

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 Commerce and Tourism

BILL: SB 742

INTRODUCER: Senator Simpson

SUBJECT: Ticket Sales

DATE: March 27, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Siples	McKay	CM	Pre-meeting
2.			CJ	
3.			AP	

I. Summary:

SB 742 amends provisions of law that govern ticket sales in Florida. Specifically, the bill:

- Expands the prohibition on the use of technology that acts to circumvent security measures or purchase restrictions on a ticket seller’s website, mobile application, or other digital platform;
- Creates criminal penalties for the use of technology that circumvent security measures on a ticket sellers website, mobile application, or other digital platform;
- Creates a private right of action for a person harmed by the use of such technology;
- Requires ticket brokers to register with the Department of Agriculture and Consumer Services (department);
- Requires a ticket broker, resale website, mobile application, or other digital platform to make certain disclosures to the prospective ticket buyer prior to purchase;
- Prohibits a resale website, mobile application, or other digital platform from using an artist’s or team’s name, image, or other trademark without express written consent of the intellectual property owner, except when it constitutes fair use under federal law;
- Allows an aggrieved individual to bring an action for declaratory and injunctive relief, and allows for the recovery of actual damages, plus attorney fees and costs;
- Permits the department to assess administrative fines or revocation or suspension of a ticket broker’s registration for violations of s. 817.36, F.S., or for the obstruction of the enforcement of its provisions;
- Creates a third degree felony, in addition to any noncriminal penalties, for any violation of s. 817.36, F.S., unless other specific criminal sanctions are provided; and
- Defines department, face value, online marketplace, place of entertainment, resale website, ticket, and ticket broker.

II. Present Situation:

A “ticket” is defined as “a slip of paper containing a certificate” entitling the holder to some right or privilege.¹ It is generally held that “in the absence of statute, a mere license to witness the performance, which the owner of proprietor may revoke at will, either before or after admission of the ticket holder, and it is immaterial whether the ticket is one for general admission, or for particular seats, or to a designated portion of the place of amusement.”² Admissions tickets are generally considered revocable licenses.³ As such, a ticket can be revoked by the proprietor at any time.⁴ When the proprietor “revokes or denies the holder’s admission to a performance, the holder has a cause of action for breach of contract.”⁵ There has been some case law to suggest that under certain circumstances, season tickets can be regarded as a property right.⁶ Generally, there is little regulation on the initial sale of tickets by the original ticket issuers. While traditionally tickets have been sold by venues or promoters, or resold by scalpers outside of venues where the events are taking place, the Internet has come to dominate the ticket sale industry. Some examples of online ticket sellers include Tickets.com,⁷ Ticketmaster⁸, StubHub,⁹ and eBay.¹⁰ Some ticket sellers will also “hold-back” tickets from primary sale.¹¹

Resale of Tickets in Florida

Current Florida law provides that any person or entity offering a resale of a ticket may only charge \$1 over the admission price charged by the original ticket seller for the following transactions:

- Tickets sold for passage or accommodation on any common carrier in Florida;¹²
- 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;¹³

¹ Black’s Law Dictionary, *What is TICKET?*, available at <http://thelawdictionary.org/ticket/> (last visited Mar. 16, 2015).

² 27A Am. Jur. 2d Entertainment and Sports Law s. 42.

³ *Jacksonville Bulls Football, Ltd. v. Blatt*, 535 So. 2d 626 (Fla. 3d DCA 1988).

⁴ *Id* at 629.

⁵ *Id* at 630. (citing *Marrone v. Washington Jockey Club*, 227 U.S. 633 (1913); *Burnham v. Flynn*, 189 N.Y. 180 (App. Ct. N.Y. 1907); *Boswell v. Barnum & Bailey*, 135 Tenn. 35 (Tenn. 1916)).

⁶ *Grossman v. Boston Red Sox Baseball Club Ltd. P’ship. (In re Platt)*, 292 B.R. 12, 17 (US Bankr. Ct. for the Dist. Of Mass. 2003).

