopoly situation.³⁶ Although Assemblywoman Tolles brought up the issue, it was never addressed by the other council members and the bill was passed.

One reason for the provision that would be beneficial to the rights holders is that tickets to events are generally seen as a licensing situation, even though the public has an impression that they "own" the rights to the seats.³⁷ What the consumer really owns is a license to a particular seat on a particular date for a particular event. Since the first Supreme Court decision upholding the "revocable license," *Marrone v. Washington Jockey Club*, historically courts have viewed

³² S. B. 131, *supra* note 2, at 2.

³³ *In re Beatrice B. Davis Family Heritage Trust*, 394 P.3d 1203, 1207 (Nev. 2017).

³⁴ *Purchase Policy*, TICKETMASTER, https://help.ticketmaster.com/s/article/Purchase-Policy?language=en_US (last visited Nov. 18, 2019); *Trump v. Eighth Judicial Dist. Court of Nev.*, 857 P.2d 740, 745 (Nev. 1993).

³⁵ S.B. 131, 80th Sess. (Nev. 2019).

³⁶ *Provisions Relating to the Resale of Tickets to an Athletic Contest or Live Entertainment Event: Hearing on S.B. 131 Before the Assemb. Comm. on Judiciary*, 2019 Leg., 80th Sess. 4–5 (Nev. 2019) (statement of Assemblywoman Jill Tolles).

³⁷ Alexander P. Frawley, Comment, *Revoking the Revocable License Rule: A New Look at Resale Restrictions on Sports Tickets*, 165 U. PA. L. REV. 433, 439 (2017).

event tickets as revocable licenses.³⁸ In the situation of season tickets, season ticket holders merely own a “revocable license to each game.”³⁹ This means that primary rights holders have “a very potent weapon since, as a matter of property law, revocable licenses can be terminated by the grantor at any time and for any reason.”⁴⁰ As a result, the primary rights holder benefits from imposing limitations on the secondary market without violating federal and state antitrust laws because the right holder can limit the ability to transfer tickets.⁴¹ Over time, courts have held that the licenses do not include a right of resale.⁴² One way to address Assemblywoman Tolles’s concern would be to limit the rights holders’ ability to revoke the licenses by only allowing them to do so in situations where the patron “violate the venue’s policies and pose a threat to the safety of other patrons.”⁴³

III. ANALYSIS OF SECONDARY TICKETING MARKET LEGISLATION IN OTHER STATES

States have attempted to restrict the secondary ticketing markets, an industry worth \$15,190,000,000.00 since the early nineteenth hundreds.⁴⁴ Six states—New York, New Jersey, California, Minnesota, Tennessee, and Maryland—have some form of secondary ticketing legislation that requires a disclosure to the consumers that the broker does not possess the ticket.⁴⁵ This type of approach would be beneficial to protect consumers from fraudulent advertising and deception, while protecting the rights holders by limiting consumer confusion about the rights holders’ affiliation with these sites.

³⁸ *Marrone v. Washington Jockey Club*, 227 U.S. 633 (1913) (The Court held that a racetrack owner was free to exclude the plaintiff, who purchased a lawful ticket, from attending the event); Frawley, *supra* note 37, at 445; *see also* Shepard Goldfein & James Keyte, *Sports Tickets: Revocable Licenses or Rights to Resale?*, N.Y.L. J. (Apr. 12, 2016), <http://www.newyorklawjournal.com/id=1202754628324/Sports-Tickets-Revocable-License-or-Rights-to-Resale?slreturn=2016040523492#ixzz46DHH5mgG> [<https://perma.cc/5MAHE42V>].

³⁹ Frawley, *supra* note 37 at 449.

⁴⁰ *Id.* at 439.

⁴¹ *Id.* at 448.

⁴² *Id.* at 450.

⁴³ *Id.* at 468.

⁴⁴ Oisín Lunny, *Battle for \$15.19 Billion Secondary Ticketing Market Heats up with First Europe-Wide Anti Touting Law*, FORBES (June 24, 2019), <https://www.forbes.com/sites/oisinelunny/2019/06/24/the-battle-for-15-19b-secondary-ticket-market-heats-up-with-first-europe-wide-anti-touting-law/?sh=3cfb33a82e02>; Robert J. McFadden, *The BOTS Act: A Small Step for Fankind When a Giant Leap Is Needed*, 55 WASHBURN L. J. 427, 435 (2016).

⁴⁵ S.B. 131 Hearing, *supra* note 5, at 22 (statement by William C. Horne, representing StubHub).

Moreover, states like Arkansas, Kentucky, Louisiana, Massachusetts, Michigan, and Rhode Island limit the secondary markets by imposing price ceilings on the resale tickets.⁴⁶ Other states have repealed their price ceiling laws.⁴⁷ Price ceilings and floors limit the supply and demand model of the ticketing industry by restricting the rights holders' and resellers' ability to price their tickets at market value, the price the consumers are willing to pay.

Missouri allows its resellers to charge a "reasonable" service fee in exchange for prohibiting resale prices from exceeding face value.⁴⁸ This approach limits the unreasonably high prices the consumers are paying for the tickets, while allowing the operation of the secondary market and ensuring that the rights holders retain a consumer base. On the other hand, it does not shield consumers from high prices imposed by the rights holders themselves because it requires the resellers to sell tickets at face value without being able to price the tickets lower to meet the market value. Louisiana mandates that Internet resellers can sell tickets above face value only with permission from the event and venue holders.⁴⁹ This would be a difficult approach because in some circumstances, the reseller may not be able to determine who the rights holder is and it would make it difficult for the consumer who is merely trying to sell a ticket because they could not attend an event from obtaining that permission in every circumstance.

Hawaii makes it completely illegal to resell tickets for boxing matches at more than face value.⁵⁰ In North Carolina, a reseller may resell their ticket at a price greater than the price listed on the ticket only if (1) the venue did not prohibit the resale of tickets at greater than face value, (2) the reseller offers the ticket on a website that offers a required refund guarantee, and (3) the ticket reseller is licensed as a retailer or wholesale merchant in North Carolina.⁵¹ Colorado's statute makes it illegal to restrict the purchasers' right to resell subscription or season tickets, restrict their right to purchase future tickets, or deny access to ticket holders solely on the basis that the reseller is unauthorized.⁵² Arizona, Connecticut, Georgia, Illinois, New Jersey, and New York make it illegal to sell tickets within a certain area outside of the event venue.⁵³ Overall, twenty-nine states have legislation relating to ticket resales.⁵⁴

Another state that has attempted to regulate the resale of tickets is New York. It requires resellers to obtain a license in order to engage in their business,

⁴⁶ David E. Harrington, *Uncapping Ticket Markets*, 33 REG. 6 (2010).

⁴⁷ *Id.* (these include Minnesota, Missouri, New York, and Pennsylvania).

⁴⁸ *Id.* at 10.

⁴⁹ *Secondary Ticket Marketplace*, SQUIRE PATTON BOGGS (July 2017), https://www.squirepattonboggs.com/-/media/files/insights/publications/2017/07/secondary-ticket-marketplace/2017_us_ticket_resale_law_guide.pdf.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *The Curious Case of U.S. Ticket Resale Laws*, TBA BY SEATGEEK (Feb. 22, 2017), <https://seatgeek.com/tba/articles/ticket-resale-laws/>.

