

**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 Commerce and Tourism Committee

BILL: SB 392

INTRODUCER: Senator Bogdanoff

SUBJECT: Ticket Sales

DATE: January 18, 2012      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hrdlicka	Hrdlicka	CM	<b>Pre-meeting</b>
2.	_____	_____	JU	_____
3.	_____	_____	BC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

SB 392 creates requirements for the sale of tickets in Florida by an original ticket seller for an event that takes place at a venue that receives public funding. The requirements include:

- Advance public notice that includes specific information, including a certification that the original ticket seller meets the requirements of the section;
- Maintenance of a toll-free phone number for handling customer issues; and
- Implementation and publication of a standard refund policy.

Further, the bill specifies prohibited actions by an original ticket seller. In general, the prohibitions limit an original ticket seller's ability to restrict or control the resale of tickets.

Prohibitions include:

- Imposing license or contractual terms on the initial sale of event tickets;
- Requiring the purchaser to agree not to resell the ticket or tickets;
- Requiring the purchaser to agree to resell through a specific channel;
- Bringing legal action or imposing a penalty for the resale of a ticket;
- Using technology to limit the resale of a ticket; and
- Limiting the amount for which a ticket may be resold.

Violation of the section by an original ticket seller is a violation of the Florida Deceptive and Unfair Trade Practices Act.

There are two exemptions to the new requirements: sponsors or promoters of charitable events for which all tickets are free of charge; and athletic event tickets distributed by a nonprofit

educational institution to (1) students, faculty, staff, and alumni without charge, or (2) booster members.

This bill substantially amends s. 817.357, F.S.

## II. Present Situation:

### Ticket Sales

Generally a ticket of admission is a license for the person to whom it is issued for some right or privilege.<sup>1</sup> However, recent court decisions – mainly in bankruptcy cases – have determined that the interest in tickets is a property interest, which gives the ticket holder more rights over the ticket, such as in transferability issues.<sup>2</sup>

Generally there is little regulation on the initial sale of tickets by original ticket issuers and their agents.

The resale of tickets is regulated by states for various reasons; these include the belief that resale of tickets for exorbitant prices above the face value of the ticket are unfair; that resale can lead to fraud by the sale of fake tickets and this harms innocent consumers; or that purchasers of resold tickets may not be properly reimbursed if the event is cancelled.<sup>3</sup> States approach regulation of ticket resales in different manners: some states have no restrictions on resales,

...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.<sup>4</sup>

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

While traditionally tickets have been sold by venues or promoters, or resold by scalpers outside of venues where events are taking place, the Internet has come to dominate the ticket sale industry. Entities such as auction and marketplace websites, sports teams, and concert promoters work together and utilize the internet to sell tickets. Some examples include Tickets.com,<sup>5</sup>

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<sup>1</sup> Black’s Law Dictionary (8th ed. 2004), ticket.

<sup>2</sup> See Davis, Danette R., “The Myth and Mystery of Personal Seat Licenses and Season Tickets: Licenses or More?” 51 STLULJ 241 (Fall 2006); and Happel, Stephen and Marianne m. Jennings, “The Eight Principles of the Microeconomic and Regulatory Future of Ticket Scalping, Ticket Brokers, and Secondary Ticket Markets,” 28 JLCOM 115 (Spring 2010).

<sup>3</sup> “Anti-Scalping Laws: Should They Be Forgotten?” Benitah, Jonathan C., 6 TXRESL 55, 60 (2005).

<sup>4</sup> “Whose Game is it Anyway? Sports Teams’ Right to Restrict (and Control) Ticket Resale.” Dreyer, Anthony J., and Mitchell P. Schwartz, 17 FDMIPMELK 753, 756 (2007).

<sup>5</sup> Tickets.com is owned by MLB Advanced Media, LP, the interactive media and Internet division of Major League Baseball, and generally acts as an original ticket seller. Website available at <http://us.provenue.com/index.php/company-info/about-us> (last visited 10/24/2011).

