

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Finance and Tax Committee

BILL: CS/SB 1190

INTRODUCER: Commerce Committee and Senators Bennett and Lynn

SUBJECT: Sale of Event Tickets

DATE: April 9, 2010 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hrdlicka	Cooper	CM	Fav/CS
2.	ODonnell	McKee	FT	Favorable
3.			GA	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The bill creates s. 817.358, F.S., related to the sale of event tickets, to ensure that venues covered by the bill retain the capacity to refund all receipts from ticket sales upon the cancellation of an event.

The bill does not have a fiscal impact.

For an event occurring on or after July 1, 2010, the bill requires an original seller of tickets to either:

- Retain all receipts received from a sale of a ticket, including taxes and fees, until the date of the event; or
- Require any person seeking advance release of funds from ticket sales to provide a surety bond to the venue in an amount equal to the greatest amount the person is seeking in advance, before releasing any funds.

If an event is cancelled, the ticket purchaser is entitled to a refund of all receipts from the sale of the ticket, including taxes and fees. These requirements apply only to original sellers, which are

venues that are publically owned facilities or issuers of event tickets pursuant to a contract with such a venue.

The bill is limited to primary ticket sales. Specifically, the requirement does not apply to tickets:

- That have the word “nonrefundable” conspicuously printed on the face of the ticket;
- For professional sports events;
- For amateur sports events sanctioned by the Amateur Athletic Union of the USA, Inc.;
- For motorsports events as defined in ss. 288.1171 and 549.10, F.S.;
- For events promoted exclusively by an educational institution;
- For postseason collegiate sporting exhibitions or athletic contests sanctioned by the National Collegiate Athletic Association; or
- For a pugilistic exhibition regulated under ch. 548, F.S.

The bill defines “educational institution,” “event,” “original seller,” and “venue.”

This bill creates s. 817.358 of the Florida Statutes.

II. Present Situation:

Sale of Tickets in Florida (Primary Sales)

There is no requirement that venues keep all charges from ticket sales for an event until the event occurs. It is up to the ticket purchaser to be aware of the terms of the contract that purchasing a ticket will be, including terms of refund should an event be cancelled.

Resale of Tickets in Florida (Secondary Sales)

Current law prohibits the resale of tickets for more than \$1 over the original admission price, but limits the application of that restriction to the following transactions:

- Tickets sold for passage or accommodation on any common carrier in Florida;¹
- Multiday or multi-event tickets to a park or entertainment complex, or a concert, entertainment event, permanent exhibition, or recreational activity within a park or complex, including an entertainment/resort complex;²
- Tickets for events for which 3,000 tickets or less are issued by a 501(c)(3) charitable organization;³
- Tickets sold through an internet website unless authorized by the original ticket seller or when the website makes and posts certain guarantees and disclosures.⁴
 - For tickets resold through websites, one required guarantee is that the website will make a full refund of the amount paid for the ticket including any servicing, handling, or processing fees, if such fees are not disclosed, when the event is canceled.

¹ Section 817.36(1)(a), F.S. This does not apply to travel agencies that have an established place of business in the state and are required to pay state, county, and city occupational license taxes.

² Section 817.36(1)(b) F.S. “Entertainment/resort complex” is defined in s. 516.01(18), F.S.

³ Section 817.36(1)(c), F.S. The tickets must be printed with a phrase that notifies the ticket holder that the ticket may not be resold for more than \$1 over the original price. This does not apply to tickets issued or sold by a third party contractor ticketing service provider on behalf of the organization, unless the disclaimer is printed on the tickets.

⁴ Section 817.36(1)(d), F.S.

If a ticket is resold in violation of the statute, or if a person uses software to circumvent a ticket seller's website, a civil penalty of treble the amount of a ticket or tickets resold is imposed.⁵

Any ticket outside of the four categories listed above may be sold at any amount over the original admissions price. Any sales tax due on resold tickets is to be remitted to the Florida Department of Revenue in accordance with s. 212.04, F.S.⁶

Regulation of Fraudulent Ticket Sales

Section 817.361, F.S., makes it a second degree misdemeanor to offer for sale, sell, or transfer, with or without consideration, any nontransferable multiday or multievent ticket that has been used at least once for admission. Second or subsequent violations are first degree misdemeanors.

Section 817.355, F.S., makes the sale of any counterfeit, forged, altered ticket, or possession of any ticket with the intention to defraud a facility, a first degree misdemeanor.

