

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 Committee on Appropriations

BILL: CS/SB 1142

INTRODUCER: Commerce and Tourism Committee and Senators Lee and Soto

SUBJECT: Ticket Sales

DATE: April 9, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hrdlicka</u>	<u>Hrdlicka</u>	<u>CM</u>	Fav/CS
2.	<u>Sumner</u>	<u>Cannon</u>	<u>CJ</u>	Favorable
3.	<u>Clodfelter</u>	<u>Kynoch</u>	<u>AP</u>	Pre-meeting

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1142 increases the criminal penalties related to counterfeit tickets and sales of “multiuse tickets” to theme parks. The bill also creates criminal penalties for cloning a ticket or counterfeiting, forging, altering, cloning, or possessing a card, wristband, or other medium that accesses or is associated with a ticket.

The Criminal Justice Impact Conference has not yet considered the fiscal impact of the bill. However, the Department of Corrections (DOC) expects the bill to have an insignificant impact on the need for prison beds and a minimal impact on the number of offenders who are on community supervision.

II. Present Situation:

Generally there is little regulation on the initial sale of tickets by original ticket issuers and their agents. The resale of tickets is regulated by states for various reasons, including the belief that resale can lead to fraud by the sale of fake tickets and harms innocent consumers.¹ Ticket issuers have also made efforts to limit fraudulent tickets, including the use of credit cards to purchase

¹ Benitah, Jonathan C., “Anti-Scalping Laws: Should They Be Forgotten?” 6 TXRESL 55, 60 (2005). Resale of tickets in Florida is generally regulated under s. 817.36, F.S.

tickets, barcodes placed on tickets, and electronic tickets to provide ways for an original ticket issuer to link a ticket to a particular person and keep track of ownership of a ticket.²

Regulation of Fraudulent Ticket Sales in Florida

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 which has been used at least once for admission.³ A second or subsequent violation is a first degree misdemeanor.⁴ A nontransferable ticket is one on which is clearly printed the phrase: “Nontransferable; must be used by the same person on all days” or a similar phrase.

Section 817.355, F.S., makes it a first degree misdemeanor to counterfeit, forge, alter, or possess an admission ticket, token, or paper with the intent to defraud a sports, amusement, concert, or other facility that offers service to the general public.

Section 817.357, F.S., states it is a violation of the Florida Deceptive and Unfair Trade Practices Act⁵ to knowingly purchase tickets from the original ticket seller in excess of the seller’s posted maximum ticket limit quantity with the intent to resell such tickets. The statute does not apply to the “original ticket seller”, which includes both the issuer of the ticket and any entity which provides distribution services or ticket sales services under contract with the issuer.

III. Effect of Proposed Changes:

Penalties

Section 1 amends s. 817.355, F.S., to expand the list of specifically prohibited activities and to create increased penalties when the offense involves ten or more items or is a repeat offense.

Under current law, it is a first degree misdemeanor to counterfeit, forge, alter, or possess any ticket, token, or paper with the intention to defraud a facility. The bill adds a prohibition against cloning and applies the restrictions to cards, wristbands, or other media that access or are associated with a ticket.

The bill enhances the penalty for a second or subsequent violation of s. 817.355(1), F.S., from a first degree misdemeanor to a third degree felony. It also provides that the offense is a third degree felony if it involves ten or more items, regardless of whether it is a first or subsequent offense.

² For example, Disney recently invested in a new form of ticket which is a wireless radio-frequency identification wristband. See Garcia, Jason, Orlando Sentinel (March 29, 2013), available at <http://www.orlandosentinel.com/the-daily-disney/os-disney-nextgen-ticket-laws-20130329,0,2136300.story>; and Shaw Brown, Genevieve, ABC News (January 9, 2013), available at <http://abcnews.go.com/Travel/magicband-disney-park-entry/story?id=18161268> (last visited 3/13/2014).

³ A second degree misdemeanor is punishable by up to sixty days imprisonment and a fine of up to \$500 (ss. 775.082 and 775.083, F.S.).

⁴ A first degree misdemeanor is punishable by up to one year imprisonment and a fine of up to \$1,000 (ss. 775.082 and 775.083, F.S.).

⁵ Sections 501.201 – 501.213, F.S. The associated civil penalty for a violation of the act is up to \$10,000 per violation.

The bill creates a third degree felony for the counterfeiting, forging, altering, cloning, or possession of ten or more tickets, cards, wristbands, or other media that access or are associated with a ticket with the intention to defraud a facility.⁶

Section 2 amends s. 817.361, F.S., relating to the unauthorized sale or transfer of nontransferable tickets after the ticket that has been used at least once for admission.

Under current law it is a second degree misdemeanor to offer for sale, sell, or transfer, with or without consideration, any nontransferable ticket or other nontransferable medium which has been used at least once for admission. The bill specifies that the offense applies to nontransferable multiuse tickets and to a “card, wristband, or other medium which accesses or is associated with a nontransferable multiuse ticket.”