⁵⁴ *Id.*

post a \$25,000.00 bond to ensure compliance with the law and cover damages for misconduct, and prohibits Bots, automated software that can perform hundreds or thousands of transactions simultaneously.⁵⁵ Additionally, New York, along with Colorado, Connecticut, Illinois, Louisiana, and North Carolina, require resellers, or anyone that facilitates reselling, to guarantee that in the event of cancellation, the consumer is denied entry, or the ticket is in some way invalid, the consumer will receive a full refund.⁵⁶ Under its purchase policy, Ticketmaster specifies these certain provisions for tickets resold to an event in Illinois or New York.⁵⁷

In 2016, the Federal Trade Commission outlawed the use of computer software like Bots when it passed the Better Online Ticket Sales Act, also known as the BOTS Act.⁵⁸ The Act makes it illegal to:

Circumvent a security measure, access control system, or other technological control or measure on an internet website or online service that is used by the ticket issuer to enforce posted event ticket purchasing limits or to maintain integrity of posted online ticket purchasing order rules.⁵⁹

The Act also made it illegal to resell tickets knowingly obtained in violation of the Act.⁶⁰ Along with the FTC, many states have outlawed the use of bots as technology replaced the face-to-face transactions between the scalpers and consumers, but enforcement of legislation has been lacking due to an increase of transactions between state lines.⁶¹ “Because of the consensual nature of purchasing a ticket ... as well as the anonymity of Internet transactions, enforcing scalping laws across state borders may be too costly.”⁶² In some situations, jurisdictional issues may arise and deciding which state’s anti-scalping laws apply can be a challenge; whether the jurisdiction is the location of the buyer and seller, the city where the financial transaction occurred, or even where the site’s servers are located.⁶³ Because most anti-scalping laws do not address

⁵⁵ Schneiderman, *supra* note 25, at 9.

⁵⁶ *The Curious Case of U.S. Ticket Resale Laws*, *supra*, note 53.

⁵⁷ *Purchase Policy*, TICKETMASTER, https://help.ticketmaster.com/s/article/Purchase-Policy?language=en_US (last visited Nov. 18, 2019) (“Special refund provisions applying to Ticket Exchange and Fan-to-Fan Resale”).

⁵⁸ Lesley Fair, *BOTS Act: That’s the Ticket!*, FED. TRADE COMM’N (Apr. 7, 2017), <https://www.ftc.gov/news-events/blogs/business-blog/2017/04/bots-act-thats-ticket>.

⁵⁹ *Id.*

⁶⁰ S.B. 131, 2019 Leg., 80th Sess. (Nev. 2019).

⁶¹ Robert J. McFadden, *The BOTS Act: A Small Step for Fankind When a Giant Leap Is Needed*, 55 WASHBURN L.J. 427, 438 (2016) (“many ticket resales occur over state lines—with the seller in one state, selling tickets to a buyer in another state—creating jurisdictional issues.”).

⁶² Clark P. Kirkman, *Who Needs Tickets? Examining Problems in the Growing Online Ticket Resale Industry*, 61 FED. COMM. L.J. 739, 740 (2009) (internal quotation marks omitted).

⁶³ Daniel J. Glantz, *For-Bid Scalping Online?: Anti-Scalping Legislation in an Internet Society*, 23 CARDOZO ARTS & ENT. L.J. 261, 269 (2005).

jurisdictional issues within the text, the courts must at the state's commercial sales code to determine whether on-line transactions would constitute a "sale" or an "offer."⁶⁴

The New York Attorney General published a report detailing the secondary ticketing market in the state.⁶⁵ For example, the report notes that although Bots are prohibited, brokers have found ways around them, such as taking advantage of pre-sale offers made available to certain credit card holders, as well as using multiple computers or mobile devices to purchase tickets at the same time they go on sale, and by establishing direct relationships with the venues and sports teams.⁶⁶ The report also explains that ticket vendors often restrict the amount of tickets that can be purchased on their website, also known as ticket limits, in order to ensure that tickets will be distributed in a fair manner.⁶⁷ The limits usually restrict the amount of tickets that can be purchased in one transaction, but it doesn't restrict the amount of tickets that a single person could purchase.⁶⁸ Additionally, the report details several concerns about the ongoing practices related to the sale and resale of tickets in the state.⁶⁹ Some issues include consumer deception as a result of price floors and impediments to consumer access to alternative ticket resale platforms, such as delayed delivery of PDF versions of resold tickets and cancellation of season ticket holders' subscriptions if they resell their tickets on unofficial resale platforms.⁷⁰ The report recommends that the industry must provide "greater transparency into the allocation of tickets" because before tickets are even sold to the general public, the rights holders "hold" or reserve tickets for industry insiders, "including the venue, artists or promoters."⁷¹ It also recommends that primary rights holders enforce ticket limits that are listed on their sites.⁷²

In June 2019, Richard Blumenthal, a Connecticut Senator, introduced a bill in the Senate to direct the FTC 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."⁷³ The bill, entitled "Better Oversight of Secondary Sales and Accountability in Concert Ticketing Act of 2019" is meant to provide greater transparency of ticket marketing and pricing by requiring both primary and secondary sellers to disclose all ancillary charges to purchasers at the

⁶⁴ *Id.* at 274.

⁶⁵ Schneiderman, *supra* note 25, at 3.

⁶⁶ *Id.* at 21.

⁶⁷ *Id.* at 22.

⁶⁸ *Id.*

⁶⁹ *Id.* at 32.

⁷⁰ *Id.* at 32–33.

⁷¹ *Id.* at 4–5.

⁷² *Id.*

⁷³ Better Oversight of Secondary Sales and Accountability in Concert Ticketing Act, S. 1850, 116th Cong. (2019).

beginning of the transaction.⁷⁴ Additionally, it prohibits a primary ticket seller from restricting the ability of a purchaser to resell tickets.⁷⁵

Outside of the US, the Digital, Culture, Media, and Sport Committee (hereinafter “DCMS”) in the United Kingdom additionally published a report in 2019, which included a warning to the public to disengage in purchasing tickets from secondary resale site Viagogo, a company with a long “history of resisting compliance, court orders and parliamentary scrutiny, and flouting consumer law.”⁷⁶ On November 27, 2018, a United Kingdom court ruled that Viagogo must make a “comprehensive overhaul” of its website in order to comply with British consumer law.⁷⁷ It required the company to disclose certain information such as the identity of the seller or business selling the tickets, the risk to the consumer of being turned away at the door, and the location of the seats inside the venue.⁷⁸ In December 2019, the Competition and Markets Authority opened an investigation into a proposed \$4,000,000,000.00 merger between StubHub and Viagogo in order to investigate the anti-competitive effects of the merger on the industry.⁷⁹ Three groups, including one trading as “Ticket Queen,” were charged by National Trading Standards with money laundering and breaches of consumer law in 2018 for touting, or ticket reselling.⁸⁰ The National Trading Standards, a UK Government Agency, investigates conduct of individuals reselling tickets via secondary ticketing platforms.⁸¹ Although touting is not illegal, touts must follow

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ Richard Smirke, *The Digital, Culture, Media and Sport Committee's "Report Into Live Music" is a "Wake-up Call for Everyone Who Wants to Safeguard Live Music," Says UK Music CEO Michael Dugher*, BILLBOARD (Mar. 19, 2019), <https://www.billboard.com/articles/business/8503251/uk-live-music-report-hip-hop-discrimination-viagogo>.

