

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1353 Ticket Sales

**SPONSOR(S):** Raulerson

**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professional Regulation Subcommittee	11 Y, 0 N	Collins	Luczynski
2) Appropriations Committee			
3) Regulatory Affairs Committee			

### SUMMARY ANALYSIS

Several Florida statutes address the sale and resale of admission tickets in the state. Specifically, s. 817.355, F.S., relates to the fraudulent creation or possession of a ticket, s. 817.357, F.S., relates to the maximum amount of tickets allowed to be purchased by a consumer, s. 817.36, F.S., relates to the resale of tickets, and s. 817.361, F.S., relates to the resale of multi-day or multi-event tickets.

Generally, the bill:

- Provides definitions;
- Provides for and increases penalties for violations and subsequent violations of certain sections;
- Allows for a person to bring a declaratory action in certain circumstances; and
- Allows for actual damages, including attorney fees and court costs, in certain circumstances.

Additionally, the bill amends s. 817.36, F.S., which relates to the resale of tickets. Specifically, the bill:

- Clarifies when a person or entity may offer for resale or resell a ticket for more than one dollar over face value on its website;
- Provides that an online ticket reseller must guarantee the consumer a full refund when the ticket event is canceled if the purchaser requests a refund;
- Requires ticket brokers to register with the Department, and provides requirements regarding how to maintain an effective registration;
- Requires the Department to publish a list of registered ticket brokers and their respective registration numbers;
- Requires that a ticket broker or resale website make certain disclosures to a prospective ticket resale purchaser prior to a resale transaction; and
- Prohibits a ticket broker or resale website from using a website with a URL that incorporates or contains a trademark that is rightfully owned by another, in violation of federal law.

The bill also amends s. 817.361, F.S., which relates to the resale of multi-day or multi-event tickets. The bill:

- Provides that a multi-use ticket is non-transferrable, unless otherwise provided by the issuer; and
- Provides increased criminal penalties for a person who violates the section relating to multi-use tickets.

Finally, the bill creates s. 817.362, F.S., which relates to the initial sales of tickets. Specifically, the bill:

- Prohibits restrictions from being placed on the ticketing methods used for the initial sale of tickets; and
- Declares that a ticket is considered to be a revocable license.

The bill has a fiscal impact on state funds. See fiscal comments.

The bill provides an effective date of October 1, 2013.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Penalties for Counterfeiting, Forging, Altering or Otherwise Possessing Such Tickets**

###### *Current Situation*

Currently, s. 817.355, F.S., provides that a person who counterfeits, forges, alters, or possesses any ticket, token, or paper that is designed for admission to any sports, amusement, concert, or other facility offering services to the general public is guilty of a first degree misdemeanor.<sup>1</sup>

The statutory language does not provide any increased criminal or civil penalties for subsequent violations. There is also no criminal or civil penalty for a person who counterfeits, forges, alters, or possesses more than one of such tickets, with the intent to defraud the event or amusement facility.

###### *Effect of Proposed Changes*

The bill creates s. 817.355(1), F.S., to provide increased criminal penalties for violations of the section. Specifically, a person who counterfeits, forges, alters, or possesses any ticket, token, or paper that is designed for admission to any sports, amusement, concert, or other facility offering services to the general public for a subsequent time commits a third degree felony which is punishable as provided in ss. 775.082<sup>2</sup> or 775.084,<sup>3</sup> F.S., or by a fine of up to \$10,000.<sup>4</sup>

Moreover, the bill creates s. 817.355(2), F.S., to impose a criminal penalty for a person who counterfeits, forges, alters, or possesses ten or more of such tickets, tokens, or papers designed for admission to any sports, amusement, concert, or other facility offering services to the general public, with the intent to defraud such facility. Such person commits a third degree felony, which is punishable as provided in ss. 775.082<sup>5</sup> or 775.084, F.S.<sup>6</sup>, or by a fine of up to \$10,000.<sup>7</sup>

##### **Definitions**

###### *Current Situation*

Section 817.36(6), F.S., sets forth the definition for the term "software," which is defined as 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.