Section 817.357, F.S., states that it is a violation of the Florida Deceptive and Unfair Trade Practices Act⁷ for knowingly purchasing a quantity of tickets from the original ticket seller that exceeds the maximum ticket limit quantity set, with the intent to resell such tickets. This does not apply to "original ticket sellers," meaning "the issuer of such ticket or a person or firm who provides distribution services or ticket sales services under a contract with such issuer."

State Taxes on Admissions:

Section 212.04, F.S., establishes a taxable privilege for selling or receiving anything of value by way of admissions. Admissions are taxed at 6 percent of the sales price or actual value received. The sales price or actual value of admission is the price remaining after deducting federal taxes, state and local seat surcharges, taxes, or fees imposed upon admission, and ticket office or ticketing service charges. A separately stated ticketing service charge added to the price of a separately stated, established admission price by a facility ticket office or ticketing service is not part of the sales price.

The tax on admissions is not levied on

- Athletic or other events sponsored by elementary schools, junior high schools, middle schools, high schools, community colleges, public or private colleges and universities, deaf and blind schools, facilities of the youth services programs of the Department of Children and Family Services, and state correctional institutions when only student, faculty, or inmate talent is used;⁸
- Dues, membership fees, and admission charges imposed by 501(c)(3) not-for-profit sponsoring organizations;⁹
- Admission paid by a student, or on the student's behalf, as part of a school sponsored activity or program to a place of sport or recreation, so long as the student is required to attend as a participant and not as a spectator;¹⁰

⁵ Section 817.36(4) and (5), F.S.

⁶ Section 817.36(3), F.S. Section 212.04, F.S. imposes a tax on the sales price or actual value of admissions.

⁷ Sections 501.201 – 501.213, F.S.

⁸ Section 212.04(2)(a)1., F.S.

⁹ Section 212.04(2)(a)2.a., F.S.

¹⁰ Section 212.04(2)(a)3., F.S.

- Admissions to the National Football League championship game, admissions to any semifinal game or championship game of a national collegiate tournament, admissions to any postseason collegiate football game sanctioned by the National Collegiate Athletic Association, or on admissions to a Major League Baseball all-star game;¹¹
- Participation or sponsorship fees associated with a governmental athletic or recreation program;¹²
- Entry fees for freshwater fishing tournaments;¹³
- Participation or entry fees charged to participants in a game, race, or other sport or recreational event if spectators are charged a taxable admission to the event;¹⁴ and
- Certain live theatre, opera, or ballet productions sponsored by 501(c)(3) non-profit organizations.¹⁵

Admissions taxes are to be paid and remitted at the same time and in the same manner as those taxes for tangible personal property. However, for events at convention halls, exhibition halls, auditoriums, stadiums, theaters, arenas, civic centers, performing arts centers, or publicly owned recreational facilities the admissions taxes are not due until the month after the actual date of the event.¹⁶

Effective July 1, 2009, sales tax began to be due on admissions to an event sponsored by a governmental entity, sports authority, or sports commission when the event is held in a convention hall, exhibition hall, auditorium, stadium, theater, arena, civic center, performing arts center, or publicly-owned recreational facility.¹⁷

Local Government Taxes on Admissions:

Sections 212.054 and 212.055, F.S., authorize Florida counties to charge a discretionary sales surtax; only those surtaxes specifically designated in s. 212.055, F.S., may be levied. The surtax applies to all transactions occurring in a county that are “subject to the state tax imposed on sales, use, services, rentals, admissions, and other transactions” and on communications services, defined in ch. 202, F.S.

The discretionary sales surtax is based on the rate in the county where the taxable goods or services are sold and is levied in addition to the state taxes. The maximum discretionary sales surtax that any county can levy depends upon the county’s eligibility for the taxes listed in s. 212.055, F.S.; currently, the maximum levy ranges between 1.5 percent and 2 percent for Florida’s 67 counties.

The surtax does not apply to a sales amount above \$5,000 on any item of tangible personal property. This \$5,000 cap does not apply to the sale of any service. The Florida Department of

¹¹ Section 212.04(2)(a)4. and 9., F.S.

¹² Section 212.04(2)(a)5., F.S.

¹³ Section 212.04(2)(a)7., F.S.

¹⁴ Section 212.04(2)(a)8., F.S.

¹⁵ Section 212.04(2)(a)6., F.S.

¹⁶ Section 212.04(3), F.S.

¹⁷ Section 212.04(2)(a)2.b., F.S. Chapter 2000-345, L.O.F., created s. 212.04(2)(a)2.b., F.S. The new admissions tax exemption was created with a repeal date of July 1, 2003. Chapter 2002-218, L.O.F., extended this tax exemption until July 1, 2006; and ch. 2006-101, L.O.F., extended the exemption until July 1, 2009.

