

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 Judiciary Committee

BILL: CS/SB 2074

INTRODUCER: Judiciary Committee and Senator Crist

SUBJECT: Resale of Tickets

DATE: April 22, 2009

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hrdlicka	Cooper	CM	Favorable
2.	Treadwell	Maclure	JU	Fav/CS
3.			GA	
4.				
5.				
6.				

I. Summary:

The bill amends the resale of tickets statute. The bill limits the resale of tickets to \$1 above the admission price for events sponsored by or benefiting a charitable organization exempt from taxation under s. 501(c)(3) of the Internal Revenue Code. This includes a prohibition on resale or offer of these charitable tickets through an Internet website for more than \$1 above the admission price.

In addition, this bill authorizes the charitable organization to prohibit ticket purchases for the purpose of remarketing or reselling, and may require contracts with registered ticket resellers to purchase, remarket, or resell event or entertainment tickets.

The bill adds a civil penalty for violation of s. 817.36, F.S., payable to the state, of treble the amount of the transaction or transactions executed in violation of the statute.

This bill amends section 817.36, Florida Statutes.

II. Present Situation:

Resale of Tickets

A ticket of admission is a license for the person to whom it is issued for some right or privilege.¹ The resale of tickets is regulated by states for various reasons, including the belief that resale of tickets for exorbitant prices above the face value of the ticket is unfair, that resale can lead to

¹ BLACK'S LAW DICTIONARY (8th ed. 2004), ticket.

fraud by sale of fake tickets, thus harming innocent consumers, or that purchasers of resold tickets may not be properly reimbursed if the event is cancelled.² States approach regulation of ticket resales in different manners. Some states have no restrictions on resales, while

. . . some prohibit the resale for any amount greater than the face-value of the ticket; others permit resellers to charge a certain percentage above the face-value of the ticket; and yet others permit a ticket reseller to charge a “reasonable fee” for services rendered in selling a ticket. Many states also impose restrictions on the locations at which ticket resales may take place, including: prohibiting resales on the property where the event is held, prohibiting sales within a specified distance from that property, and prohibiting sales in public. In addition to state statutes limiting or prohibiting the resale of tickets, many municipalities impose their own restrictions on ticket resales.³

Also, some states require individuals or entities to register as ticket resellers or ticket brokers in order to participate in this industry.

In general, “scalping” is the practice of selling a ticket at a price above face value once it becomes scarce (usually just before a high-demand event begins).⁴ Usually, ticket scalping occurs outside or near a venue where an event is taking place. In recent years, the Internet has come to dominate the ticket resale industry. Entities such as auction and marketplace websites, sports teams, and concert promoters work together and utilize the Internet to sell tickets.

Resale of Tickets in Florida

Under current Florida law,⁵ a person who offers for resale or resells any ticket may only charge \$1 over the original admission price for:

- **Transportation tickets:** Passage of accommodations on any common carrier in Florida;⁶
- **Multiple day or event tickets:** Multiday or multievent tickets to a park or entertainment complex, concert, entertainment event, permanent exhibition, or recreational activity within a park or complex, including an entertainment/resort complex as defined in s. 561.01(18), F.S.;⁷
- **Tickets resold or offered online:** Any tickets resold or offered through a website, other than those discussed in transactions above, unless the website is authorized by the

² Jonathan C. Benitah, *Anti-Scalping Laws: Should They Be Forgotten?*, 6 TEX. REV. ENT. & SPORTS L. 55, 60 (2005).

³ Anthony J. Dreyer and Mitchell P. Schwartz, *Whose Game is it Anyway? Sports Teams’ Right to Restrict (and Control) Ticket Resale*, 17 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 753, 756 (2007).

⁴ BLACK’S LAW DICTIONARY (8th ed. 2004), scalping.

⁵ Section 817.36, F.S., was amended by ch. 2006-105, Laws of Fla., to the current version discussed herein.

⁶ Section 817.36(1), F.S. This does not apply to travel agencies that have an established place of business in the state, which is required to pay state, county, and city occupational license taxes.