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<sup>1</sup> Section 775.082(4)(a), Florida Statutes, provides that the penalty for a first degree misdemeanor shall be a term of imprisonment not to exceed one year; Section 775.083(1)(d), Florida Statutes, provides that a person who has been convicted of a first degree misdemeanor may be sentenced to pay a fine of \$1,000, in addition to any imprisonment that he or she has been sentenced to, unless specifically authorized by statute that the fine is in lieu of any incarceration.

<sup>2</sup> Section 775.082(3)(d), Florida Statutes, provides that the penalty for a third degree felony shall be a term of imprisonment not to exceed five years.

<sup>3</sup> Section 775.084, Florida Statutes, provides enhanced penalties for habitual felony offenders.

<sup>4</sup> See, generally: s. 775.083(1)(b), Florida Statutes, the \$10,000 fine may be imposed in lieu of any incarceration, rather than in addition to any incarceration imposed by the court.

<sup>5</sup> Section 775.082(3)(d), Florida Statutes, provides that the penalty for a third degree felony shall be a term of imprisonment not to exceed five years.

<sup>6</sup> Section 775.084, Florida Statutes, provides enhanced penalties for habitual felony offenders.

<sup>7</sup> See, generally: s. 775.083(1)(b), Florida Statutes, the \$10,000 fine may be imposed in lieu of any incarceration rather than in addition to any incarceration imposed by the court.

No other definitions related to the resale of tickets are provided.

### *Effect of Proposed Changes*

The bill amends s. 817.36(1), F.S., to provide definitions for the following terms: “department,” “online marketplace,” “resale website,” and “ticket broker.”

- “Department” is defined as the Department of Agriculture and Consumer Services.
- “Online Marketplace” is defined as an internet website that provides a forum for the buying and selling of tickets, which is not operated by a ticket issuer or an agent of an owner or operator of a place of entertainment.
- “Resale Website” is defined as an internet website, or portion of a website, whose primary purpose is to facilitate the resale of tickets to consumers.
- “Ticket Broker” is defined as a person in the business of reselling tickets to events at places of entertainment in the state, who charges a premium in excess of the face value of the ticket. The term does not include an individual who does not regularly engage in the business of reselling tickets who: 1) sells less than sixty tickets during a one-year period, and 2) initially obtained the tickets he or she sold for personal use, or the use of an immediate family member, friend, or known acquaintance. The term also does not include a person operating a website whose primary business is to serve as a resale marketplace where third parties can buy and sell tickets, and who does not otherwise engage in the business of reselling tickets.

The bill also includes the definition of “software” from s. 817.36(6), F.S., with the definitions now set forth in s. 817.36(1), F.S.

## **Ticket Resale Guarantees**

### *Current Situation*

Section 817.36(1)(d), F.S., prohibits a person or entity that offers to resell or resells a ticket from charging more than one dollar above the admission price charged by the original ticket seller in any transaction wherein the tickets are resold or offered through an internet website, unless:

- The website is authorized by the original ticket seller; and
- The website posts certain guarantees and disclosures on its website, or links to websites which contain such guarantees and disclosures.

The prospective purchaser must be directed to the guarantees and disclosures prior to the completion of the resale transaction.

Specifically, the website operator must:

- Disclose that it is not the issuer, original seller, or reseller of the ticket or items and does not control its pricing, and that the ticket or item may be resold for more than its original value; and
- Guarantee a full refund of the amount paid for the ticket, including any servicing, handling, or processing fees, if such fees are not disclosed, in certain circumstances.

The circumstances under which the website operator must provide a full refund include when:

- The ticketed event is canceled;
- The purchaser is denied admission to the ticketed event, unless such denial is due to an act 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.

### *Effect of Proposed Changes*

The bill amends s. 817.36(1)(d), F.S., and renumbers it as s. 817.36(2)(d), F.S., to clarify that in order for a person or entity to offer to resell or resell a ticket for more than one dollar above its admission

price on a website, that the website 1) is authorized by the original ticket seller to sell such tickets; or 2) provides certain guarantees and disclosures.