⁷⁷ Richard Smirke, *Viagogo Agrees to 'Comprehensive' Overhaul of U.K. Ticketing Operations to Avoid Court Battle*, BILLBOARD (Nov. 21, 2018), <https://www.billboard.com/articles/business/8486780/viagogo-overhaul-uk-secondary-ticketing-operations-cma-court-battle>.

⁷⁸ *Id.*

⁷⁹ Richard Smirke, *U.K. Competition Regulator Orders Viagogo to Hit Pause on StubHub Merger*, BILLBOARD (Feb. 10, 2020), https://www.billboard.com/articles/business/touring/8550649/uk-competition-regulator-viagogo-stubhub-merger-investigation?utm_source=The+Real&utm_campaign=dfd3508892-EMAIL_CAMPAIGN_2020_02_10_05_03&utm_medium=email&utm_term=0_3db035a4e3-dfd3508892-216488149.

⁸⁰ Mark McGivern, *Six People Charged With Money Laundering Over Alleged £10million Ticket Touting Scams*, DAILY RECORD (Oct. 1, 2018, 9:02 PM), <https://www.dailyrecord.co.uk/news/business-consumer/six-people-charged-money-laundering-13342965>.

⁸¹ Chris Cooke, *National Trading Standards charges nine ticket touts in the UK, as Ticketmaster faces a class action over resale Stateside*, COMPLETE MUSIC UPDATE

the rules on ticket resale, including what information is provided to a buyer.⁸² Two individuals who traded as “Ticket Wiz” and “BZZ” were found guilty of fraudulent trading and possessing an article for fraud in a three month trial, profiting five million dollars’ worth of concert and West End theaters show tickets over two-and-a-half years.⁸³ In Germany, the Regional Court in Hanover ruled that it is anticompetitive to resell tickets at a price that is 25% above list price in cases where there is already a clause prohibiting resale and when there is a place on the ticket for the ticket buyer’s name.⁸⁴

Additionally, on April 18, 2019, Australia’s Federal Court found that Viagogo breached consumer law by “making false or misleading claims” when reselling tickets.⁸⁵ The court found that Viagogo misused the word “official” on its website and that it made claims such as “less than 1 percent tickets remaining” to urge consumers to purchase tickets quickly.⁸⁶ Before the case, the Australian Competition and Consumer Authority (hereinafter “ACCC”) investigated the secondary resellers in August 2017 for misleading representations and “allegedly ripping off consumers.”⁸⁷ The DCMS report also commented on the dominance of companies, such as Live Nation, who have a competitive advantage over smaller promoters and venues.⁸⁸

Additionally, the government of Canada’s Competition Bureau fined StubHub Canada Ltd. and StubHub Inc. \$1,300,000 Canadian dollars (USD \$978,000) for misleading pricing claims for event tickets.⁸⁹ The Competition Bureau is an independent law enforcement agency that ensures that Canadian consumers and businesses “prosper in a competitive and innovative

(Oct. 2, 2018), <https://completemusicupdate.com/article/national-trading-standards-charges-nine-ticket-touts-in-the-uk-as-ticketmaster-faces-a-class-action-over-resale-stateside/>.

⁸² *Id.*

⁸³ Richard Smirke, *Ed Sheeran and Taylor Swift Ticket Scalpers Found Guilty in Landmark UK Trial*, BILLBOARD (Feb. 13, 2020), <https://www.billboard.com/articles/business/8550953/ed-sheeran-taylor-swift-ticket-scalpers-touts-found-guilty>.

⁸⁴ Wolfgang Spahr, *German Live Music Lobby Wins Ruling Against Secondary Ticketing Platform*, BILLBOARD (Jan. 31, 2019), <https://www.billboard.com/articles/business/8495875/germany-secondary-ticketing-ruling-bdkv-ticketbande>.

⁸⁵ Lars Brandle, *Australia’s Federal Court Finds Viagogo Mised Consumers*, BILLBOARD (Apr. 18, 2019), <https://www.billboard.com/articles/news/8507748/australia-federal-court-viagogo-mised-consumers>.

⁸⁶ *Id.* (internal quotations omitted).

⁸⁷ *Id.*

⁸⁸ Smirke, *supra* note 76.

⁸⁹ Karen Bliss, *Canada Slaps StubHub with \$1.3 Million Fine over 'Misleading Pricing' Practices*, BILLBOARD (Feb. 18, 2020), https://www.billboard.com/articles/business/8551207/canada-stubhub-fine-misleading-pricing-claims-competition?utm_source=The+Real&utm_campaign=085d2ae697-EMAIL_CAMPAIGN_2020_02_18_05_19&utm_medium=email&utm_term=0_3db035a4e3-085d2ae697-216488149.

marketplace.”⁹⁰ The Bureau’s investigation found that listings on StubHub were misleading because StubHub did not disclose the full price of the ticket, including fees, in advertising and sale listings.⁹¹ The fees were only disclosed once the purchaser clicked or turned on an option in the filters to reveal the fees associated with the ticket prices, or the fees were disclosed in a later part of the purchasing process.⁹² In order to comply with the agreement, StubHub will ensure that the prices for tickets for events in Canada will not include all mandatory fees throughout the ticket purchase process, in addition to establishing a compliance program to implement new procedures to prevent further violations in the future.⁹³

In 2009, Live Nation and Ticketmaster merged with the condition imposed by the US Justice Department, that Live Nation sign a ten year consent decree forbidding Live Nation from forcing venues that want to book Live Nation’s tours to use Ticketmaster or otherwise retaliate if the venues refuse.⁹⁴ The merger was negatively received by critics who believed that the Justice Department should have imposed stricter requirements to protect competitors and consumers.⁹⁵ In 2019, the Justice Department announced that it readying a lawsuit against Live Nation after claims that the company was violating the consent decree.⁹⁶ Two Congressional Senators, Sens. Richard Blumenthal and Amy Klobuchar raised antitrust concerns to the Justice Department against Live Nation, claiming that as a result of the merger, ticket prices have increased without meaningful alternatives to purchase tickets.⁹⁷ After the announcement, Live Nation agreed to stop threatening to withhold tours from venues that utilize AEG’s AXS ticketing system in lieu of the Justice Department’s lawsuit and an additional five year extension of the consent decree.⁹⁸ Although the company is not allowed to threaten venues to switch from AXS to Ticketmaster, the company

⁹⁰ *Competition Bureau Canada, GOV’T OF CAN.*, <https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/home> (last visited Feb. 20, 2020).

⁹¹ Bliss, *supra* note 89.

⁹² *Id.*

⁹³ News Release, Competition Bureau Canada, StubHub to Pay \$1.3 Million Penalty for Advertising Unattainable Prices for Event Tickets (Feb. 13, 2020).