The bill defines a “multiuse ticket” as a ticket, other medium, or right designed for admission to:

- More than one theme park complex;
- More than one amusement location or other facility in a theme park complex;
- One or more amusement locations or other facilities in a theme park complex for more than one day; or
- One or more amusement locations or other facilities in a theme park complex more than once in the same day.

The current statute applies to sale or transfer of nontransferable tickets or other media designed for admission to more than one amusement location or other facility offering entertainment to the general public. The bill applies only to admission to theme park complexes or amusement areas within a theme park complex.⁷ This change has the effect of repealing penalties for the resale of used nontransferable multiday or multievent tickets to entertainment venues other than theme parks.

The bill increases the penalty for the offense to a first degree misdemeanor, and enhances the penalty for a second or subsequent offense to a third degree felony. Currently, the first offense is a second degree misdemeanor which is enhanced to a first degree misdemeanor for a second or subsequent offense.

Nontransferable Multiuse Tickets

Under current law, a ticket is transferable unless otherwise stated on the ticket itself. Section 2 repeals that provision, and instead states a multiuse ticket is nontransferable unless either:

- The phrase “may be used by more than one person” is printed clearly on the ticket; or
- The issuer of the ticket explicitly states on its website the ticket may be used by more than one person.

⁶ A third degree felony is generally punishable by up to five years imprisonment and a fine of up to \$5,000 (ss. 775.082 and 775.083, F.S.). However, s. 775.084(4)(a), F.S., provides that a habitual felony offender may be sentenced to a term of imprisonment not exceeding ten years.

⁷ The bill defines “theme park complex” as “an area comprised of at least 25 acres of land owned by the same business entity and which contains rides or other recreational activities.”

Section 3 provides an effective date of July 1, 2014.

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:

None.

B. Private Sector Impact:

Individuals who counterfeit tickets or sell or transfer used multiuse tickets or associated cards or wristbands will be subject to increased criminal penalties.

However, individuals will no longer be subject to criminal penalties for the resale or transfer of multiday or multievent tickets to entertainment venues other than theme parks.

C. Government Sector Impact:

The Department of Corrections indicated the impact on the prison population is expected to be insignificant and the impact on community supervision population is expected to be minimal.

The Department of Corrections stated CS/SB 1142 would require the department to create a new offense code for the Offender Based Information System, requiring IT programing.⁸

VI. Technical Deficiencies:

In Section 1 of the bill, the amendments to subsections (1) and (3) of s. 817.355, F.S., use different phrasing to describe the items that cannot be counterfeited, forged, etc. In subsection (1), the items are “a ticket, card, wristband, or other medium that accesses or is associated with a

⁸ Department of Corrections, 2014 Agency Legislative Bill Analysis: SB 1142 (3/6/2014). The department’s estimated average cost to program new offense codes each year due to legislation passed with penalties is \$7,650 (estimated 90 hours at \$85.00 per hour). “This amount could fluctuate due to the number of new offense codes required or other programming exceptions.”

ticket; or a ticket, token or paper . . .”. In subsection (3), the items are “tickets, cards, wristbands, or other media that access or are associated with a ticket, token, or paper . . .”. It is recommended that the bill be amended to make the phrasing the same in both subsections except as to plurality of the nouns.

VII. Related Issues:

There may be confusion as to when a multiuse ticket is transferrable. The bill does not provide any direction to an issuer how to “explicitly state” on its website when a ticket may be used by more than one person.

Current law prohibits the resale of tickets for more than \$1 over the original admission price for multiday or multievent access 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.⁹

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 817.355 and 817.361.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes: (Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Commerce and Tourism on March 24, 2014:

The committee substitute does the following:

- Adds “cloning” a ticket as a criminal act under s. 817.355, F.S.;
- Adds counterfeiting, forging, altering, cloning, or possessing a card, wristband, or other medium that accesses or is associated with a ticket with the intention to defraud a facility as a criminal act under s. 817.355, F.S.;
- Limits the penalty for counterfeiting, forging, altering, or possessing 10 or more tickets to the following items that access or are associated with a ticket: tickets, cards, wristbands, or other media;
- Adds to the definition of “multiuse ticket” a ticket, other medium, or right designed for admission to more than one theme park complex;
- Repeals the provisions creating criminal penalties for purchasing used multiuse tickets; and
- Repeals the provision creating a penalty to sell a card, wristband, or other medium that accesses or is associated with a nontransferable multiuse ticket that already has a card, wristband, or other medium accessing or associated with it. The provisions of the CS related to cloning address this issue.

⁹ Section 817.36(1)(b), F.S. “Entertainment/resort complex” is defined in s. 516.01(18), F.S.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