Moreover, the bill amends s. 817.36(1)(d)1.a., F.S., and renumbers it as s. 817.36(2)(d)1.a., F.S., to provide that the online ticket reseller must guarantee the consumer a full refund when the ticket event is canceled if the purchaser requests a refund.

### **Penalties for Software that Circumvents a Ticket Sellers' Website**

#### *Current Situation*

Currently, s. 817.36(5), F.S., provides that a person who intentionally uses or sells software to circumvent a security measure, access control system, or any other control or measure that is used to ensure an equitable ticket-buying process on a ticket seller's website is liable to the state for a civil penalty equal to three times the amount for which the ticket or tickets were sold (hereinafter "treble damages").

#### *Effect of Proposed Changes*

The bill amends s. 817.36(5), F.S., and renumbers it as s. 817.36(6), F.S., to provide a criminal penalty for a person who intentionally uses or sells software to circumvent a security measure, access control system, or any other control or measure that is used to ensure an equitable ticket-buying process on a ticket seller's website. Specifically, such person commits a third degree felony, punishable as provided in ss. 775.082<sup>8</sup> or 775.084,<sup>9</sup> F.S., or by a fine of up to \$10,000.<sup>10</sup>

The bill does not affect the person's liability to the state for treble damages if he or she intentionally uses or sells software to circumvent a security measure or access control system on a ticket seller's website, in violation of the subsection.

### **Ticket Broker Registration, Disclosures and Behavior**

#### *Current Situation*

Currently, nothing in Florida's statutes requires a "ticket broker" to register with the state or otherwise make themselves known to the state. Additionally, there is nothing in Florida's statutes that requires a "ticket broker" to make any disclosures to the prospective ticket purchaser.

#### *Effect of Proposed Changes*

The bill creates s. 817.36(7), F.S., to require a ticket broker to register with the Department of Agriculture and Consumer Services (hereinafter "Department") by April 1, 2014 or within thirty days after commencing business as a ticket broker in the state, whichever is later. The ticket broker must maintain an active registration with the Department.

The bill further provides that in order to have and maintain an effective registration, a ticket broker must:

- Maintain a permanent office or place of business in the state for the purpose of engaging in the business of a ticket broker;
- Submit the ticket brokers' business name, street address, and other information, as requested by the Department;

<sup>8</sup> Section 775.082(3)(d), Florida Statutes, provides that the penalty for a third degree felony shall be a term of imprisonment not to exceed five years.

<sup>9</sup> Section 775.084, Florida Statutes, provides enhanced penalties for habitual felony offenders.

<sup>10</sup> See, generally: s. 775.083(1)(b), Florida Statutes, the \$10,000 fine may be imposed in lieu of any incarceration rather than in addition to any incarceration imposed by the court.

- Certify that the ticket broker does not use, sell, give, transfer, or distribute software that is primarily designed for the purpose of interfering with the operations of a ticket seller, as prohibited in s. 817.36, F.S.;
- Pay an annual registration fee;
- Renew the registration annually; and
- Register for sales and use tax purposes under ch. 212, F.S.

Upon registration, the Department will issue the ticket broker a unique registration number. It must also publish a list of registered ticket brokers, including their respective registration numbers, on its website.

A person may not register as a ticket broker if he or she has been convicted of a felony, and has not been pardoned or had his or her civil rights, other than voting, restored under ch. 940, F.S. As such, prior to issuing the registration number, the Department is implicitly required to certify whether a ticket broker applicant has been convicted of a felony, and if so, the Department must certify whether the person's civil rights have been restored under ch. 940, F.S.

The bill also creates s. 817.36(8), F.S., to require that a ticket broker or resale website make certain disclosures to a prospective ticket resale purchaser prior to a resale transaction. Such disclosures may be on the ticket broker's resale website or online marketplace, or in person. Such disclosures must include:

- The face value and exact location of the seat offered for sale, including any section, row and seat number, or area specifically designated as accessible seating that is printed on the ticket; and
- Whether the ticket offered for sale is in the actual possession of the reseller and available for delivery.