Ticketmaster,<sup>6</sup> StubHub,<sup>7</sup> and EBay.<sup>8</sup> In fact, some promoters and owners “hold-back” tickets from the primary sales in order to sell them on the secondary market or distribute them to artists, staff, radio stations, and others who may then sell or distribute the tickets as they wish.<sup>9</sup>

### Resale of Tickets in Florida

Current law prohibits the resale of tickets for more than \$1 over the original admission price, but limits the application of that restriction to the following transactions:

- Tickets sold for passage or accommodation on any common carrier in Florida;<sup>10</sup>
- 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;<sup>11</sup>
- Tickets for events for which 3,000 or fewer tickets are issued by a 501(c)(3) charitable organization;<sup>12</sup> and
- Tickets sold through an internet website unless authorized by the original ticket seller or when the website makes and posts certain guarantees and disclosures.<sup>13</sup>
  - For tickets resold through websites, one required guarantee is that the website will make 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 event is canceled, the ticket purchaser is denied admission to the event, or the ticket is not delivered to the purchaser which creates an inability for the purchaser to attend the event.
  - The website operator must disclose 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 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.<sup>14</sup>

If a ticket is resold in violation of the statute, or if a person uses software to circumvent a ticket seller’s website, a civil penalty of treble the amount of a ticket or tickets resold is imposed.<sup>15</sup>

<sup>6</sup> Ticketmaster now operates through several websites, including Live Nation, which allows for the company to act as an original ticket seller and as a ticket reseller. See company profile for Live Nation Entertainment available at <http://phx.corporate-ir.net/phoenix.zhtml?c=194146&p=irol-homeprofile> (last visited 10/24/2011).

<sup>7</sup> StubHub, a subsidiary of EBay, acts as a facilitator for the resale of tickets by third parties. The User Agreement contains the obligations that a ticket reseller must agree to in order to use the website. User Agreement available at [http://www.stubhub.com/user\\_agreement/](http://www.stubhub.com/user_agreement/) (last visited 10/24/2011).

<sup>8</sup> EBay acts as a facilitator for both the primary and resale of tickets. Ticket Sale Policy available at <http://pages.ebay.com/help/policies/event-tickets.html> (last visited 10/24/2011).

<sup>9</sup> See Happel, 28 JLCOM at 160-163. See also pp. 163-173 for a detailed chart and information on the companies and organization of primary and secondary ticket markets.

<sup>10</sup> Section 817.36(1)(a), F.S. This does not apply to travel agencies that have an established place of business in the state and are required to pay state, county, and city occupational license taxes.

<sup>11</sup> Section 817.36(1)(b), F.S. “Entertainment/resort complex” is defined in s. 516.01(18), F.S.

<sup>12</sup> Section 817.36(1)(c), F.S. The tickets must be printed with a phrase that notifies the ticket holder that the ticket may not be resold for more than \$1 over the original price. This does not apply to tickets issued or sold by a third party contractor ticketing service provider on behalf of the organization, unless the disclaimer is printed on the tickets.

<sup>13</sup> Section 817.36(1)(d), F.S.

<sup>14</sup> Section 817.36(3), F.S. Section 212.04, F.S., imposes a tax on the sales price or actual value of admissions.

### Regulation of Fraudulent Ticket Sales

Section 817.361, F.S., 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. Second or subsequent violations are first degree misdemeanors.

Section 817.355, F.S., makes the sale of any counterfeit, forged, altered ticket, or possession of any ticket with the intention to defraud a facility, a first degree misdemeanor.

Section 817.357, F.S., states that it is a violation of the Florida Deceptive and Unfair Trade Practices Act<sup>16</sup> for knowingly purchasing a quantity of tickets from the original ticket seller that exceeds the maximum ticket limit quantity set, with the intent to resell such tickets. 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.”

### Current Issues with the Resale of Tickets

Many professional sports teams have limited the resale of season tickets to games – either by requiring season ticket holders to resell the ticket to the team, which will then sell the ticket itself, or resell tickets through an approved team secondary website.<sup>17</sup>

The advent of “paperless tickets” has also been said to limit the secondary ticket market. These efforts by promoters and owners to limit fraudulent tickets and make it easy for ticket purchasers to avoid will-call or lost or forgotten tickets have also limited the easy transferability of tickets.

In 2010, New York passed into law a prohibition on the restriction of the resale of season tickets and a prohibition on the use of paperless ticketing systems that do not permit the transferability of tickets.<sup>18</sup>

## **III. Effect of Proposed Changes:**

SB 392 creates additional requirements for the sale of tickets in Florida by an original ticket seller.

Section 1 amends s. 817.357, F.S.

The bill redefines “original ticket seller” to mean a person other than the operator of an Internet resale marketplace that initially sells admission tickets to the general public. It may include the operator of a venue, an event sponsor or promoter, a sports team, a theatre company, a musical group, or an agent of any such person.

