

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1287

Resale of Tickets

SPONSOR(S): Holder

TIED BILLS:

IDEN./SIM. BILLS: SB 2074

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Agriculture & Natural Resources Policy Committee	17 Y, 0 N	Thompson	Reese
2) Public Safety & Domestic Security Policy Committee	8 Y, 0 N, As CS	Padgett	Kramer
3) General Government Policy Council			
4)			
5)			

SUMMARY ANALYSIS

Secondary ticketing, otherwise known as ticket scalping, is a large economic enterprise and a significant component of the sports and entertainment industries. Current Florida law prohibits reselling tickets for more than \$1 above the original admission price for the following transactions:

- Passage or accommodations on any common carrier in this state, except this prohibition does not apply to travel agencies that have an established place of business in this state that are required to pay state, county, and city occupational license taxes.
- Multiday or multievent tickets to a park or entertainment complex or to a concert, entertainment event, permanent exhibition, or recreational activity within such park or entertainment complex.
- Any other tickets that are resold 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).

Current law does not specifically regulate the resale of tickets for events sponsored by or benefiting organizations described in section 501(c)(3), of the Internal Revenue Code, commonly referred to as charitable organizations.

The bill prohibits the resale of tickets at a price in excess of \$1 above the admission price for events sponsored by such charitable organizations. The bill affords any such organization the choice to prohibit ticket purchases for resale by any person or firm and allows the organizations to require binding contractual agreements with registered ticket resellers for purchasing, remarketing, or reselling event or entertainment tickets.

The bill provides a person may not sell or resell event admission tickets over the internet until tickets have been offered for sale via an event authorized provider. The bill provides an internet portal or website may not allow a person to offer for resale any event admission tickets until such tickets have first been offered for sale via an event authorized provider.

The bill provides that a person who resells a ticket or tickets in violation of the this statute commits a violation of the Florida Deceptive and Unfair Trade Practices Act and is liable to the state for a civil penalty equal to triple the amount for which the ticket or tickets were sold.

The bill does not appear to have a fiscal impact on state or local government.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Ticket Scalping

Ticket scalping is an activity that has been around since the 1850's.¹ Otherwise known as secondary ticketing, ticket scalping is commonly defined as the reselling of tickets at a price higher than the established value.² Ticket scalping is a large economic enterprise and a significant component of the sports and entertainment industries.³ Legislation limiting or prohibiting ticket scalping has been criticized as limiting free enterprise. Despite the enactment of such legislation, ticket scalping continues as a multi-billion dollar business.

Proponents of ticket scalping argue that once a person purchases a ticket, that person should be able to resell the ticket at any price.⁴ Further, it has been argued that ticket scalping provides a service to those who are not willing or unable to purchase tickets directly from a facility or promoter.⁵ 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.⁶ As a result, ticket prices become inflated, which may cause customer dissatisfaction with the promoters and sponsors of the event and a decline in future sales.⁷

In addition to inflating ticket prices, scalping also creates congestion, annoyance and inconvenience in areas where crowds must move rapidly and safely. In this respect, scalping may actually be dangerous to individual patrons.⁸

¹ Consumereports.org; February, 19, 2008, The Scoop on Ticket Scalping

² 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).

³ *Id.* at 190

⁴ *Id.* at 189-90.

⁵ *Id.* at 191.

⁶ *Id.* at 192.

⁷ *Id.* at 192.

⁸ *Id.* at 192.

Other Jurisdictions

There are no federal laws directly governing ticket resales, but at least sixteen states prohibit or regulate the resale of tickets: Arizona, Arkansas, California, Connecticut, Delaware, Florida, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, New Mexico, Ohio, Rhode Island and Wisconsin.⁹ 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.¹⁰ In almost all instances where ticket scalping is prohibited or there is a resale without a license, the offense is a misdemeanor.¹¹

In 2008, federal legislation was introduced¹² to prohibit the counterfeiting and sale of inaugural tickets that were supposed to be free. In a statement of intent, the sponsor of the legislation said: "This legislation is meant to immediately stop the unscrupulous behavior of those who obtain these tickets for free and then seek to profit by selling them, often at dramatically inflated prices."¹³

Current Florida Law

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. Also, the bill created s. 817.357, F.S., to provide that purchasing tickets in excess of a specified quantity, with the intent to resell those tickets, is a violation of the Florida Deceptive and Unfair Trade Practices Act.