⁹⁴ Brent Kendall & Anne Steele, *Justice Department Preparing Legal Action Against Live Nation for Ticketing Practices*, WALL ST. J. (Dec. 13, 2019, 5:44 PM), <https://www.wsj.com/articles/justice-department-preparing-legal-action-against-live-nation-for-ticketing-tactics-11576266778>.

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ Bill Hochberg, *Don’t Expect Ticket Prices to Drop After Live Nation’s Antitrust Settlement with DOJ*, FORBES (Dec. 20, 2019, 9:58 AM), <https://www.forbes.com/sites/williamhochberg/2019/12/20/live-nation-sidesteps-a-ticket-thicket-as-the-doj-backs-off-on-antitrust-litigation-threat/#3972a2b37d6d>.

can still choose to book exclusively with venues that use Ticketmaster without violating the decree.

In Las Vegas, Nevada, there are several major concert and sports arenas, including the Park Theater at Park MGM, T-Mobile Arena, Mandalay Bay Arena, MGM Grand Arena, The Colosseum at Caesars Palace, Zappos Theater at Planet Hollywood, the Encore Theater at Wynn Las Vegas, and the seven Cirque du Soleil theaters. Live Nation operates only one venue, The House of Blues at Mandalay Bay Resort and Casino. Its competitor, AEG, operates the Encore Theater, the Joint at Hard Rock Hotel and Casino, along with the brand new Allegiant Stadium where the Oakland Raiders will play. AEG also operated the Colosseum at Caesars Palace ending its seventeen-year run in 2019, hosting residencies, such as Celine Dion, Elton John, Shania Twain, and Cher.⁹⁹ The only Live Nation produced residency at the Colosseum during AEG's run was Mariah Carey. Caesars Entertainment, which owns the venue, began operating the Colosseum in 2019 in partnership with promotor Live Nation.

IV. ANALYSIS OF PRIMARY RIGHTS HOLDERS ATTEMPTING TO COMBAT SECONDARY TICKETING MARKETS

Companies such as Live Nation and Ticketmaster have attempted to infiltrate the secondary market by allowing others to resell their authenticated tickets directly on Live Nation's website alongside the face-value tickets.¹⁰⁰ Moreover, the company had a "quiet practice" of helping performers sell their tickets by transferring thousands of tickets to a broker to be sold on the secondary market before the tickets were even offered for face-value.¹⁰¹ The goal is to keep the money "in-house" by controlling the prices and directly competing with the ticket scalpers in the same market place.¹⁰²

Moreover, venue and event holders are switching away from paper tickets to paperless, non-transferrable tickets. Event holders are using "Flash Seats," a digital ticketing system, that issues digital tickets and allows consumers to enter the venue by a digital "ID," either a credit card, driver's license, or "Mobile ID"

⁹⁹ Dave Brooks, *As Exclusive Management Deal with the Colosseum Ends, Concerts West Plans Pivot in Las Vegas*, BILLBOARD (Feb. 4, 2019), <https://www.billboard.com/articles/business/8496190/concerts-west-las-vegas-aeg-colosseum>.

¹⁰⁰ Hannah Karp, *Live Nation Testing Way to Bring Ticket Resellers into Its Fold*, DOW JONES INSTITUTIONAL NEWS (Aug. 11, 2013), <http://ezproxy.library.unlv.edu/login?url=https://search.proquest.com/docview/2092150944?accountid=3611>.

¹⁰¹ Kaitlyn Tiffany, *Live Nation Admits to Helping Artists Scalp Their Own Tickets to Make More Money*, VOX (July 22, 2019, 12:20 PM), <https://www.vox.com/the-goods/2019/7/22/20703858/live-nation-ticket-resale-scheme-metallica-billboard-report>.

¹⁰² *Id.*

through the Flash Seats mobile app.¹⁰³ At the ticketing gate, a Guest Services Representative either swipes the card or scans the app using a handheld device and prints out a “seat locator,” identifying the seat location, but cannot be used as a ticket for re-entry into the arena.¹⁰⁴

Ticketmaster’s influence in the United Kingdom has shaped ticketing in London’s largest arenas. London’s O2 Arena, along with 19 of AMG’s other venues, are accepting digital tickets alongside paper tickets.¹⁰⁵ Consumers receive the tickets directly to their cell phones and the tickets can be transferred to a friend or resold on a “fan-to-fan exchange.”¹⁰⁶ Ticketmaster claims that the shift to digital tickets provides “increased security for music fans and [prevents] tickets from entering the [unauthorized] secondary market.”¹⁰⁷

Due to digital music streaming and a decline in physical album sales, artists themselves are also attempting to combat the secondary market.¹⁰⁸ Another artist that has pushed back against ticket resellers is American Country artist Eric Church, who cancelled broker tickets during his 2017 tour.¹⁰⁹ In 2015, Ed Sheeran began cancelling tickets purchased through resale site Viagogo for his “Shape of You” tour after his manager and promotor inadvertently sold tickets to a group of ticket touts—those who buy tickets in bulk for an event and resell

¹⁰³ Connor Clark, *What is Flash Seats? How do I use Flash Seats?*, TICKPICK BLOG (Jan. 16, 2018),

<https://www.tickpick.com/blog/what-is-flash-seats/>; *What is Flash Seats?*, AXS, <https://www.axs.com/bellco-flash-seats> (last visited Feb. 16, 2021); Kevin Kelps,

AXS is Discontinuing Flash Seats, Which Dan Gilbert Founded in 2006; Cavs Deal is Set to Expire Soon, CRAIN’S CLEVELAND BUSINESS (AUG. 28, 2020),

<https://www.craigslist.com/kevin-kleps-blog/axs-discontinuing-flash-seats-which-dan-gilbert-founded-2006-cavs-deal-set-expire#:~:text=01%3A29%20PM>.

(Flash Seats was discontinued on August 30, 2020 after being launched in 2006 and changed brands to AXS to be incorporated as AXS Mobile ID. The Flash Seats technology “is still there and still the same.”).

¹⁰⁴ *Id.*

¹⁰⁵ Richard Smirke, *Ticketmaster Partners with Academy Music Group to Rollout Digital Ticketing Across UK*, BILLBOARD (Mar. 6, 2019),

<https://www.billboard.com/articles/business/8501383/ticketmaster-academy-music-group-digital-ticketing-uk>.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ Jason Bracelin, *Ticket Price ‘Bait-and-Switch’ Gives Fans No Satisfaction*, LAS VEGAS REV. J. (Oct. 4, 2016, 2:01 AM),

<https://www.reviewjournal.com/entertainment/entertainment-columns/sounding-off/ticket-price-bait-and-switch-gives-fans-no-satisfaction/>.

