

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 339 w/CS                      Resales of Admission Tickets  
**SPONSOR(S):** Benson  
**TIED BILLS:** None                              **IDEN./SIM. BILLS:** SB 1108

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| REFERENCE                           | ACTION         | ANALYST   | STAFF DIRECTOR |
|-------------------------------------|----------------|-----------|----------------|
| 1) Commerce                         | 10 Y, 6 N w/CS | Billmeier | Billmeier      |
| 2) Public Safety & Crime Prevention |                |           |                |
| 3) Finance & Tax                    |                |           |                |
| 4)                                  |                |           |                |
| 5)                                  |                |           |                |

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**SUMMARY ANALYSIS**

Section 817.36, Florida Statutes, provides that anyone who resells tickets to a “sporting exhibition, athletic contest, theater, or any exhibition where an admission price is charged” for a price in excess of \$1 over the original retail price commits a second degree misdemeanor. HB 339 provides that this prohibition does not apply to the first ten tickets that a natural person purchases to an event “which are resold through a credit card or other electronic payment mechanism that offers partial or full reimbursement for fraud, misrepresentation, or nonperformance.” This bill provides that any term or condition of the original ticket sale that purports to limit the terms or conditions of resale of the ticket are void if the resale transaction is carried out through a credit card or other electronic payment mechanism that offers partial or full reimbursement for fraud, misrepresentation, or nonperformance.

This bill provides that any natural person that knowingly resells, knowingly assists another to resell, or conspires to resell more than ten tickets to an event without being licensed pursuant to s. 559.9335(8), F.S., commits a second degree misdemeanor.

The fiscal impact of this bill is uncertain. See “Fiscal Comments”.

This bill takes effect upon becoming law.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. DOES THE BILL:

- |                                      |                                         |                             |                                         |
|--------------------------------------|-----------------------------------------|-----------------------------|-----------------------------------------|
| 1. Reduce government?                | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |
| 2. Lower taxes?                      | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

### B. EFFECT OF PROPOSED CHANGES:

#### Present Situation

#### Ticket Scalping in Florida

Section 817.36, Florida Statutes, prohibits anyone from reselling tickets to a “sporting exhibition, athletic contest, theater, or any exhibition where an admission price is charged” for a price in excess of \$1 over the original retail price charged by the original seller. This practice is sometimes called “ticket scalping.”<sup>1</sup> The ticket scalping statute does not apply to certain travel agencies.<sup>2</sup> Persons who violate the statute commit a second degree misdemeanor.<sup>3,4</sup>

The Florida ticket scalping statute was passed in 1945. There is no express legislative intent in the statute to explain why the statute was enacted.<sup>5</sup> The Fifth District Court of Appeal has discussed the purpose of the “ticket scalping” statute:

We think the statute attempts to regulate areas of legitimate state concern--public events and tourism. Its obvious goal is to protect the consuming public and event promoters from the economic harm done to them by persons who artificially corner the market for tickets to public events. By making an exception for sellers of travel, it seeks to promote tourism, and regulate the travel industry. Similar statutes in other states have been upheld by the state courts... [T]icket scalpers deprive consumers of a valuable service--the availability of low-cost tickets through box office sources. The effect on the ticket market by scalpers who buy up available tickets for resale is to lessen public opportunity to buy tickets at the lowest prices. Statutes like section 817.36 are designed to prevent unfair cornering of the market and limit opportunities to manipulate prices, both of which damage the general public and the promoters of public events.<sup>6</sup>

<sup>1</sup> “Ticket scalping is commonly defined as the reselling of tickets at a price higher than the established value.” Paul J. Criscuolo, *Reassessing the Ticket Scalping Dispute: The Application, Effects and Criticisms of Current Anti-Scalping Legislation*, Seton Hall Journal of Sport Law, 5 SHJSL 189, 189 (1995).

<sup>2</sup> See s. 817.36(2), F.S.

<sup>3</sup> *Id.*

<sup>4</sup> A second degree misdemeanor is punishable by a maximum of 60 days in jail and a maximum fine of \$500. See ss. 775.082, 775.083, F.S.

<sup>5</sup> *State v. Sobieck*, 701 So. 2d 96, 103 (Fla. 5<sup>th</sup> DCA 1997).

<sup>6</sup> *State v. Sobieck*, 701 So. 2d 96, 104 (Fla. 5<sup>th</sup> DCA 1997).