Finally, the bill creates s. 817.36(9), F.S., to prohibit a ticket broker or resale website from using a website with a URL that incorporates or contains a trademark that is rightfully owned by another, without the written consent of the trademark owner, in such a way that the incorporation or use constitutes a violation of federal trademark law.

## **Penalties for Violations of Ticket Resale and Ticket Broker Provisions**

### *Current Situation*

Section 817.36(4), F.S., provides that a person who knowingly resells a ticket in violation of the ticket resale provisions of s. 817.36, F.S., is liable to the state for treble damages.

Section 817.36, F.S., does not address penalties for a person who otherwise violates the section.<sup>11</sup>

### *Effect of Proposed Changes*

#### Civil Penalties

The bill creates s. 817.36(10), F.S., which provides that a person who is aggrieved by a violation of this section, which relates to the resale of tickets and ticket brokers, may bring a declaratory action in order to enjoin the person who has violated, is violating, or is otherwise likely to violate the section. This does not affect the aggrieved person's ability to receive any other relief or remedy to which he or she is entitled.

Moreover, the bill provides additional civil penalties for a person who has been aggrieved by a violation of the section and who has suffered a loss as a result of the violation. Specifically, the bill provides that

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<sup>11</sup> Section 817.36(5), Florida Statutes, addresses penalties for a person who intentionally uses or sells software to circumvent a ticket seller's website security measure or access control system.

an aggrieved person who has suffered a loss as a result of a violation may bring an action to recover actual damages, plus attorney fees and court costs.

### Criminal Penalties

Finally, the bill creates s. 817.36(11), F.S., to provide a criminal penalty for a person who violates the provisions of the section. Specifically, except as otherwise provided, a person who knowingly violates the section commits a third degree felony, punishable as provided in ss. 775.082<sup>12</sup> or 775.084, F.S.,<sup>13</sup> or by a fine of up to \$10,000.<sup>14</sup>

This criminal penalty is in addition to any non-criminal penalty provided in the section.

As a result, this criminal penalty provision would apply to a person who knowingly resells a ticket in violation of the section. Although that violation is provided for in s. 817.36(4), F.S., (renumbered by the bill to s. 817.36(5), F.S.) that provision provides for a non-criminal penalty. As a result, a person who knowingly resells a ticket in violation of the section commits a third degree felony, and is also liable to the state for treble damages.

Additionally, a person who is aggrieved by someone who has knowingly resold a ticket in violation of the section, as discussed above, may also bring:

- A declaratory action under the newly-created s. 817.36(10), F.S.; and
- A civil action for actual damages, including attorney fees and court costs, if the aggrieved person has suffered a loss as a result of the violation.

Conversely, the criminal penalty provision would not apply to a person who intentionally uses or sells software to circumvent a security measure or access control system on a ticket seller's website, as that violation has an a criminal penalty associated with it, as provided for in s. 817.36(5), F.S., (renumbered by the bill to s. 817.36(6), F.S.).

Finally, as generally discussed above, the criminal penalty provision is in addition to any declaratory judgment or civil damages obtained by a person aggrieved by any other violation of the section, as provided for in the newly created ss. 817.36(10) and 817.36(11), F.S., as these penalties are non-criminal in nature.

### Multi-Day or Multi-Event Tickets

#### *Current Situation*

Section 817.361, F.S., sets forth the statutory provisions relating to multi-day or multi-event tickets.

The statute defines "non-transferrable ticket or medium" as one on which the following phrase is clearly printed: "Non-transferrable; must be used by the same person on all days," or words of similar significance.

The statute further provides that it is a violation of the section to sell, offer for sale, or otherwise transfer in connection with a commercial transaction, any non-transferrable ticket or medium designed for admission to more than one amusement location or other facility offering entertainment to the general public, or for admission for more than one day thereto, after said ticket has been used at least once for admission. A person who violates the section is guilty of a second degree misdemeanor, punishable as

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<sup>12</sup> Section 775.082(3)(d), Florida Statutes, provides that the penalty for a third degree felony shall be a term of imprisonment not to exceed five years.

