

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill creates a new state regulatory program for “resellers of tickets.”

Ensure lower taxes – The bill establishes a fee-based registration program for ticket resellers.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

There currently is no requirement for ticket sellers to register with the State of Florida. Regulation of the resale of tickets purchased from an original seller is covered under two separate sections of law. Section 817.357, F.S., sanctions as a violation of the Florida Unfair and Deceptive Trade Practices Act, Part II, Ch. 501, F.S., the practice of knowingly purchasing, with the intent of reselling, a quantity of tickets exceeding the published maximum amount.

The 2006 Legislature adopted HCB 6003 CS relating to resale of tickets. This bill deleted a provision of law making the sale or marketing of certain admission tickets at a price in excess of \$1 above the retail admission price charged by the original seller a violation of the Sellers of Travel Act. The bill created s. 817.357, F.S., to provide that purchasing tickets in excess of a specified amount, with the intent to resell those tickets, is a violation of the Florida Deceptive and Unfair Trade Practices Act. The new law also prohibited persons from reselling the following tickets for more than \$1 above the resale admission price:

- Tickets for passage or accommodations on common carriers in this state (this prohibition does not apply to travel agencies with an established place of business in Florida and who are required to pay state, county, and city occupational license taxes).
- Multi-day or multi-event tickets to a park or entertainment complex or to a concert, entertainment event, permanent exhibition, or recreational activity within such park or entertainment complex.
- Tickets, other than those listed above, sold through an Internet website (this prohibition does not apply to tickets sold through an Internet website that is authorized by the original ticket seller or if the website makes and posts certain guarantees and disclosures).

In 2007, following the repeal of the Florida ticket scalping law, the Florida Attorney General's (AG) office began receiving complaints related to a secondary ticket market – ticket brokers.

Many complaints were triggered by the difficulty parents encountered when trying to purchase tickets for their children to see Hannah Montana as part of a 54 city concert tour sponsored by Disney. Within minutes of tickets becoming available online, the tickets were sold out. Thousands of tickets had been purchased by ticket brokers for resale. Resale ticket prices were from \$350 to \$2,000 each for the \$63 concert tickets.¹ The concert tour began in October 2007 and by late November 2007, the AG had received 33 complaints. As of March 13, 2008, 53 complaints had been received in the past 365 days.

Lawsuits have been filed in California and Missouri relating to the resale of tickets by brokers, and the Arkansas attorney general is conducting an investigation into the practice.² The Arkansas attorney general is also looking into allegations that one company is selling a software product that allows users

¹ www.cnn.com/2007/SHOWBIZ/TV/10/12/montanatickets/

² www.consumeraffairs.com

to breach the original seller's, such as Ticketmaster, online system. The software allows users to "cut in line" ahead of customers and block access to tickets at the site.³

Proposed Changes

The bill creates a new section of law requiring resellers of defined tickets to register with the Department of Agriculture and Consumer Services (department). Under the proposed new law, each reseller of tickets must register annually with the department and must provide:

- the legal business or trade name, mailing address, and business locations;
- the full names, addresses, telephone numbers, and social security numbers of the owners or corporate officers and directors, and the Florida agent of the corporation;
- a statement indicating if it is a domestic or foreign corporation, the state and date of its incorporation, the charter number, and, if foreign, the date of registration with the state, and any applicable occupational license;
- the date of registration of any fictitious names if the reseller is operating under any fictitious or trade names;
- the name of all other corporations, business entities, and trade names through which each owner of the ticket reseller operated, was known, or did business as a reseller within the preceding 5 years;
- a list of all authorized independent agents, including names, trade names, addresses, telephone numbers, and social security numbers;
- locations of branch offices with names and addresses of managers or supervisors; and
- proof of purchase of required bond, letter of credit, or certificate of deposit.

The bill establishes an annual registration fee of \$300 per registrant and all amounts collected must be used for the sole purpose of administration of the program.

The bill requires each independent agent to annually file an affidavit with the department prior to doing business in Florida. An "independent agent" is defined as a person who:

- represents a reseller of tickets by soliciting persons on the reseller's behalf;
- has a written contract with a reseller of tickets that is operating in compliance with the law and any adopted rules;
- does not receive a fee, commission, or other valuable consideration directly from the purchaser for the reseller of tickets;
- does not at any time have any unissued ticket stock in his or her possession; and
- does not have the ability to issue tickets.

Before seeking a local occupational license, either new or a renewal, to engage in business as a reseller of tickets, a person must exhibit a current registration certificate from the department. All contracts and advertisements of resellers of tickets must display a Florida Reseller of Tickets registration number.

The bill allows the department to deny or refuse to renew the registration of any reseller of tickets if the reseller or any of its directors, officers, owners, or general partners has:

- failed to meet the provided registration requirements;
- been convicted of a crime involving fraud, dishonest dealing, or any other act of moral turpitude;
- not satisfied a civil fine or penalty arising from any administrative or enforcement action involving fraud, dishonest dealing, or any other act of moral turpitude;
- pending any criminal, administrative, or enforcement proceedings involving fraud, dishonest dealing, or any other act of moral turpitude; or

³ Id.

