

Moran-1

BAG16632

S.L.C. Jerry Moran

AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—114th Cong., 2d Sess.

**S. 3183**

To prohibit the circumvention of control measures used by Internet ticket sellers to ensure equitable consumer access to tickets for any given event, and for other purposes.

Referred to the Committee on \_\_\_\_\_ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended to be proposed by Mr. MORAN

Mr. Blumenthal  
Ms. Fischer

Viz:

1 Strike all after the enacting clause and insert the following:  
2

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Better Online Ticket  
5 Sales Act of 2016” or the “BOTS Act of 2016”.

6 **SEC. 2. UNFAIR AND DECEPTIVE ACTS AND PRACTICES RELATING TO CIRCUMVENTION OF TICKET ACCESS CONTROL MEASURES.**  
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8

9 (a) CONDUCT PROHIBITED.—

10 (1) IN GENERAL.—Except as provided in paragraph (2), it shall be unlawful for any person—  
11

1 (A) to circumvent a security measure, ac-  
2 cess control system, or other technological con-  
3 trol or measure on an Internet website of a  
4 ticket issuer that is used by the ticket issuer to  
5 enforce posted event ticket purchasing limits or  
6 to maintain the integrity of posted online ticket  
7 purchasing order rules; or

8 (B) to sell or offer to sell any event ticket  
9 in interstate commerce obtained in violation of  
10 subparagraph (A) if the person selling or offer-  
11 ing to sell the ticket either—

12 (i) participated directly in or had the  
13 ability to control the conduct in violation of  
14 subparagraph (A); or

15 (ii) knew or should have known that  
16 the event ticket was acquired in violation  
17 of subparagraph (A).

18 (2) EXCEPTION.—It shall not be unlawful  
19 under this section for a person to create or use any  
20 computer software or system—

21 (A) to investigate, or further the enforce-  
22 ment or defense, of any alleged violation of this  
23 section or other statute or regulation; or

24 (B) to engage in research necessary to  
25 identify and analyze flaws and vulnerabilities of

1 measures, systems, or controls described in  
2 paragraph (1)(A), if these research activities  
3 are conducted to advance the state of knowl-  
4 edge in the field of computer system security or  
5 to assist in the development of computer secu-  
6 rity product.

7 (b) ENFORCEMENT BY THE FEDERAL TRADE COM-  
8 MISSION.—

9 (1) UNFAIR OR DECEPTIVE ACTS OR PRAC-  
10 TICES.—A violation of subsection (a) shall be treated  
11 as a violation of a rule defining an unfair or a de-  
12 ceptive act or practice under section 18(a)(1)(B) of  
13 the Federal Trade Commission Act (15 U.S.C.  
14 57a(a)(1)(B)).

15 (2) POWERS OF COMMISSION.—

16 (A) IN GENERAL.—The Commission shall  
17 enforce this section in the same manner, by the  
18 same means, and with the same jurisdiction,  
19 powers, and duties as though all applicable  
20 terms and provisions of the Federal Trade  
21 Commission Act (15 U.S.C. 41 et seq.) were in-  
22 corporated into and made a part of this section.

23 (B) PRIVILEGES AND IMMUNITIES.—Any  
24 person who violates subsection (a) shall be sub-  
25 ject to the penalties and entitled to the privi-

1           leges and immunities provided in the Federal  
2           Trade Commission Act (15 U.S.C. 41 et seq.).

3           (C) AUTHORITY PRESERVED.—Nothing in  
4           this section shall be construed to limit the au-  
5           thority of the Federal Trade Commission under  
6           any other provision of law.

7           (c) ENFORCEMENT BY STATES.—

8           (1) IN GENERAL.—In any case in which the at-  
9           torney general of a State has reason to believe that  
10          an interest of the residents of the State has been or  
11          is threatened or adversely affected by the engage-  
12          ment of any person subject to subsection (a) in a  
13          practice that violates such subsection, the attorney  
14          general of the State may, as *parens patriae*, bring  
15          a civil action on behalf of the residents of the State  
16          in an appropriate district court of the United  
17          States—

18                 (A) to enjoin further violation of such sub-  
19                 section by such person;

20                 (B) to compel compliance with such sub-  
21                 section; and

22                 (C) to obtain damages, restitution, or other  
23                 compensation on behalf of such residents.

24           (2) RIGHTS OF FEDERAL TRADE COMMIS-  
25           SION.—

1 (A) NOTICE TO FEDERAL TRADE COMMIS-  
2 SION.—

3 (i) IN GENERAL.—Except as provided  
4 in clause (iii), the attorney general of a  
5 State shall notify the Commission in writ-  
6 ing that the attorney general intends to  
7 bring a civil action under paragraph (1)  
8 not later than 10 days before initiating the  
9 civil action.