<sup>13</sup> Section 775.084, Florida Statutes, provides enhanced penalties for habitual felony offenders.

<sup>14</sup> See, generally: s. 775.083(1)(b), Florida Statutes, the \$10,000 fine may be imposed in lieu of any incarceration rather than in addition to any incarceration imposed by the court.

provided in ss. 775.082<sup>15</sup> or 775.083, F.S.<sup>16</sup>

Moreover, the statute provides that upon a subsequent violation of the section, such person is guilty of a first degree misdemeanor, punishable as provided in ss. 775.082<sup>17</sup> or 775.083,<sup>18</sup> F.S.

### *Effect of Proposed Changes*

#### Definitions

The bill creates s. 817.361(1), F.S., to define the term “multi-use ticket.” Specifically, the bill defines a “multi-use ticket” to be a ticket, other medium, or right designed for admission to more than one amusement location or other facility offering entertainment to the general public, or for admission for more than one day to one or more such locations or facilities.

Moreover, the bill defines the “issuer of a multi-use ticket” as the person or entity that created the multi-use ticket, and who is obligated to allow admission thereunder.

The bill also creates s. 817.361(2), F.S., to provide that a multi-use ticket is non-transferrable, unless the issuer:

- Clearly prints on the multi-use ticket that it “may be used by more than one person;” or
- Explicitly states on its website that the multi-use ticket may be used by more than one person.

#### Enforcement

The bill creates s. 817.361(3), F.S., to retain the statutory language that it is a violation of the section to sell, offer for sale, or otherwise transfer in connection with a commercial transaction, any non-transferrable multi-use ticket after that ticket or medium has been used at least once for admission.

The bill further creates s. 817.361(4), F.S., to provide that a person who violates the section commits a second degree misdemeanor, which is consistent with the current statutory language. Moreover, unlike the current statutory language, the bill provides that the violation is punishable as provided in s. 775.082, F.S.,<sup>19</sup> or by a fine of up to \$10,000.<sup>20</sup>

Moreover, subsequent violations constitute a third degree felony, punishable as provided in ss. 775.082<sup>21</sup> or 775.084,<sup>22</sup> F.S., or by a fine of up to \$10,000.<sup>23</sup>

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<sup>15</sup> Section 775.082(4)(b), Florida Statutes, provides that the penalty for a second degree misdemeanor shall be a term of imprisonment not to exceed sixty days.

<sup>16</sup> Section 775.083(1)(e), Florida Statutes, provides that a person who has been convicted of a second degree misdemeanor may be sentenced to pay a fine of \$500, in addition to any imprisonment that he or she has been sentenced to, unless specifically authorized by statute that the fine is in lieu of any incarceration.

<sup>17</sup> Section 775.082(4)(a), Florida Statutes, provides that the penalty for a first degree misdemeanor shall be a term of imprisonment not to exceed one year.

<sup>18</sup> Section 775.083(1)(d), Florida Statutes, provides that a person who has been convicted of a first degree misdemeanor may be sentenced to pay a fine of \$1,000, in addition to any imprisonment that he or she has been sentenced to, unless specifically authorized by statute that the fine is in lieu of any incarceration.

<sup>19</sup> Section 775.082(4)(b), Florida Statutes, provides that the penalty for a second degree misdemeanor shall be a term of imprisonment not to exceed sixty days.

<sup>20</sup> See, generally: s. 775.083(1)(e), Florida Statutes, provides that a person who has been convicted of a second degree misdemeanor may be sentenced to pay a fine of \$500; s. 775.083(1)(g), Florida Statutes, provides that the fine may not exceed that amount, unless specifically authorized by the statute. Here, \$10,000 is higher than the allowable amount set forth in s. 775.083(1)(3), Florida Statutes, but it is permissible pursuant to s. 775.083(1)(g), Florida Statutes.