⁷ Tickets.com, *About Us*, available at <http://www.tickets.com/about-us/> (last visited Mar. 16, 2015).

⁸ Ticketmaster.com, *Who We Are*, available at http://www.ticketmaster.com/about/about-us.html?tm_link=tm_i_abouttm (last visited Mar. 16, 2015). Ticketmaster also owns *LiveNation*, which allows people to sell their TM+ event tickets through this website. Live Nation.com, *Frequently Asked Questions*, available at http://concerts.livenation.com/h/help.html?tm_link=help_nav_4_top10 (last visited Mar. 16, 2015).

⁹ “StubHub is an eBay company.” StubHub.com, *Overview*, available at <http://www.stubhub.com/about-us/> (last visited Mar. 16, 2015.)

¹⁰ eBay.com, *Even Ticket Resale Policy*, available at <http://pages.ebay.com/help/policies/event-tickets.html> (last visited Mar. 16, 2015).

¹¹ Scott Simon, *Note: If You Can’t Beat ‘Em, Join ‘Em: Implications for New York’s Scalping Law in Light of Recent Developments in the Ticket Business*, 72 Fordham L. Rev. 1171, 1181.

¹² Section 817.36(1)(a), F.S. However, this provision does not apply to travel agencies that have an established place of business in this state and are required to pay state, county, and city occupational license taxes.

¹³ Section 817.36(1)(b), F.S.

- Tickets for events for which 3,000 or fewer tickets are issued by a 501(c)(3) charitable organization;¹⁴ and
- Tickets resold or offered through an internet website unless authorized by the original ticket seller or when the website makes and posts the following certain guarantees and disclosures:
 - A full refund guarantee, including any servicing, handling, or processing fees, when the ticketed event is canceled, the purchaser is denied admission to the event through no fault of his or her own, or the ticket is not delivered in the requested manner and in accordance with any delivery guarantee made by the reseller and such failure results in the purchaser's inability to attend the ticketed event.
 - Disclosure that the website is not the issuer, original seller, or reseller of the ticket and does not control the pricing of the ticket.¹⁵

Any ticket outside 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.¹⁶

Section 817.36(4), F.S., imposes a civil penalty on an individual or entity who knowingly resells a ticket or tickets in violation of this section equal to three times the amount of the price of the ticket or tickets that were resold. An individual or entity that uses or sells software to circumvent security measures used to ensure equitable ticket-buying on a ticket seller's website is subject to a civil penalty, paid to the state, equal to three times the amount of the price of the ticket or tickets sold.

Regulation of Fraudulent Ticket Sales

Pursuant to s. 817.361, F.S., it is a second degree misdemeanor¹⁷ to offer for sale, sell, or transfer, with or without consideration, any nontransferable multiuse ticket¹⁸ that has been used at least once for admission. A second or subsequent violation of this section results in a third degree felony.¹⁹

¹⁴ Section 817.36(1)(c), F.S. However, the ticket must be printed with the following statement: "Pursuant to s. 817.36, Florida Statutes, this ticket may not be resold for more than \$1 over the original admission price." This provision does not apply to tickets issued or sold by a third party contractor ticketing services on behalf of a charitable organization unless the required disclosure is printed on the ticket.

¹⁵ Section 817.36(1)(d), F.S.

¹⁶ Section 817.36(3), F.S. Section 212.04, F.S., imposes a tax on sale of admissions and also provides exceptions to this rule.

¹⁷ Section 775.082(4)(b), F.S., provides that a misdemeanor of the second degree is punishable by a term of imprisonment not exceeding 60 days. Section 775.083(1)(e), F.S., provides that a person convicted of a misdemeanor of the second degree is subject to a fine not to exceed \$500.

