

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 163 Ticketholders' Rights
SPONSOR(S): Smith
TIED BILLS: **IDEN./SIM. BILLS:** SB 394

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professional Regulation Subcommittee	7 Y, 6 N	Collins	Luczynski
2) Regulatory Affairs Committee			

SUMMARY ANALYSIS

The bill creates s. 501.166, F.S., to provide that an event or admission ticket purchased by a consumer is considered personal property of that consumer.

Additionally, the bill provides that any restriction imposed on the purchase of the ticket which prohibits the consumer from transferring or reselling the ticket to another consumer, or which imposes conditions upon or prescribes the means or methods of such transaction, is void.

The bill has no fiscal impact on state funds.

The bill has an effective date of July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

A “ticket” is defined as a certificate indicating that the person to whom it is issued, or the holder, is entitled to some right or privilege.¹ Generally, in the absence of a statute to the contrary, an event or admission ticket is 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.² Florida law does not currently address whether an event or admission ticket is deemed to be a license or a property interest.

Without a statute to the contrary, a ticket is generally considered 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.

The live entertainment industry appears to be moving from paper tickets toward paperless, electronic tickets (hereinafter “paperless tickets”). Recently, a growing number of music artists and professional sports teams have begun using paperless tickets.³ Frequently, paperless tickets have restricted means of resale or transferability to help deter fraud or scalping. Specifically, the paperless ticket is usually affiliated with the name and credit card that was used to purchase the ticket. As such, a consumer must present proper photo identification and the credit card used to purchase the ticket when redeeming the ticket and entering the facility.

Because the photo identification and credit card of the consumer must match the name and credit card information on the ticket, these paperless tickets are not able to easily be resold or transferred to another consumer, in the event that the purchasing consumer is sick, late, or otherwise unable to attend the event. Instead, the consumer must work with the facility’s box office in order to arrange for the resale or transfer of his or her paperless ticket.

Effect of Proposed Changes

The bill creates s. 501.166, F.S., to provide that an event or admission ticket purchased by a consumer is considered personal property of that consumer.

Moreover, any restriction imposed on the purchase of the ticket by either the ticket seller or its agent, which prohibits the consumer from transferring or reselling the ticket to another consumer, or which imposes conditions upon or prescribes the means or methods of such transaction, is void.

The bill stipulates that this prohibition does not impact the applicability of the enforcement of ss. 817.355,⁴ 817.357,⁵ 817.36,⁶ or 817.361,⁷ F.S., nor does it authorize any activity that otherwise violates those sections.

¹ Black’s Law Dictionary (9th ed. 2009), ticket.

² 27A Am. Jur. 2d Entertainment and Sports Law § 42.

³ The Consumer Action Network has indicated that the following music artists use paperless tickets: Bruce Springsteen, Kid Rock, Radiohead, Rihanna, and Mumford and Sons. Moreover, the Consumer Action Network has indicated that the following professional sports teams use paperless tickets: the Atlanta Braves, the San Francisco 49ers, and the Cleveland Cavaliers. Consumer Action Network HB 163 & SB 394-Ticketholders’ Rights, page 1, on file with subcommittee.

⁴ It is illegal for a person to counterfeit, forge or alter, or to otherwise possess a ticket which is designed for admission to any sports, amusement, concert, or other facility offering services to the general public, with the intent to defraud such facility.

⁵ It is illegal to knowingly purchase, from the original ticket seller, a quantity of tickets to an event which exceeds the maximum ticket limit quantity posted by or on behalf of the original ticket seller, with the intent to resell the tickets.

B. SECTION DIRECTORY:

Section 1: creates s. 501.166, F.S., to provide that an event or admission ticket purchased by a consumer is considered personal property of that consumer, and to provide that restrictions placed on the ticket's transferability are void.

Section 2: provides for an effective date of July 1, 2013.

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:

The bill would provide a consumer with the ability to resell or otherwise transfer his or her event or admission ticket, without any conditions placed on that transfer or resale transaction.

The bill will promote the free exchange of admission or event tickets.

D. FISCAL COMMENTS:

None.

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.

⁶ A person or entity that offers for resale or resells any ticket may charge only \$1 above the admission price charged therefor by the original ticket seller, less certain exceptions. Additionally, it is illegal for a person to intentionally use or sell software to circumvent on a ticket seller's website, a security measure, access control system, or any other control or measure that is used to ensure an equitable ticket-buying process.

⁷ It is illegal for a person to offer for sale, sell, or transfer in connection with a commercial transaction, any non-transferable 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 1 day thereto, after said ticket or medium has been used at least once for admission.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

By expressly defining an event or admission ticket as a “property right” rather than a license, the language may be construed to imply that the venue operator may not have the same ability to place reasonable restrictions on the use of the ticket, such as the inability to reenter the facility, that have nothing to do with the resale or transferability of the ticket.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.