<sup>21</sup> Section 775.082(3)(d), Florida Statutes, provides that the penalty for a third degree felony shall be a term of imprisonment not to exceed five years.

<sup>22</sup> Section 775.084, Florida Statutes, provides enhanced penalties for habitual felony offenders.

<sup>23</sup> See, generally: s. 775.083(1)(b), Florida Statutes, the \$10,000 fine may be imposed in lieu of any incarceration rather than in addition to any incarceration imposed by the court.

## **Ticketholders' and Ticket Sellers' Rights**

### *Current Situation*

A "ticket" is generally defined as a certificate indicating that the person to whom it is issued, or the holder, is entitled to some right or privilege.<sup>24</sup> It is not specifically defined in Florida law.

In the absence of a statute to the contrary, an event or admission ticket is generally considered to be a license to witness the performance, which may be revoked by the owner or proprietor at will, either before or after admission of the ticketholder.<sup>25</sup> Florida law currently does not address whether an event or admission ticket is deemed to be a license or a property interest.

Without a Florida statute to the contrary, a ticket is generally considered to be a license, and the ticket seller is able to place restrictions upon the use of that ticket. For example, a common restriction placed on an event or admission ticket by the seller is the inability to reenter the venue facility upon leaving. In addition to manner of use restrictions, the ticket seller is also able to place conditions and restrictions upon the resale or transferability of the ticket.

### *Effect of Proposed Changes*

The bill creates s. 817.362, F.S., to define the term "ticket." Specifically, the bill defines a "ticket" as a printed, electronic, or other type of evidence of the right, option or opportunity to occupy space at or to enter or attend an entertainment event, even if there is no physical manifestation of such right.

Moreover, the bill explicitly declares that a ticket is considered to be a revocable license, held by the person in possession of the ticket, to use a seat or standing area in a specific place for a limited period of time. The license may be revoked by the ticket issuer at any time, with or without cause.

Finally, the bill states that in order to preserve the rights of consumers to secure tickets to live entertainment events through safe and reliable means, nothing in ss. 817.355-817.361, F.S., prevents operators of places of entertainment, event presenters, or their agents from using any ticketing methods for the initial sale of tickets, through any medium, whether existing now or in the future.

## **B. SECTION DIRECTORY:**

**Section 1:** amends s. 817.355, F.S., to provide increased criminal penalties for repeat violations by a person who counterfeits, forges, alters or otherwise possesses such ticket; and to provide a criminal penalty for a person who counterfeits, forges, alters or otherwise possesses ten or more of such tickets.

**Section 2:** amends s. 817.36, F.S., to provide definitions related to the resale of tickets; to clarify when a person or entity may offer for resale or resell a ticket for more than one dollar over face value on its website; to provide that an online ticket reseller must guarantee the consumer a full refund when the ticket event is canceled if the purchaser requests a refund; to provide criminal penalties for a person who intentionally uses or sells software to circumvent a security measure or access control system on a ticket seller's website; to require ticket brokers to register with the Department, and to provide requirements regarding how to maintain an effective registration; to require the Department to publish a list of registered ticket brokers and their respective registration numbers; to require that a ticket broker or resale website make certain disclosures to a prospective ticket resale purchaser prior to a resale transaction; to prohibit a ticket broker or resale website from using a website with a URL that incorporates or contains a trademark that is rightfully owned by another, in violation of federal law; to provide that a person who is aggrieved by a violation of the section relating to the resale of tickets and ticket brokers may bring a declaratory action; to provide that a person who has suffered a loss as a result of a violation of the section relating to the resale of tickets and ticket brokers may recover actual damages, plus attorney fees and court costs; and to provide criminal penalties for a person who

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<sup>24</sup> Black's Law Dictionary (9<sup>th</sup> ed. 2009), ticket.

<sup>25</sup> 27A Am. Jur. 2d Entertainment and Sports Law § 42.



violates the section relating to the resale of tickets and ticket brokers, except as otherwise provided in the section.