- had a judgment entered against him or her in any action brought by the department or the Department of Legal Affairs (DLA) pursuant to this bill or the Deceptive and Unfair Trade Practices Act.⁴

The bill requires the registration application to be accompanied by a \$25,000 performance bond from a surety company authorized to do business in Florida. In lieu of the required performance bond, an applicant may establish a certificate of deposit or an irrevocable letter of credit in a Florida banking institution in the amount of \$25,000. The bond, letter of credit, or certificate of deposit must be in favor of the department for the benefit of any ticket purchaser injured by the fraud, misrepresentation, breach of contract, financial failure, or violation of any provision of the proposed section or s. 817.357, F.S., regarding fraudulent practices in the purchase of tickets.

The bill proscribes the procedures a ticket purchaser must follow to file a claim. According to the bill, the Legislative intent is that a bond, letter of credit or certificate of deposit is applicable and liable only for the payment of claims duly adjudicated by order of the department. If the reseller of tickets is currently the subject of an administrative, civil, or criminal action by either the department, DLA, or the state attorney concerning compliance with the section, the right to proceed against the bond, letter of credit, or certificate of deposit is suspended until after any enforcement action becomes final.

According to the bill, a person who resells a ticket without a valid registration commits a misdemeanor of the second degree, punishable as provided in s. 775.082 F.S.,⁵ or s. 775.083, F.S.⁶

The bill also expands the scope of activities prohibited under s. 817.357, F.S., relating to the purchase of tickets in conjunction with the sale of tickets and provides a criminal penalty for using computer software to evade maximum ticket quantity limitations posted by or on behalf of the original ticket seller. An original ticket seller using a publicly available Internet website must post the following information.

- The number of tickets offered for sale to the general public at each price level;
- The number of tickets allocated or distributed to the original ticket seller or its agents at each price level;
- The number of tickets sold, allocated, or distributed to fan clubs at each price level;
- The number of tickets sold, allocated, or distributed to the promoter or performer or their agents at each price level; and
- The identity of recipients of any tickets sold, allocated, or distributed to anyone not covered under the above requirements at each price level.

Knowingly violating any of these requirements violates the Florida Deceptive and Unfair Trade Practices Act.⁷ Knowingly using computer software to purchase tickets in a way that evades the ticket limit posted by or on behalf of the original ticket seller is a violation punishable as a misdemeanor of the second degree.⁸

Finally, the bill amends existing resale of tickets law⁹ by renumbering certain paragraphs and adding a civil penalty of “treble” the amount for which tickets were sold in violation of the law.

C. SECTION DIRECTORY:

Section 1. Creates Part XII of chapter 559, F.S.; providing definitions; requiring registration of certain ticket resellers; requiring specified information from registrants; providing for a registration fee; requiring a current registration certificate to obtain a local occupational license; requiring specified registration

⁴ ss. 501.201-501.213, F.S.

⁵ Imprisonment not exceeding 60 days.

⁶ A fine of \$500.

⁷ ss. 501.201-501.213, F.S.

⁸ s. 775.082, F.S., or s. 775.083, F.S.

⁹ s. 817.36, F.S.

information in contracts and advertisements; requiring notice of changes of name or location; prohibiting assignment of registration; providing for application of specified administrative provisions to such registrations; permitting denial or revocation of registration in certain circumstances; providing for a performance bond; providing penalties.

Section 2. Amends s. 817.357, F.S.; prohibiting use of computer software to evade quantity limits on ticket purchases; requiring an original ticket seller to provide specified information on a publicly available Internet site; providing penalties.

Section 3. Amends s. 817.36, F.S.; providing civil penalties for certain violations.

Section 4. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Indeterminate. See Fiscal Comments.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Those in the business of purchasing and reselling admission and event tickets will incur increased costs for registration with the department, including the annual fee of \$300 and costs associated with providing a performance bond, letter of credit or certificate of deposit in the amount of \$25,000.00. Resellers may incur criminal liability for violating the requirements created in new s. 559.945, F.S.¹⁰, or the proposed amendments to s. 817.357(1)(a)2., F.S.¹¹, and additional civil penalties for violating revised s. 817.36, F.S.¹²

D. FISCAL COMMENTS:

Indeterminate. The bill establishes an annual registration fee of \$300 per registrant and all amounts collected must be used for the sole purpose of administration of the program.

¹⁰ Proposed registration program for certain ticket resellers.

¹¹ Prohibiting use of certain software for purposes of evading limitations on number of tickets that may be purchased.

¹² Assessing a civil penalty equal to treble the amount for which the ticket or tickets were sold.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

The bill's registration, bonding, and application fee requirements, as well as the prohibition against using computer software to purchase tickets in a way that evades the posted ticket limit, have the potential to affect entities not solely within Florida. A state law that has the potential to regulate commerce occurring wholly outside that State's borders is invalid under the Commerce Clause." (*Healy v. The Beer Institute*, 491 U.S. 324, 332 (1989)). .

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The proposed legislation requires disclosure of individual social security numbers. Conditioning licensure on the disclosure of individual social security numbers appears to violate section 7 of the federal Privacy Act of 1974, at 5 U.S.C. § 552a note.¹³ Section 7 of the Privacy Act does not preclude states from requiring social security numbers on state license applications. Federal law requires that the person being asked to provide his or her social security number be informed of the statutory authority for the request or demand, whether the furnishing of the social security number is mandatory or voluntary, and how the information is to be used.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

N/A

¹³ FL Department of Agriculture & Consumer Services' analysis of the bill.