¹⁸ A multiuse ticket is a ticket that is designed for admission to more than one theme park complex or to more than one amusement location in a theme park complex, or for admission for more than 1 day or more than once in the same day to one or more such locations or facilities in a theme park complex.

¹⁹ Section 775.082(3)(e), F.S., provides that a felony of the third degree is punishable by a term of imprisonment not exceeding 5 years. Section 775.083(1)(c), F.S., provides that a person convicted of a felony of the third degree is subject to a fine not to exceed \$5,000. Section 775.082, F.S., provides for enhanced penalties for habitual offenders.

Pursuant to s. 817.355, F.S., it is a first degree misdemeanor²⁰ to counterfeit, forge, alter, or possess a ticket with the intent to defraud a facility.

Pursuant to s. 817.357, F.S., it is a violation of the Florida Deceptive and Unfair Trade Practices Act²¹ to knowingly purchase a quantity of tickets exceeding the maximum ticket limit with the intent to resell the tickets. This section does not apply to the original ticket seller.²²

III. Effect of Proposed Changes:

The bill amends s. 817.36, F.S., to limit the use of technology used to circumvent controls that may be instituted on a ticket sale website, to require the registration of ticket brokers with the Department of Agriculture and Consumer Services, and to provide for the enforcement of the provisions of the bill. The bill adds mobile applications and other digital platforms as mediums on which ticket sales may occur. The bill also repeals a requirement that a reseller must post on its website, mobile application, or digital platform that it will refund the price the purchaser paid for the ticket if the ticket is not delivered in the requested manner and pursuant to any delivery guarantee made by the reseller, and this failure results in the purchaser being unable to attend the event.

Technology to Circumvent Controls

The bill amends s. 817.36, F.S., to protect against technology that would circumvent controls by providing the following:

- A person may not sell or use any means, technology, devices, or software that functions to bypass portions of the ticket-buying process or disguise the identity of the ticket purchaser or circumvent a security measure on a ticket issuer's or resale ticket agent's website, mobile application, or digital platform;
- A person may not use any means or technology that functions to disguise the identity of the purchaser with the purpose of purchasing, via online sale, a quantity of tickets to a place of entertainment in excess of authorized limits established by the owner or operator of the place of entertainment or of the entertainment event;
- A violation of these provisions is punishable as a second-degree misdemeanor and each ticket purchase, sale, or violation constitutes a separate offense;
- Repeal of a provision that imposed a civil penalty, to be paid to the state, on a person who used or sold technology that would circumvent controls on a ticket seller's website; and
- Creation of a private right of action for any person injured by wrongful conduct in violation of these provisions to recover all actual damages; and authorizing the court to award up to three times the amount of actual damages.

²⁰ Section 775.082(4)(a), F.S., provides that a misdemeanor of the first degree is punishable by a term of imprisonment not to exceed 1 year. Section 775.083(1)(d), F.S., provides that a person convicted of a misdemeanor of the first degree is subject to a fine not to exceed \$1,000.

²¹ Sections 501.201-501.213, F.S.

²² "Original ticket seller" means the issuer of the ticket or a person or firm who provides distribution services or ticket sales services under a contract with such issuer.

Registration of Ticket Brokers

The bill requires a ticket broker to register with the Department of Agriculture and Consumer Services (department) by April 1, 2016, or within 30 days after commencing business as a ticket broker in Florida, whichever is later. A ticket broker must actively maintain its registration with the department by:

- Maintaining a permanent office or place of business in Florida for the purpose of engaging in the business as a ticket broker;
- Submitting its business name, a physical address in Florida, and other information as requested on a form adopted by the department by rule;
- Certifying that it does not use, sell, give, transfer, or distribute software that is primarily designed for the purpose of interfering with the operations of any ticket seller in violation of law;
- Annually renewing its registration and paying a registration fee as determined by the department;²³ and
- Registering for sales and use tax purposes under ch. 212, F.S.