Section 817.36, F.S., prohibits reselling tickets for more than \$1 above the original admission price for the following transactions:

- Passage or accommodations on any common carrier in this state, except this prohibition does not apply to travel agencies that have an established place of business in this state that are required to pay state, county, and city occupational license taxes.
- Multiday or multievent tickets to a park or entertainment complex or to a concert, entertainment event, permanent exhibition, or recreational activity within such park or entertainment complex.
- Any other tickets that are resold 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).

There are no criminal penalties provided in this section.

Charitable Organizations

Section 501(c)(3) of the Internal Revenue Code provides federal tax benefits to certain not-for-profit and charitable organizations.¹⁴ Organizations described in section 501(c)(3) are commonly referred to as charitable organizations. To receive tax exempt status, an organization must be organized and operated exclusively for charitable purposes such as educational, religious, scientific, literary, fostering national or international sports competition, preventing cruelty to children or animals, or testing for public safety. Such organizations are reliant upon community support through contributions, grants, sponsorships, and ticket sales as sources of revenue. Current law does not specifically restrict the resale of event tickets of not-for-profit or charitable organizations.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² S. 3685

¹³ The Washington Post; Nikita Stewart, "Sen. Feinstein Introduces Anti-Ticket Scalping Legislation"; Inaugural Watch.

¹⁴ <http://www.irs.gov/charities/charitable/article/0,,id=96099,00.html>

Proposed Changes

The bill amends current law¹⁵ to prohibit a person or entity from reselling tickets at a price in excess of \$1 above the admission price for events sponsored by or benefiting a federally exempt charitable organization.¹⁶ Also, the bill affords a charitable organization whose ticket transactions are regulated under this provision the choice to prohibit ticket purchases for resale by any person or firm. In addition, the bill allows such not-for-profit organizations to require binding contractual agreements with registered ticket resellers for purchasing, remarketing, or reselling event or entertainment tickets.

The bill provides that a person may not offer to sell or resell over the internet, and an internet portal or website may not allow a person to sell or resell tickets over the internet, admission tickets to a live entertainment event, theater, musical performance, or place of public entertainment or amusement of any kind, unless and until such tickets have first been offered for sale via an event-provider-authorized outlet or offering.

The bill provides a person who intentionally uses or sells software to circumvent a ticket seller's internet website security system commits a second degree misdemeanor.¹⁷ The bill defines software to mean computer programs that are primarily designed or produced for the purpose of interfering with the operation of any person or entity that sells, over the internet, tickets of admission to a sporting event, theater, musical performance, or place of public entertainment or amusement of any kind.

The bill provides that a person who violates this section commits a violation of the Florida Deceptive and Unfair Trade Practices Act and is liable to the state for a civil penalty equal to triple the amount for which the ticket or tickets were sold for.

B. SECTION DIRECTORY:

Section 1. Amends s. 817.36, F.S., relating to the resale of tickets.

Section 2. Provides an effective date of July 1, 2009.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

¹⁵ s. 817.36, F.S.

¹⁶ s. 501(c)(3), Internal Revenue Code

¹⁷ A second degree misdemeanor is punishable by up to 60 days in county jail and a maximum \$500 fine. Section 775.082, s. 775.083, F.S.

The bill creates a civil penalty for reselling tickets of events sponsored by a federally tax exempt charitable organization. The number of future violations of this statute and the amount of the resulting fines are indeterminate.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 24, 2009, the Public Safety & Domestic Security Committee adopted an amendment that makes the following changes to the bill:

- provides a person may not offer event admission tickets for sale over the internet until the tickets have been offered for sale via an event authorized provider;
- prohibits a internet portal or website from allowing a person to resell event admission tickets until the tickets have been offered for sale via an event authorized provider;
- provides a person who uses or sells software designed to circumvent a ticket seller's internet security system commits a second degree misdemeanor;
- provides a violation of this section is a violation of the Florida Deceptive and Unfair Trade Practices Act