**Section 3:** creates s. 817.361, F.S., to provide definitions relating to multi-use tickets; to provide that a multi-use ticket is non-transferrable, unless otherwise provided by the issuer; to provide increased criminal penalties for a person who violates the section relating to multi-use tickets; and to provide increased criminal penalties for subsequent violations of the section relating to multi-use tickets.

**Section 4:** creates s. 817.362, F.S., to prohibit restrictions from being placed on the ticketing methods used for the initial sale of tickets.

**Section 5:** creates s. 817.362, F.S., to define the term "ticket," and to declare that a ticket is considered to be a revocable license.

**Section 6:** provides an effective date of October 1, 2013.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The Department has indicated that, beginning in fiscal year 2014-15, it anticipates that the ticket brokers' registration program will provide \$20,500 in revenue.<sup>26</sup> Specifically, the program is estimated to create recurring revenue of \$25,000 per year, with \$2,500 in recurring operating expenses related to the cost of running the program, and \$2,000 in non-operating expenses per year.

#### 2. Expenditures:

The Department has indicated that the ticket brokers' registration program is anticipated to cost \$21,000 in fiscal year 2013-14.<sup>27</sup> The program is estimated to create recurring revenue of \$25,000 that year, and to incur \$2,500 in recurring operating expenses related to the cost of running the program, \$2,000 in non-operating expenses, and \$41,600 in non-recurring expenses for contracted services related to software development needed to create the program.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

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

Consumers who qualify as a "ticket broker" under the definition set forth in s. 817.36, F.S., must formally register with the Department and pay an annual registration fee, which they are currently not required to do.

### D. FISCAL COMMENTS:

None.

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<sup>26</sup> Department of Agriculture and Consumer Services Legislative Analysis Form, page 1-2, dated March 8, 2013, on file with subcommittee.

<sup>27</sup> Id.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

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

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of sales tax shared with counties or municipalities.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

The bill requires that all ticket brokers register with the Department by April 1, 2014 or within thirty days after commencing business as a ticket broker in the state whichever is later. As such, the bill requires the Department to create and maintain a ticket brokers' registration program. Among other things, the Department is required to certify that an applicant is qualified to be a ticket broker, set fees, create forms, create procedures for issuing registration numbers, and publish lists of registered ticket brokers.

To carry out the objectives of the registration program, rulemaking is required. The bill does not set forth sufficient guidance to the Department regarding rulemaking. As such, the Department does not have adequate authority to promulgate the necessary rules.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

##### *Drafting Issues*

Line 182-85 reads that "a person who has been convicted of a felony and who has not been pardoned or had his or her civil rights other than voting restored under chapter 940 may not register as a ticket broker." Line 184 contains a drafting error, and should read "...rights other than voting restored..."

Additionally, Section 4 creates s. 817.362, F.S., which is meant to include two subsections. The subsections are included in an additional section, Section 5, which does not have the appropriate directory language. This is likely the result of a drafting error, as the two subsections should be included in Section 4.

##### *Other Concerns*

The Department has indicated that typically, the programs that it registers have administrative fines that can be levied for failure to register.<sup>28</sup> This bill allows for civil and criminal penalties, but no administrative penalties.

In addition, the bill stipulates that a person may not register as a ticket broker if he or she has been convicted of a felony, and has not been pardoned or had his or her civil rights, other than voting, restored under ch. 940, F.S. (see lines 182-85). As discussed in the ticket brokers section of the bill analysis, this provision implicitly requires the Department to certify whether a ticket broker applicant has been convicted of a felony, and if so, the Department must certify whether the person's civil rights have been restored under ch. 940, F.S., prior to issuing the registration number. Despite this instruction, the bill is silent regarding the rulemaking needed to implement the provision, and as to how the Department is to fund the registration program's cost of certification.

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<sup>28</sup> Department of Agriculture and Consumer Services Legislative Analysis Form, page 2, dated March 8, 2013, on file with subcommittee.

#### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.