Once registered, the department must issue each ticket broker a unique registration number and publish a list of registered ticket brokers on its website. A person who has been convicted of a felony and has not been pardoned or had his or her civil rights, other than voting, restored may not register as a ticket broker.

Disclosures

The bill requires a ticket broker, resale website, mobile application, or other digital platform to clearly and conspicuously disclose to a prospective ticket resale purchaser:

- The face value²⁴ and exact location of the seat offered for sale, including a section, row, and seat number or area specifically designated as accessible seating;
- Whether the ticket offered for sale is in the actual possession of the reseller and available for delivery; and if the ticket is not in the actual physical possession of the reseller, the period of time the reseller reasonably expects to have the ticket in its actual possession and available for delivery;
- Whether the reseller is actively making an offer to procure the ticket;
- The refund policy of the ticket broker or resale website in connection with the cancellation or postponement of an entertainment event; and
- That the reseller's ticket prices often exceed face value.

The bill provides that a resale website, mobile application, or other digital platform may not use the name of the venue, artist, or team trademark or service mark without express written consent of the owner of the name of the venue, the artist, or the owner of the team trademark or service

²³ The bill requires the department to determine the fee by rule, and the fee must cover the department's cost to administer the registration program.

²⁴ The bill defines face value as the face price of a ticket, as determined by the event presenter and printed or displayed on the ticket.

mark, except when it constitutes fair use²⁵ and is consistent with applicable laws, including full disclosure or attribution of the true owner.

Enforcement

In addition to any other remedy or relief to which a person is entitled, the bill provides that a person who is aggrieved by a violation of s. 817.36, F.S., may bring an action to obtain a declaratory judgment that an act or practice violated the provisions of the bill and to enjoin a person from engaging in an activity in violation of the law. In such an action, a person suffering a loss may recover actual damages, plus attorney fees and court costs.

The bill repeals a provision that subjected a person who knowingly resells a ticket in violation of the law to a civil penalty, payable to the state, of three times the price of the ticket. Under the bill, an unlawful resale of a ticket is a second degree misdemeanor.

Additionally, the department may impose an administrative fine of up to \$1,000 per occurrence, the revocation or suspension of a registration, or both, against any person who violates the requirements of the law or any rules the department has adopted, or who impedes, obstructs, hinders, or otherwise interferes with the department's performance of its duties required under the bill.

The bill also provides that, in addition to any noncriminal penalties that may be assessed, a person who knowingly violates the provisions of the bill commits a third degree felony,²⁶ or may be fined up to \$10,000, unless another specific criminal is provided.

New Definitions

Additionally, the bill provides for the following definitions:

- Department means the Department of Agriculture and Consumer Services;
- Face value means the face price of a ticket, as determined by the event presenter and printed or displayed on the ticket;
- Online marketplace means a website, mobile application, or any other digital platform that provides a forum for the buying and selling of tickets, but does not include a website, mobile application, or any other digital platform operated by a reseller, ticket issuer, event presenter, or agent of an owner or operator of a place of entertainment;
- Place of entertainment means a privately owned and operated entertainment facility or publicly owned and operated entertainment facility in this state, such as a theater, stadium, museum, arena, racetrack, or other place where performances, concerts, exhibits, games, athletic events, or contests are held for which an entry fee is charged. A facility owned by a

²⁵ 17 U.S.C. s. 107, governs fair use under the Copyright Law of the United States of America. Generally, fair use of copyrighted work is not considered an infringement on a copyright. However, to determine whether a particular use is considered fair use, the following factors should be considered: (1) the purpose and character of the use; (2) the nature of the copyrighted work; (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and (4) the effect of the use on the potential market for or value of the copyrighted work.