Revenue (DOR) is responsible for administering, collecting, and enforcing all sales taxes. Collections received by DOR are returned monthly to the county imposing the tax.

III. Effect of Proposed Changes:

Section 1 creates s. 817.358, F.S., which requires an original seller of tickets to either:

- Retain all receipts received from a sale of a ticket, including taxes and fees, until the date of the event; or
- Require any person seeking advance release of funds from ticket sales to provide a surety bond to the venue in an amount equal to the greatest amount the person is seeking in advance, before releasing any funds.

The bill clarifies that the original seller does not have to deposit ticket receipts into an escrow or separate account while the funds are being held.

It also requires that if an event is cancelled,¹⁸ the ticket purchaser is entitled to a refund of all receipts from the sale of the ticket, including taxes and fees. These requirements apply only to original sellers, which are venues or firms that contract to sell tickets on behalf of the venue and collect the purchase price from the ticket purchaser. Venues are limited to facilities owned by the state, a county, a municipality, or other governmental entity which offers services to the general public.

The section provides that, based upon the intent of the Legislature that the state remains consumer friendly, the purpose of the statute is to ensure that publicly owned venues retain the capacity to refund all receipts from ticket sales upon the cancellation of an event, which protects ticket purchasers and venues from financial loss.

The bill defines “educational institution,” “event,” “original seller,” and “venue.”

This section is limited to primary ticket sales (as opposed to secondary or resale). It does not apply to tickets:

- That have the word “nonrefundable” conspicuously printed on the face of the ticket;
- For professional sports events;
- For amateur sports events sanctioned by the Amateur Athletic Union of the USA, Inc.;
- For motorsports events as defined in ss. 288.1171 and 549.10, F.S.;
- For events promoted exclusively by an educational institution;
- For postseason collegiate sporting exhibitions or athletic contests sanctioned by the National Collegiate Athletic Association; or
- For a pugilistic exhibition regulated under ch. 548, F.S.

Section 2 provides an effective date of July 1, 2010.

¹⁸ Applies only to cancelled, not postponed events.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

The bill does not have a fiscal impact.

Subsection 212.04(3), F.S., provides an exception to the requirement that tax due on the sale of admission be remitted on the dealer's first tax return due after the sale for events at convention halls, exhibition halls, auditoriums, stadiums, theaters, arenas, civic centers, performing arts centers, or publicly owned recreational facilities.

The bill, as amended, defines venue to mean "a facility owned by the state, a county, a municipality, or other governmental entity created by law which offers services to the general public. The term includes, but is not limited to, an auditorium, theater...."

The venues addressed in the bill as filed were not the same as those currently permitted by 212.04(3), F.S., to remit tax after the event occurs. Based on the short term lag in tax remitted by this additional dealer population, the Revenue Estimating Conference's review of SB 1190 determined that the bill would produce a negative cash impact to the General Revenue Fund in FY 1020-11 of \$200,000.

B. Private Sector Impact:

Currently, venues or issuers of tickets are free to determine their own refund policies. This bill would require the original sellers of tickets to either hold the funds from ticket sales until the event occurs or require the person seeking advanced funds to post a bond. However, if the event is cancelled, by maintaining the funds on hand, the original ticket sellers will have the money readily available to make refunds to ticket purchasers.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

There is no enforcement or penalty provision for non-compliance with the bill.

Section 548.066, F.S., provides for refunds related to pugilistic events.

By requiring a venue to retain charges related to the sale of tickets for an event, the venue will be unable to provide funds from ticket receipts to the event promoter before the event occurs, unless the event promoter posts a bond equal to the greatest amount the promoter is seeking in advance.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by the Commerce Committee on March 17, 2010:

The CS differs from the bill as filed in the following ways:

- Replaces references to “charges” for tickets to “receipts” throughout;
- Specifies in the definition of “original seller” that the term includes issuers of event tickets that contract with the venue to collect the purchase price from the ticket purchaser;
- Limits the definition of “venue” to publically owned facilities;
- Clarifies that the original seller does not have to deposit ticket receipts into an escrow or separate account while the funds are being held;
- Adds the option for the promoter to post a bond in order to receive receipts prior to the event, as an alternative to the requirement that the original seller retain the ticket receipts.
- Requires that if an event is cancelled, the ticket purchaser is entitled to a refund, as opposed to requiring the purchaser to proactively request a refund; and
- Adds exemption for tickets for pugilistic exhibitions, because they are regulated under another chapter of Florida law.

B. Amendments:

None.