¹⁰⁹ Dave Brooks, *Need Tickets? Get in Line, as Emails Reveal How Brokers Get First Crack at Tix for Big Arena Shows*, BILLBOARD (Dec. 14, 2018),

<https://www.billboard.com/articles/business/8490296/concert-tickets-brokers-resellers-emails-secondary-dti>.

them at a much higher price.¹¹⁰ Pearl Jam entered into an agreement with Ticketmaster for their 2020 North American Gigaton tour to use a new technology known as Safetix. The technology refreshes the ticket barcode every fifteen seconds, making it “impossible to copy, screengrab, email, or print” the tickets.¹¹¹ In addition, Ticketmaster has disabled ticket transfers between accounts in almost every state except for New York and Colorado, reducing the possibility of ticket resale.¹¹²

Other artists are employing a new version of an old technique known as “rush seating,” allowing consumers to fill empty seats on a first come, first serve basis.¹¹³ Rush seating originated on Broadway and was typically employed to sell less-desirable seats at the last minute, such as the day of the show, at a significant discount.¹¹⁴ Tegan and Sara, a Canadian sister-singing duo, recently implemented an enhanced version of the technique as a response to the group’s “sold-out” show where in fact, the room was essentially empty because scalpers had bought up large quantities of tickets but were unable to resell them.¹¹⁵ Six hours before their show, the duo asked fans to line-up at the venue and then sat the fans on a first come, first serve basis in exchange for a donation to their

¹¹⁰ Dave Brooks, *Amid Ed Sheeran's Crackdown on Scalpers, His Manager Acknowledges Inadvertently Selling to Brokers on 2015 Tour*, BILLBOARD (May 30, 2018), <https://www.billboard.com/articles/business/8458093/ed-sheeran-crackdown-scalpers-manager-acknowledges-selling-brokers-2015>; *Ticket Tout*, CAMBRIDGE DICTIONARY, <https://dictionary.cambridge.org/us/dictionary/english/ticket-tout> (last visited Nov. 19, 2019).

¹¹¹ Dave Brooks, *Buyer Beware: What Resellers Aren't Telling Fans About Pearl Jam Tickets*, BILLBOARD (Jan. 31, 2020), https://www.billboard.com/articles/business/touring/8549581/pearl-jam-ticketmaster-gigatron-resellers?utm_source=The+Real&utm_campaign=cff98cc092EMAIL_CAMPAIGN_2020_01_30_09_19&utm_medium=email&utm_term=0_3db035a4e3-cff98cc092-216488149.

¹¹² *Id.* (Ticketmaster is not allowed to make tickets non-transferrable in those two states, due to StubHub’s lobbying efforts, because the lawmakers passed measures “protecting the right of consumers to treat a ticket as personal property after they've purchased it”).

¹¹³ Taylor Mims, *How Tegan and Sara Defeated Scalpers & Embraced Their Fans With ‘Rush Seating’ Concept*, BILLBOARD (Oct. 22, 2019), https://www.billboard.com/articles/business/8533766/tegan-and-sara-defeated-scalpers-embraced-fans-rush-seating?utm_source=The+Real&utm_campaign=f8b25a4693-EMAIL_CAMPAIGN_2019_10_22_09_37&utm_medium=email&utm_term=0_3db035a4e3-f8b25a4693-216488149.

¹¹⁴ *Guide to Getting Discounted Broadway Show Tickets Through the Broadway RUSH Program That is Not Just for Students*, NYTIX (Aug. 20, 2018), <https://www.nytx.com/articles/broadway-rush-tickets>.

¹¹⁵ Mims, *supra* note 113.

foundation.¹¹⁶ They eyeballed empty seats where no ticketed consumer showed up and placed “rush” seaters in those seats.¹¹⁷ They would relocate the “rush” seaters to other empty seats if ticketed consumers arrived late.¹¹⁸

Some teams have become creative in meeting the demand for tickets with a limited supply of seats. The Golden State Warriors sell tickets into the arena, but with no accompanying seats; instead, fans can purchase tickets to watch the game from television screens at the bar or in standing room only sections.¹¹⁹ It gives the fans the feel and excitement of attending the game and hearing the crowd and energy while generating revenue for the teams and meeting demand for tickets. This experiment realistically only works for teams that sell out home games; it would not be logical for teams that do not. The Sacramento Kings were also attempting to change the fan experience by creating a 3,000-square-foot gathering space where upper-level seats would typically be.¹²⁰

Additionally, the Vegas Golden Knights implement a last-minute rush system through text and buy programs to fill open seats and generate last-minute revenue the week before, day before, or day-of the game. One program is known as the Taco Bell Student Rush, where students receive an email with last minute seats at a discounted rate, usually seats with no views of the game or standing room only. The students must have a valid .edu email in order to register for the Student Rush program. Another program is Pogoseat, an enterprise solution for sports teams that allows fans to purchase last minute games tickets by simply responding with the number of tickets they wish to purchase. The fans then receive various seat options based on the quantity they selected; then, once they identify the seats they want, they simply text “BUY” and the tickets are delivered to their Flash Seats account. Other ways promoters in Las Vegas fill seats for low-selling shows are by offering tickets to House Seats, a ticketing company in Las Vegas that works with venues and businesses to gain access to tickets for free, and then distributing them to House Seats paying members. Although the promoter will not receive any revenue from the tickets offered to House Seats, the promoter might generate revenue from merchandise and food and beverage.

Although rush seating would be beneficial to ensure that real fans are able to attend an event, the same technique used by Tegan and Sara might be difficult to implement in the case of sporting or concert arenas, where capacity is largely increased to tens of thousands. Eyeballing empty seats would be difficult when large amounts of patrons are often exiting their seats to visit concession stands. Instead of standby lines and first-come-first-serve, arena operators would have to implement some technique of ticketing to ensure that they can control the

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ Bill Shaikin, *Warriors Sell Tickets with No Seat for the Game. Is it the Wave of the Future?*, LA TIMES (Jan. 15, 2019, 6:15 PM), <https://www.latimes.com/sports/nba/la-sp-warriors-nba-tickets-20190115-story.html>.

¹²⁰ *Id.*

inventory of unused seats. Teams, such as the Vegas Golden Knights, might be able to use the inventory of seats listed for resale on Ticket Exchange, the team's official primary and secondary marketplace, to determine which season ticket seats might be empty for a "sold-out" game. They can then take those seats, if the listing has not been taken down within a certain amount of time before the start of the game and resell them for a minimal price to consumers waiting in a stand-by line.

A. *Analysis of Procedures by Rights Holders in Nevada*

Along with major event promoters and artists around the country, sports teams in Las Vegas are attempting to combat the secondary ticketing market by joining it. The Vegas Golden Knights, Las Vegas, Nevada's first National Hockey League (hereinafter "NHL") team, is a prime example. In 2016, Las Vegas, Nevada was awarded an expansion team that would begin playing in the 2017-2018 NHL season in the brand new, state-of-the-art, T-Mobile Arena.¹²¹ The team made it to the Stanley Cup playoffs during their inaugural year and sold out of its season tickets for the following year for more than a month before the finals were over.¹²² The Vegas Golden Knights, who had the best season in the history of expansion teams in North America, are enjoying a demand for tickets.¹²³ Tickets for home games are often double or triple the amount than away games.¹²⁴

In 2017, the Vegas Golden Knights entered into a multiyear contract with StubHub and AXS as the "co-exclusive secondary ticketing partners of the organization."¹²⁵ As a result of the partnership, the Vegas Golden Knights use AXS's Flash Seats technology for the primary ticket market and StubHub's secondary market for ticket resale, hoping to reduce the amount of fraudulent

¹²¹ Adam Kimelman, *Vegas Golden Knights Official Team Name*, NHL (Nov. 22, 2016), <https://www.nhl.com/news/vegas-golden-knights-official-team-name/c-283981522>.