Legislation limiting or prohibiting ticket scalping has been the subject of discussion. Such legislation has been criticized as limiting free enterprise. Commentators argue that once a person purchases a ticket, that person should be able to resell the ticket at any price.<sup>7</sup> Further, it can be argued that scalping provides a service to those who are not willing to purchase tickets directly from the promoter.<sup>8</sup> A contrary view is that ticket scalping limits the number of reasonably priced tickets because professional ticket scalpers purchase such a large number of the tickets from the promoter and limit the ability of the public to purchase tickets at retail prices.<sup>9</sup> Further, ticket scalping can lead to the sale of fraudulent tickets.<sup>10</sup>

### **Ticket Scalping Statutes in Other States**

Many states do not regulate ticket scalping at all. According to information provided by eBay, thirty one states do not regulate the price for which tickets can be resold. Eighteen states have some regulation. Regulatory schemes include allowing resales for no more than face value, permitting resales for higher prices by licensed ticket brokers, or allowing resales for a specified amount above face value.<sup>11</sup>

### **Effect of Proposed Changes**

HB 339 provides that this prohibition does not apply to the first ten tickets that a natural person purchases to an event “which are resold through a credit card or other electronic payment mechanism that offers partial or full reimbursement for fraud, misrepresentation, or nonperformance.” This bill provides that any term or condition of the original ticket sale that purports to limit the terms or conditions of resale of the ticket are void if the resale transaction is carried out through a credit card or other electronic payment mechanism that offers partial or full reimbursement for fraud, misrepresentation, or nonperformance.

This bill provides that any natural person that knowingly resells, knowingly assists another to resell, or conspires to resell more than ten tickets to an event without being licensed pursuant to s. 559.9335(8), F.S.,<sup>12</sup> commits a second degree misdemeanor. This appears to create a crime for reselling more than ten tickets even if the tickets are resold for the original price. Current law does not restrict the resale of tickets for less than the original price of the tickets.

This bill provides that nothing in the bill changes the applicability of chapter 212 to any person with respect to the sale or resale of any ticket.

This bill takes effect upon becoming law.

### **C. SECTION DIRECTORY:**

Section 1: Amends s. 817.36, F.S., to specify conditions when the statutory prohibition against the resale of tickets for an amount in excess of \$1 above the original retail price of the ticket does not apply.

Section 2: Amends s. 559.9335, F.S., clarify the application of s. 817.36, F.S., to licensed sellers of travel.

Section 3: Provides that the bill becomes effective upon becoming law.

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<sup>7</sup> See Criscuolo, supra note 1, at 189-90.

<sup>8</sup> See Criscuolo, supra note 1, at 191.

<sup>9</sup> See Criscuolo, supra note 1, at 192.

<sup>10</sup> See Criscuolo, supra note 1, at 192.

<sup>11</sup> See White Paper provided by eBay, on file with the Committee on Commerce.

<sup>12</sup> Section 559.9335(8), F.S., provides that it is a violation of provisions relating to sellers of travel for anyone to resell a ticket for more than \$1 above the original value. The section does not reference licensing of sellers of travel.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

See "Fiscal Comments".

#### 2. Expenditures:

See "Fiscal Comments".

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

See "Fiscal Comments".

#### 2. Expenditures:

See "Fiscal Comments".

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill would allow persons to resell tickets for an amount greater than the face value. This could lead to the creation of businesses to resell tickets.

### D. FISCAL COMMENTS:

The fiscal impact on state government is uncertain. According to information provided by the Office of the State Court Administrator, only 145 cases were filed<sup>13</sup> for violations of s. 817.36, F.S. This bill would likely reduce the number of filings under the statute and allow judges, prosecutors, and public defenders to devote time and resources to other cases.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

The bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

#### 2. Other:

None.

### B. RULE-MAKING AUTHORITY:

None.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

Section 559.9335(8), F.S., provides that it is a violation of provisions relating to sellers of travel for anyone to resell a ticket for more than \$1 above the original value. The section does not reference licensing of sellers of travel.

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<sup>13</sup> The information on filings comes from the clerks of the courts in every county except for Brevard, Nassau, St. Lucie, and Seminole.

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

The Committee on Commerce consider this bill on March 8, 2004. The committee adopted an amendment that required that tickets be resold using a "credit card or other electronic payment mechanism." The original bill permitted tickets to be resold through a "credit card, licensed money transmitter, or other mechanism that offers partial or full reimbursement" for fraud. The amendment also limited the number of tickets that could be resold for more than the original value to ten. The Committee reported the bill favorably, as amended, with a committee substitute.