⁷ Section 817.36(2), F.S. “Entertainment/resort complex” means a theme park comprised of at least 25 acres of land with permanent exhibitions and a variety of recreational activities, which has at least 1 million visitors annually who pay admission fees thereto, together with any lodging, dining, and recreational facilities located adjacent to, contiguous to, or in close proximity to the theme park, as long as the owner(s)/operator(s) of the theme park, or a parent or related company or subsidiary thereof, has an equity interest in the lodging, dining, or recreational facilities or is in privity therewith. Close proximity shall include an area within a 5-mile radius of the theme park complex. Section 516.01(18), F.S.

original ticket seller to charge a greater amount, or the website makes and posts the following guarantees and disclosures on its website to which a prospective purchaser is directed before completion of the resale transaction:⁸

- The website operator guarantees a full refund of the amount paid for the ticket including any servicing, handling, or processing fees, if such fees are not disclosed, when:
 - The ticketed event is canceled;
 - The purchaser is denied admission to the ticketed event, unless such denial is due to the action or omission of the purchaser; or
 - The ticket is not delivered to the purchaser in the manner requested and pursuant to any delivery guarantees made by the reseller and such failure results in the purchaser's inability to attend the ticketed event.
- The website operator discloses that it is not the issuer, original seller, or reseller of the ticket or items and does not control the pricing of the ticket or items, which may be resold for more than their original value.

Any ticket outside of the three categories listed above may be sold at any amount over the original admissions price.

In reviewing a previous version of the ticket resale statute in 1997, a Florida appellate court stated:

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. . . . 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. This appears to us to be a legitimate area in which the state may impose economic regulations.⁹

Florida law does not authorize an individual or entity to engage in resale activities on property where an event is held without obtaining prior express consent of the property owner in writing.¹⁰ Further, any sales tax due on the resold tickets is to be remitted to the Florida Department of Revenue in accordance with s. 212.04, F.S.¹¹ However, there is no penalty specified for violation of this section.

⁸ Section 817.36(3), F.S.

⁹ *State v. Sobieck*, 701 So. 2d 96, 104 (Fla. 5th DCA 1997).

¹⁰ Section 817.36(4), F.S.

¹¹ Section 817.36(5), F.S. Section 212.04, F.S., imposes a tax on the sales price or actual value of admissions.

Penalties Related to Use or Sale of Tickets

Existing law 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.¹² Second or subsequent violations are first-degree misdemeanors.

It is also a first-degree misdemeanor under current law for any person to counterfeit, forge, alter, or possess any ticket designed for admission to an event, with the intent to defraud.¹³

Florida Deceptive and Unfair Trade Practices Act

It is a violation of the Florida Deceptive and Unfair Trade Practices Act¹⁴ to knowingly purchase a quantity of tickets from the original ticket seller that exceeds the maximum ticket limit quantity set by that original seller with the intention to resell such tickets.¹⁵ 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:

Section 1 amends s. 817.36, F.S., to add that tickets for events sponsored by or benefiting a charitable organization that is exempt from taxation under s. 501(c)(3) of the Internal Revenue Code may be offered for resale or resold for only \$1 above the original admission price. For example, the resale or offer of such tickets through an Internet website or physically between two individuals for more than \$1 above the admission price is prohibited.

Any charitable organization exempt from taxation under s. 501(c)(3) of the Internal Revenue Code that is an original seller or issuer of tickets subject to this provision may prohibit ticket purchases for the purpose of remarketing or reselling, and may require binding contractual agreements with registered ticket resellers to purchase, remarket, or resell event or entertainment tickets. “Registered ticket resellers” is not defined by the bill. For clarity, the Legislature may wish to provide a definition of this term.

The bill provides that individuals or entities in violation of s. 817.36, F.S., are liable to the state for a civil penalty of treble the amount of the transaction or transactions executed in violation of the statute. As a result, civil penalties will apply to other violations of s. 817.36, F.S., in addition to a person who charges more than \$1 above the original admission price for charitable event tickets.

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

¹² Section 817.361, F.S.

¹³ Section 817.355, F.S.

¹⁴ Sections 501.201-501.213, F.S.

¹⁵ Section 817.357, F.S.

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:

Individuals or entities previously reselling tickets, in any manner, to events sponsored by or benefiting a charitable organization will be limited to a resale price of \$1 over the face value of each ticket. Further, they may not be allowed to purchase the tickets. Registered ticket resellers may be required to enter into a contract with the charitable organization in order to be allowed to resell the tickets.

Violators of s. 817.36, F.S., will be subject to a civil penalty of treble the amount of each transaction value. Previously there were no civil penalties associated with this statute.

C. Government Sector Impact:

To the extent that the state attorneys enforce or the Attorney General enforces the restrictions imposed by this bill, and the restrictions in current law, there will be corresponding costs associated with such enforcement.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Judiciary on April 21, 2009:

The committee substitute replaces a reference in the bill to “not-for-profit” organization with “charitable” organization for consistency in the bill.

- B. **Amendments:**

None.