¹²² Eli Segall, *Golden Knights Sell Out of Season Tickets for 2018-19*, LAS VEGAS REV. J. (May 4, 2019, 8:54 PM), <https://www.reviewjournal.com/sports/golden-knights-nhl/golden-knights-sell-out-of-season-tickets-for-2018-19/>.

¹²³ Ken Boehlke, *Partnered Post: Secondary Market Prices for 2018-2019 Vegas Golden Knights Tickets are Second Highest in NHL*, SINBIN.VEGAS (Sept. 24, 2018), <http://sinbin.vegas/partnered-post-secondary-market-prices-for-2018-19-vegas-golden-knights-tickets-are-second-highest-in-nhl/>.

¹²⁴ Eli Segall, *Golden Knights Tickets Priciest in NHL, Broker Says*, LAS VEGAS REV. J. (May 3, 2018, 6:57 PM), <https://www.reviewjournal.com/sports/golden-knights-nhl/golden-knights-tickets-priciest-in-nhl-broker-says/>. ("average asking prices for Knights' home games this round range between \$434 and \$631, compared with \$207 to \$249 for games in San Jose").

¹²⁵ Vegas Golden Knights, *AXS and StubHub Announced as Secondary Ticketing Partners*, NHL (Sept. 18, 2017), <https://www.nhl.com/goldenknights/news/axs-and-stubhub-announced-as-secondary-ticketing-partners/c-291136958>.

tickets consumers might be exposed to.¹²⁶ Additionally, season tickets holders are allowed to sell or transfer their tickets through either mobile application.¹²⁷ If a season ticket member resells their ticket on a “non-authorized [site]” for profit, their season tickets are subject to cancellation.¹²⁸ At the end of the 2017-2018 season, the Vegas Golden Knights sued StubHub, alleging that the ticketing site did not pay almost \$1,500,000.00 in playoff ticket sales profits.¹²⁹ StubHub was the Knights’ exclusive secondary marketplace during the 2017-2018 season and the team had the NHL’s top-selling regular-season tickets on StubHub.¹³⁰

In 2018, the Vegas Golden Knights rebranded Flash Seats into “VGK Ticket Exchange” because other teams in the league are also utilizing Flash Seats as the official ticketing program.¹³¹ For the 2018-2019 season and beyond, the Vegas Golden Knights utilized VGK Ticket Exchange for both the primary and secondary markets where season ticket members will be allowed to resell their tickets without fees.¹³² The Vegas Golden Knights also raised five-year and 10-year member season tickets by thirteen percent for the 2020-21 season.¹³³ In 2020, the Vegas Golden Knights introduced a new season ticket program, known as the Knights Salute. Through the program, season ticket holders will have opportunities to purchase additional home game tickets for \$200 for deserving individuals and groups, including “Las Vegas Metro[politan Police Department], First Responders, Nellis Air Force Base, Creech Air Force Base and all other Military members, Clark County School teachers and administrators as well as charitable organizations.”¹³⁴

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ Adam Hill, *Knights Enforce Ticket Policies to Crack Down on Resellers*, L.V. REV. J. (Sept. 26, 2018, 7:31 PM), <https://www.reviewjournal.com/sports/golden-knights-nhl/knights-enforce-ticket-policies-to-crack-down-on-resellers/>.

¹²⁹ Eli Segall, *Golden Knights Sue StubHub for \$1.5M from Playoff Ticket Sales*, LAS VEGAS REV. J. (June 26, 2018, 7:27 PM), <https://www.reviewjournal.com/sports/golden-knights-nhl/golden-knights-sue-stubhub-for-1-5m-from-playoff-ticket-sales/>.

¹³⁰ *Id.*

¹³¹ Alan Snel, *Golden Knights Rebrand Their Flash Seats Into VGK Ticket Exchange*, SINBIN.VEGAS (Nov. 23, 2018), <https://lvsportsbiz.com/2018/11/23/golden-knights-rebrand-its-flash-seats-into-vgk-ticket-exchange/>.

¹³² Vegas Golden Knights, *Vegas Golden Knights Launch The "VGK Ticket Exchange"*, NHL (Nov. 21, 2018), <https://www.nhl.com/goldenknights/news/vegas-golden-knights-launch-the-vgk-ticket-exchange/c-302154998>.

¹³³ David Schoen, *Golden Knights Announce Price Increase for 2020-21 Season Tickets*, Las Vegas Rev. J. (Jan. 13, 2020, 9:42 AM), <https://www.reviewjournal.com/sports/goldenknights/golden-knights-announce-price-increase-for-2020-21-season-tickets-1934588/>.

¹³⁴ Vegas Golden Knights, *Vegas Golden Knights Launch "Knights Salute" Season Ticket Member Program*, NHL (Jan. 13, 2020, 9:27 AM), <https://www.nhl.com/goldenknights/news/vgk-launch-knights-salute-season-ticket-member-program/c-313873218>.

Moreover, the Las Vegas Raiders introduced to Las Vegas a new ticketing scheme, the personal seat license, which gives holders the right to buy a particular set of seats for as long as the team plays in that venue.¹³⁵ The one-time fee gives fans an exclusive right to purchase season-ticket packages at face value for a specific seat over a fixed period of time, and if the fan fails to purchase season tickets, the license will be revoked.¹³⁶ The Las Vegas Raiders have brought in nearly \$400 million in personal seat license fees, a key source of stadium financing outside private funds and taxpayer contributions.¹³⁷ The personal seat licenses range ranged from \$500 to \$75,000.¹³⁸ The revenue allows the builders to enhance the new Allegiant Stadium by bringing in upgraded internet connection, “furniture and fixtures, technology and food service upgrades, building out certain unassigned spaces, and additional sponsor signage and other fixtures.”¹³⁹ Season tickets for the Las Vegas Raiders range from \$650 for 10 home games to \$3,500 for club seats.¹⁴⁰

On top of the ticket price, rights holders and venues impose combinations of fees.¹⁴¹ Ticket costs are usually made up of the face value price (also known as the base ticket price), which is determined by the venue or event promoter, the service fee and order processing fee, which is usually set by the ticketing service, such as Ticketmaster in exchange for providing software, equipment, services, and support to manage a venue’s tickets. Sometimes a delivery fee is added, depending on the agreement between the ticketing system and the venue, and can vary based on whether the consumer chooses mobile tickets, will-call pickup, print-at-home, mail or UPS.¹⁴² Facility charges are sometimes added, depending on the venue, to cover operation costs; taxes, whether city, state, or local, are

¹³⁵ *Are Permanent Seat Licenses a Good Investment?*, UNUSUAL INVESTMENTS, <https://unusualinvestments.com/are-permanent-seat-licenses-a-good-investment/> (last visited Feb. 16, 2020).