10 (ii) CONTENTS.—The notification re-  
11 quired by clause (i) with respect to a civil  
12 action shall include a copy of the complaint  
13 to be filed to initiate the civil action.

14 (iii) EXCEPTION.—If it is not feasible  
15 for the attorney general of a State to pro-  
16 vide the notification required by clause (i)  
17 before initiating a civil action under para-  
18 graph (1), the attorney general shall notify  
19 the Commission immediately upon insti-  
20 tuting the civil action.

21 (B) INTERVENTION BY FEDERAL TRADE  
22 COMMISSION.—The Commission may—

23 (i) intervene in any civil action  
24 brought by the attorney general of a State  
25 under paragraph (1); and

- 1 (ii) upon intervening—  
2 (I) be heard on all matters arising in the civil action; and  
3  
4 (II) file petitions for appeal of a  
5 decision in the civil action.

6 (3) INVESTIGATORY POWERS.—Nothing in this  
7 subsection may be construed to prevent the attorney  
8 general of a State from exercising the powers conferred on the attorney general by the laws of the  
9 State to conduct investigations, to administer oaths  
10 or affirmations, or to compel the attendance of witnesses or the production of documentary or other  
11 evidence.  
12  
13

14 (4) PREEMPTIVE ACTION BY FEDERAL TRADE  
15 COMMISSION.—If the Commission institutes a civil  
16 action or an administrative action with respect to a  
17 violation of subsection (a), the attorney general of a  
18 State may not, during the pendency of such action,  
19 bring a civil action under paragraph (1) against any  
20 defendant named in the complaint of the Commission for the violation with respect to which the Commission instituted such action.  
21  
22

23 (5) VENUE; SERVICE OF PROCESS.—

24 (A) VENUE.—Any action brought under  
25 paragraph (1) may be brought in—

1 (i) the district court of the United  
2 States that meets applicable requirements  
3 relating to venue under section 1391 of  
4 title 28, United States Code; or

5 (ii) another court of competent juris-  
6 diction.

7 (B) SERVICE OF PROCESS.—In an action  
8 brought under paragraph (1), process may be  
9 served in any district in which the defendant—

10 (i) is an inhabitant; or

11 (ii) may be found.

12 (6) ACTIONS BY OTHER STATE OFFICIALS.—

13 (A) IN GENERAL.—In addition to civil ac-  
14 tions brought by attorneys general under para-  
15 graph (1), any other consumer protection offi-  
16 cer of a State who is authorized by the State  
17 to do so may bring a civil action under para-  
18 graph (1), subject to the same requirements  
19 and limitations that apply under this subsection  
20 to civil actions brought by attorneys general.

21 (B) SAVINGS PROVISION.—Nothing in this  
22 subsection may be construed to prohibit an au-  
23 thorized official of a State from initiating or  
24 continuing any proceeding in a court of the

1 State for a violation of any civil or criminal law  
2 of the State.

3 **SEC. 3. DEFINITIONS.**

4 In this Act:

5 (1) COMMISSION.—The term “Commission”  
6 means the Federal Trade Commission.

7 (2) EVENT.—The term “event” means any con-  
8 cert, theatrical performance, sporting event, show, or  
9 similarly scheduled activity, taking place in a venue  
10 with a seating or attendance capacity exceeding 200  
11 persons that—

12 (A) is open to the general public; and

13 (B) is promoted, advertised, or marketed  
14 in interstate commerce or for which event tick-  
15 ets are generally sold or distributed in inter-  
16 state commerce.

17 (3) EVENT TICKET.—The term “event ticket”  
18 means any physical, electronic, or other form of a  
19 certificate, document, voucher, token, or other evi-  
20 dence indicating that the bearer, possessor, or per-  
21 son entitled to possession through purchase or other-  
22 wise has—

23 (A) a right, privilege, or license to enter an  
24 event venue or occupy a particular seat or area



1 in an event venue with respect to one or more  
2 events; or

3 (B) an entitlement to purchase such a  
4 right, privilege, or license with respect to one or  
5 more future events.

6 (4) TICKET ISSUER.—The term “ticket issuer”  
7 means any person who makes event tickets available,  
8 directly or indirectly, to the general public, and may  
9 include—

10 (A) the operator of the venue;

11 (B) the sponsor or promoter of an event;

12 (C) a sports team participating in an event  
13 or a league whose teams are participating in an  
14 event;

15 (D) a theater company, musical group, or  
16 similar participant in an event; and

17 (E) an agent for any such person.