²⁶ Section 775.082(3)(e), F.S., provides that a felony of the third degree is punishable by a imprisonment not exceeding 5 years. Section 775.083(1)(e), F.S., provides that a person convicted of a felony of the third degree is subject to a fine not to exceed \$5,000.

school, college, university, or house of worship is a place of entertainment only when an event is held for which an entry fee is charged;

- Resale website means a website, mobile application, or any other digital platform or portion of a website, that facilitates the sale of tickets by resellers to consumers or on which resellers offer tickets for sale to consumers;
- Ticket means a printed, electronic, or other type of evidence of the right, option, or opportunity to occupy space at, or to enter or attend, an entertainment event even if there is no physical manifestation of such right. A ticket is a revocable license, held by the person in possession of the ticket, to use a seat or occupy a standing area in a specific place of entertainment for a limited time. The license represented by the ticket may be revoked at any time, with or without cause, by the ticket issuer; and
- Ticket broker means a person, or persons acting in concert, involved in the business of reselling tickets of admission to places of entertainment. However, the term does not include:
 - An individual who does not regularly engage in the business of reselling tickets, who resells less than 60 tickets or one-third of all tickets purchased from a professional sports entity during any 12-month period, and who obtained the tickets for the person's own use or the use of the person's family, friends, or acquaintances; or
 - A person operating a website whose primary business is to serve as an online marketplace for third parties to buy and sell tickets, and whose primary business is not engaging in the reselling of tickets.

Section 2 provides that the bill takes effect October 1, 2015.

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:

Ticket brokers will have to pay a fee to register with the department. The department has indicated that the annual registration fee is to be set at \$875.²⁷

C. Government Sector Impact:

The department estimates the following to implement the provisions of the bill:²⁸

	FY 15-16	FY 16-17	FY 17-18
Registration Fees	\$70,000	\$70,000	\$70,000
Recurring Costs, including personnel costs	\$73,216	\$55,451	\$55,451
Non-Recurring Costs, including computer software	\$44,200	\$0	\$0
Total Recurring and Non-Recurring Costs	\$91,298	\$55,451	\$55,451
Non-operating costs, including information technology support	\$13,449	\$13,449	\$13,449
Total Expenditures	\$104,747	\$68,900	\$68,900
Net Gain (Loss)	(\$34,747)	\$1,100	\$1,100

The Criminal Justice Impact Conference (CJIC) has not yet considered SB 742; the bill has been requested for consideration at the next CJIC meeting to determine the bill’s impact on prison beds. However, a preliminary estimate indicates that the bill will have a positive insignificant effect on prison beds.²⁹

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill requires the Department of Agriculture and Consumer Services to adopt rules to administer those provisions related to the registration of ticket brokers.

An individual who purchase tickets on behalf of another individual and does not clearly identify the purchaser may be subject to the penalties provided in the bill. For example, if a group of individuals planning to attend an event designate one person to purchase all the tickets on behalf of the other group members and provide the money to cover the purchase price, this could be

²⁷ Department of Agriculture and Consumer Services, *Agency Bill Analysis Senate Bill 742*, (Mar. 16, 2015) (on file with the Senate Commerce and Tourism Committee).

²⁸ *Id.*

²⁹ Email from Matthew Hasbrouck, Office of Economic and Demographic Research, (Mar. 16, 2015) (on file with the Senate Commerce and Tourism Committee).

construed under the bill's provisions as an individual purchasing tickets using a method that disguises the identity of the purchaser.

On lines 227-231, the bill provides that a violation of 817.36, F.S., is punishable as a third degree felony, unless otherwise provided. However, the bill also provides, on lines 111-116, that a person who knowingly resells a ticket in violation of s. 817.36, F.S., commits a second degree misdemeanor. Since any ticket sold in violation of this section of law would necessarily encompass a violation of any other provision in this section, confusion may arise about which criminal penalty would apply. For example, a person who knows that they must register with the department as a ticket broker but fails to do so and subsequently resells a ticket, commits a second degree misdemeanor for reselling a ticket in violation of the law for not being registered as required, and also commits a third degree felony for not being registered as required.

VIII. Statutes Affected:

This bill substantially amends section 817.36 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.