¹³⁶ Thomas Barrabi, *NFL Personal Seat Licenses: Pigskin Ponzi or Good Investment?*, FOX BUS. (Jan. 9, 2020), <https://www.foxbusiness.com/sports/nfl-personal-seat-licenses-raiders-season-tickets>.

¹³⁷ Bryan Horwath, *Raiders: Seat License Sales Reach Nearly \$400 Million*, LAS VEGAS SUN (Nov. 18, 2019, 4:55 PM), <https://lasvegassun.com/news/2019/nov/18/raiders-seat-license-sales-reach-400-million/>.

¹³⁸ Barrabi, *supra* note 136.

¹³⁹ Zach Spedden, *Allegiant Stadium Cost Rises by \$90M*, FOOTBALL STADIUM DIG. (Sept. 17, 2019), <https://footballstadiumdigest.com/2019/09/allegiant-stadium-cost-rises-by-90m/>.

¹⁴⁰ Mick Akers, *First Las Vegas Raiders Season Tickets Fees Due Nov.15*, LAS VEGAS REV. J. (Oct. 19, 2019, 10:35 AM), <https://www.reviewjournal.com/business/stadium/first-las-vegas-raiders-season-tickets-fees-due-no-15-1875116/>.

¹⁴¹ *How are Ticket Prices and Fees Determined?*, TICKETMASTER, https://help.ticketmaster.com/s/article/How-are-ticket-prices-and-fees-determined?language=en_US (last visited Nov. 2, 2019).

¹⁴² *Id.*

typically included in the face value of the ticket or may be listed as a separate charge.¹⁴³ On average, the event ticket fee on a primary sale is twenty-seven percent of face value while fees on resale sites are thirty-one percent of the face value.¹⁴⁴

One such tax charged in Nevada is the Live Entertainment Tax, which has its roots in a federal tax called the Admissions Tax.¹⁴⁵ The 10% tax was enacted in 2003 and applies to any place where live entertainment is provided, unless the venue is over 7,500 seats, in which case, the tax is 5%.¹⁴⁶ The tax is administered by two agencies, the Nevada State Gaming Control Board, which receives, audits, and oversees the tax for venues within a licensed gaming establishment, and the Department of Taxation, which oversees the tax for live entertainment venues not located within a gaming establishment.¹⁴⁷ The gaming establishment is the taxpayer for its facility and usually there are lease provisions between the casino and the live entertainment venue “that address reporting, collecting, auditing, recording, reimbursing, etc.”¹⁴⁸ Moreover, most facilities will pass on the charge to the consumers.¹⁴⁹ On top of the ticket to the show, other items such as food, beverage, and merchandise are also taxed.¹⁵⁰

In its unpublished opinion in *Desert Palace, Inc. v. Nevada Gaming Commission*, the Nevada Supreme Court held that convenience fees paid by third parties were “service charges” within the Nevada tax statute, and therefore exempt under the statute.¹⁵¹ In the case, AEG granted Ticketmaster the right to remotely sell tickets to the Colosseum, which was retained by Caesars Palace, in exchange for forty-percent of royalties of the per-ticket convenience fee that Ticketmaster collected.¹⁵² In turn, AEG was supposed to forward the ticket proceeds and collected L.E.T. to Caesars, which would in turn remit the L.E.T. revenue to the State Gaming Control Board.¹⁵³ When AEG failed to forward the royalties, and Caesars failed to pay the L.E.T., the Board determined that the royalties were taxable as an admission charge and issued a deficiency determination.¹⁵⁴ After AEG and Caesars petitioned for judicial review, the

¹⁴³ *Id.*

¹⁴⁴ David Dayen, *The Ticket Monopoly is Worse than Ever (Thanks, Obama)*, THE NEW REPUBLIC (May 15, 2018), <https://newrepublic.com/article/148419/ticket-monopoly-worse-than-ever-thanks-obama>.

¹⁴⁵ Jennifer Roberts, *A Primer on the Live Entertainment Tax*, NEV. LAW., May 2015, at 22.

¹⁴⁶ *Id.* at 23.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.* at 24.

¹⁵⁰ *Id.* at 23–24.

¹⁵¹ *Desert Palace, Inc. v. Nevada Gaming Commission*, No. 61168, 2014 WL812449, at *1, *2–3 (Nev. Feb. 21, 2014).

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Id.*

Nevada Supreme Court determined that Ticketmaster was providing a useful service to AEG and therefore the convenience fees were service charges retained by Ticketmaster, not AEG, and not taxable under Nevada statute.¹⁵⁵

B. *Ticketing Impact on the Casino Industry*

Before any tickets are released to the public through a main on-sale, a variety of tickets are reserved and placed in holds for various reasons. Some tickets are reserved for the artist or team to distribute to friends, family, or high-profile guests. Some tickets may be reserved for presales. Others are placed in holds for VIP packages and special prices or given or sold to media outlets. Due to the low percentage of seats that are ADA accessible, some are reserved for last minute ADA issues in case buyers purchase all of the ADA advertised seats. In Las Vegas, Nevada, especially for theaters located in resorts, some tickets are reserved for the casinos. Depending on the type of event or promotor, the casinos are typically charged the face value for the tickets without having to pay any convenience fees. The casinos then distribute those tickets in the form of “comps,” or compensation, to their players using a hierarchical distribution system based on a casino guest’s value. Most casinos award compensations based on a guest’s actual time spent playing or gambling, usually in the form of how many bets per hour and at what amount a player makes.¹⁵⁶ The compensations are calculated not based on actual loss, but on theoretical expected loss.¹⁵⁷

In addition to casino compensations, most casinos provide additional benefits to higher tiered players, such as VIP lines to enter the venue or discount prices for guests who pay for tickets by charging the amount to their rooms instead of paying with cash or credit card. Additional ways that casinos generate revenue from live entertainment, as well as food and beverage is by packaging the two together. For example, travel website Vegas.com, that exclusively serves the Las Vegas, Nevada destination, will often provide discounts on hotel rooms, airfare, tours, dining, and show tickets by packaging ticket and dinner packages. Customers who purchase packages through Vegas.com often receive a discount on both the show tickets and a pre-fixed dinner at select restaurants. Through partnerships with the show promotors and restaurants which provide Vegas.com with prices below market value, Vegas.com can sell the packages at an increased rate, thus generating profit for Vegas.com, while generating revenue for the show promotor and restaurant that they might not have been able to generate otherwise.

Traditional casino floor gaming is changing, with the advent of mobile sports betting and gambling applications to attract younger tourists. In addition, mobile gaming is making it easier to circumvent Nevada rules and regulations.

¹⁵⁵ *Id.*

¹⁵⁶ Michael Stevens, *How Comps Work in Gambling (and How to Make Them Work for You)*, GAMBLINGSITES.ORG (June 10, 2018), <https://www.gamblingsites.org/blog/how-comps-work-in-gambling/>.