Additional requirements for the sale of tickets in Florida by an original ticket seller for an event that takes place at a venue that receives any public funding include:

<sup>15</sup> Section 817.36(4) and (5), F.S.

<sup>16</sup> Sections 501.201 – 501.213, F.S.

<sup>17</sup> Dreyer, Anthony J. and Mitchell P. Schwartz, “Whose Game is it Anyway: Sports Teams’ Right to Restrict (and Control) Ticket Resale,” 17 FDMIPMELJ 753 (Spring 2007).

<sup>18</sup> NY ART & CULT AFF s. 25.30. New York also requires the licensing of ticket resellers.

- Advance public notice that includes specific information, including a certification that the original ticket seller meets the requirements of the section;
- Maintenance of a toll-free phone number for handling customer issues; and
- Implementation and publication of a standard refund policy.

The advance public notice must be posed conspicuously on the website of the original ticket seller and at any physical locations where tickets are sold. The notice must include:

- Information which identifies the event;
- The total number of tickets to be issued and the number made available to the public, and a breakdown of the number of tickets by class, tier, or level of admission for each;
- The prices for each class, tier, or level of tickets made available to the public;
- Whether the ticket being sold was not available at the time of public sale;
- The date and time of the initial public sale;
- A complete list of where publicly available tickets will be sold, including internet websites;
- The toll-free phone number for customer issues; and
- The refund policy and process.

An original ticket seller must establish a full refund policy to repay the full price paid by the customer for the ticket, including any fees, such as convenience fees, processing fees, at home printing charges, shipping and handling charges, or delivery fees. The refund may be conditioned upon return of the ticket. Full refunds must be made for events that are:

- Canceled before the scheduled occurrence of the event and not rescheduled;
- Counterfeit tickets purchased;
- Tickets cancelled by the ticket issuer for nonpayment by the original ticket purchaser “or any other reason other than act or omission by the consumer”;
- Tickets that materially fail to conform to the description of the event by the seller or reseller to the detriment of the consumer; or
- Tickets not delivered to the consumer prior to the occurrence of the event, unless such failure was due to any act or omission by the consumer.

Further, the bill specifies prohibited actions by an original ticket seller. Prohibitions include:

- Imposing license or contractual terms on the initial sale of event tickets;
- Requiring the purchaser to agree not to resell the ticket or tickets;
- Requiring the purchaser to agree to resell through a specific channel;
- Bring legal action or impose a penalty for the resale of a ticket;
- Use technology to limit the resale of a ticket; and
- Limit the amount for which a ticket may be resold.

Violation of the section by an original ticket seller is a violation of the Florida Deceptive and Unfair Trade Practices Act.<sup>19</sup> Further, the bill eliminates the safe harbor provision under the Florida Deceptive and Unfair Trade Practices Act for original ticket sellers who purchase more than the maximum amount of admissions tickets to an event, with the intent to resell those tickets.

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<sup>19</sup> Codified at part II, ch. 501, F.S.

There are two exemptions to the new requirements: sponsors or promoters of charitable events for which all tickets are free of charge; and athletic event tickets distributed by a not-for-profit educational institution to (1) students, faculty, staff, and alumni without charge, or (2) booster members who have made substantial financial contributions to the institution.

Resale of tickets would still be restricted as set forth in current law, and discussed above in the Present Situation.

Section 2 provides an effective date of July 1, 2012, and provides that the bill applies to all ticket sales made on or after that date.

#### **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:

Consumers will be able to resell their event tickets without limitation by the original ticket seller.

The bill requires the original ticket seller to provide a refund to a consumer of the full price paid upon the occurrence of certain events, some of which are outside the control of the original ticket seller. The original ticket seller may be liable to repay to consumers an amount more than the original ticket price, for example if the consumer purchased a ticket for a higher price from a secondary sales website and incurred additional fees.

C. Government Sector Impact:

To the extent that the State Attorneys 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:**

While the bill requires a full refund by ticket sellers, it does not specify that any sales taxes paid be refunded to the consumer.

Charitable organizations are not exempted from the provisions of the bill. However, under s. 817.36, F.S., charitable organizations are currently permitted to restrict the resale price of a ticket and print such restrictions on the ticket. Passage of this bill would create a conflict for event tickets sold by charitable organizations.

**VIII. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

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

None.

**B. Amendments:**

None.