

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 Criminal Justice

BILL: CS/SB 1142

INTRODUCER: Commerce and Tourism Committee and Senator Lee

SUBJECT: Ticket Sales

DATE: March 28, 2014

REVISED: _____

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

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.

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 this harms innocent consumers.¹ Ticket issuers have also made efforts to limit fraudulent tickets, including the use of credit cards to purchase 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

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.

² For example, Disney recently invested in a new form of ticket which is a wireless radio-frequency identification wristband. See Garcia, Jason, Orlando Sentinial (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).

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 that has been used at least once for admission. Second or subsequent violations are first degree misdemeanors.³ 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 the counterfeit, forging, altering, 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 Act⁴ 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.”

III. Effect of Proposed Changes:

Penalties

Section 1 amends s. 817.355, F.S., to increase the criminal penalties for the fraudulent creation or possession of admission tickets.

Under current law, the counterfeit, forging, altering, or possession of any ticket with the intention to defraud a facility is a first degree misdemeanor. The bill creates a third degree felony for subsequent violations. Additionally, under the bill cloning a ticket and 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 is subject to the same penalties.

The bill creates a third degree felony for the counterfeit, forging, altering, cloning, or possession of 10 or more tickets, cards, wristbands, or other media that access or are associated with a ticket with the intention to defraud a facility.

A third degree felony is punishable by a fine of \$5,000, a term of imprisonment not exceeding 5 years, or, in the case of a habitual offender a term of imprisonment not exceeding 10 years.

Section 2 amends s. 817.361, F.S., to provide criminal penalties for the resale or repurchase of a multiuse 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 multiuse ticket that has been used at least once for admission. The bill increases the penalty to a first degree misdemeanor.

³ Second degree misdemeanors are punishable by up to 60 days imprisonment and a fine of up to \$500. First degree misdemeanors are punishable by up to 1 year imprisonment and a fine of up to \$1,000. ss. 775.082 and 775.083, F.S.

⁴ 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 penalty also applies to the sale of “a card, wristband, or other medium that accesses or is associated with a nontransferable multiuse ticket.”

A second or subsequent violation of the provisions is increased from a first degree misdemeanor to a third degree felony.

A third degree felony is punishable by a fine of \$5,000, a term of imprisonment not exceeding 5 years, or, in the case of a habitual offender a term of imprisonment not exceeding 10 years. A first degree misdemeanor is punishable by up to 1 year imprisonment and a fine of up to \$1,000. A second degree misdemeanor is punishable by up to 60 days imprisonment and a fine of up to \$500.

Because the bill limits the definition of “multiuse ticket” to admission to a theme park, the effect is to repeal penalties for the resale of used multiday or multievent tickets to entertainment venues other than theme parks.⁵

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 that a multiuse ticket is nontransferable. The bill provides two instances when a multiuse ticket is transferable:

- 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 that the ticket may be used by more than one person.

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

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.

⁵ A “theme park” is an area of at least 25 acres that contains rides or other recreation activities and is owned by the same business entity.

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 that 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 that the bill would require the department to create a new offense code for the Offender Based Information System, requiring IT programing.⁶

VI. Technical Deficiencies:

None.

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.⁷

⁶ 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.”

⁷ Section 817.36(1)(b), F.S. “Entertainment/resort complex” is defined in s. 516.01(18), F.S.

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.

- B. **Amendments:**

None.