¹⁵⁷ *Id.*

For example, the Las Vegas Raiders signed a lease with the Las Vegas Stadium Authority to play in the new Allegiant Stadium, and the lease agreement contains a provision that prohibits “any Gaming or Gambling, the maintaining or operating of a Gaming Establishment and/or sports wagering or any wagering on racing or other non-sports events.”¹⁵⁸ However, Nevada gaming laws allow the use of mobile, handheld devices for gambling anywhere within Nevada state lines.¹⁵⁹ Therefore, fans attending Raiders game will be able to circumvent the lease agreement by using their mobile devices to gamble from their seats.¹⁶⁰ Twenty-nine percent of Nevada’s overall handle in 2016 was generated by mobile sports betting, and that percentage could reach fifty percent by 2020.¹⁶¹

With a decrease in gaming as the primary revenue and an increase in non-gaming revenue as evidenced by an increase in the number of sports and entertainment venues in Las Vegas, casinos are seeing an increase of revenue from hotel stays, dining, shopping, transportation, and gambling as a result of traffic from these venues.¹⁶² In addition to increased revenues, casinos have increased their exposure and market reach by partnering with teams and associations. For example, in 2017, MGM Resorts International acquired the Las Vegas Aces, the Women’s National Basketball Association franchise that previously played in San Antonio.¹⁶³

In addition, MGM Resorts International partnered with the National Hockey League to become the league’s first official sports betting partner, while also signing a betting deal with the National Basketball Association and another gambling partnership with Major League Baseball.¹⁶⁴ It has also been named as the official Gaming Partner of the new Las Vegas Raiders and a Founding Partner of the new Allegiant Stadium housing the team.¹⁶⁵ The growth of entertainment

¹⁵⁸ Neil Greenberg, *Loophole Would Allow Las Vegas Fans to Gamble from Their Seats at Raiders’ Stadium*, WASH. POST (May 22, 2017, 12:31 PM), <https://www.washingtonpost.com/news/early-lead/wp/2017/05/22/loophole-would-allow-las-vegas-fans-to-gamble-from-their-seats-at-raiders-stadium/>.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² Buck Wargo, *Study: Las Vegas Bet on Sports and Entertainment Paying Off*, CDC GAMING REP. (Nov. 30, 2018, 12:05 AM), <https://www.cdcgamingreports.com/study-las-vegas-bet-on-sports-and-entertainment-paying-off/>.

¹⁶³ John Seelmeyer, *Professional Sports: the Big Game in Town*, NEVADABUSINESS.COM (Oct. 1, 2019), <https://www.nevadabusiness.com/2019/10/professional-sports/>.

¹⁶⁴ Eric Ramsey, *MLB Makes MGM Resorts ‘Official Gaming Partner’ as Sports Betting Deals Proliferate*, LEGAL SPORTS REP. (Nov. 27, 2018), <https://www.legalsportsreport.com/26238/mlb-sports-betting-announcement-mgm/>.

¹⁶⁵ *MGM Resorts Named an Official Gaming Partner of the Las Vegas Raiders and Founding Partner of Allegiant Stadium*, RAIDERS.COM (Jan. 23, 2020, 11:06 AM), <https://www.raiders.com/news/mgm-resorts-named-an-official-gaming-partner-of-the-las-vegas-raiders-founding-p>.

and sports industry has generated an economic boost in Las Vegas, Nevada aside from gambling. The addition of the Allegiant Stadium, which will house the Las Vegas Raiders and the University of Nevada, Las Vegas football team is projected to generate an annual economic impact of \$620,000,000, which includes \$367,000,000 in economic activity directly attributable to the stadium and another \$253,000,000 that will “ripple through the economy of Southern Nevada.”¹⁶⁶

V. RECOMMENDATIONS FOR NEVADA’S TICKETING LEGISLATION

The main concern with SB 131 and Nevada’s ticketing legislation is the balance between satisfying the primary rights holders without allowing them to monopolize the ticketing market. Secondary ticketing markets are beneficial to the thriving sports and entertainment industry because they fulfill the demand from fans to attend sporting and concert events, but also provide the event promoters with opportunities to fill seats for their events. It also furthers the growth of the industry by allowing for new technological advances to deliver tickets to fans without hassles, such as waiting in line at the box office, forgetting tickets at home, or even waiting for friends to arrive at a concert that’s about to start. Primary and secondary rights holders have been forced to become creative in satisfying the growing needs of fans who expect to have a smooth experience from the moment of purchasing tickets for an event, to arriving at the door, to eventually being seated. Therefore, the primary rights holders should not be allowed to stifle the secondary market, while the secondary market should not be allowed to drive a profit from unsuspecting fans without some boundaries. But those boundaries should not be imposed by the primary rights holders, who have an incentive to repress the secondary market; instead, carefully crafted legislation should provide the checks and balances necessary to facilitate a balance between the primary and secondary markets.

Nevada Revised Statute 598.3979 states that

In addition to any other restrictions imposed by the rights holder, a reseller, a secondary ticket exchange or any other affiliate of a reseller or secondary ticket exchange shall not resell more than one copy of the same ticket to an athletic contest or live event.¹⁶⁷

This all-encompassing language is problematic because it allows primary rights holders to impose any sort of restriction on the ticket reseller without oversight. Every section in the Nevada Revised Statute limits the ability of the secondary rights holders to purchase and sell tickets without imposing any restriction on the primary rights holders.¹⁶⁸ Primary rights holders are receiving a benefit from tickets that are resold. When a ticket enters the secondary market,

¹⁶⁶ Seelmeyer, *supra* note 164.

¹⁶⁷ NEV. REV. STAT. § 598.3979 (2020).

¹⁶⁸ NEV. REV. STAT. §§ 598.397–3984 (2020).

the primary rights holders have already received their asking price for the ticket because the ticket has already been purchased. Additionally, the primary rights holders receive additional incidental revenue from food and beverage as well as merchandise. Additionally, especially in Las Vegas, restaurants and casinos receive additional revenue from event-goers before and after an event. The secondary market is also beneficial to the primary market because the resellers assume the risk of an event failure by purchasing large quantities of tickets from the primary market without an opportunity to resell the tickets and recoup their losses.¹⁶⁹ Therefore, the primary rights holders have an incentive to fill seats, even if those tickets have been resold on secondary markets.

The secondary ticketing market has developed ways to fulfil consumer needs the way that the primary market has only recently begin to implement. For example, compared to the airline industry and hotel room industry, dynamic pricing, a pricing model in which businesses set flexible pricing depending on the demand of the market, has been the primary pricing model employed by the secondary market. Consumers are given flexible options to purchase tickets at a cost that may be lower or higher than the primary market price, depending on the demand for tickets to an event or proximity to the date of the event. The primary rights holders have realized that dynamic pricing is the key to drawing fans to purchase tickets from their websites or box offices. Without both primary and secondary markets thriving, neither market would be able to survive because the primary market relies on the secondary market to fill seats while the secondary market relies on the traditional, rigid pricing of the primary market. Therefore, neither market should be permitted to constrain the other.

VI. CONCLUSION

With the increase of primary rights holders entering the secondary ticket market themselves, enforcement of NRS 598.397 against the primary rights holders will be difficult because the contracting parties will be the primary rights holder and their affiliates. Therefore, the Nevada legislature should consider the monopolization of primary rights holders on the ticketing market and should implement legislative changes accordingly.

¹⁶⁹ Thomas A. Diamond, *Ticket Scalping: A New Look at an Old Problem*, 37 U. MIAMI L. REV. 71, 73 (1982).