

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 Committee on Commerce and Tourism

BILL: CS/SB 394

INTRODUCER: Commerce and Tourism Committee and Senator Hays

SUBJECT: Ticketholders' Rights

DATE: April 9, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hrdlicka	Hrdlicka	CM	Fav/CS
2.			JU	
3.			RC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes
B. AMENDMENTS..... Technical amendments were recommended
 Amendments were recommended
 Significant amendments were recommended

I. Summary:

CS/SB 394 increases the criminal penalties related to counterfeit tickets; and creates criminal penalties for reselling or purchasing “multiuse tickets” to theme parks.

This bill amends s. 817.355, F.S.

II. Present Situation:

Tickets and Sales

Generally there is little regulation on the initial sale of tickets by original ticket issuers and their agents. Original ticket issuers take different approaches to the restriction of resale of tickets. Some impose no restrictions at all on the resale of tickets, while others prohibit the sale of season ticket accounts.¹ “Some prohibit the reselling of tickets over the face-value; some prohibit the

¹ As long as there is adequate notice of restrictions, including resale restrictions, courts have generally held that the restrictions may be enforced. Dreyer, Anthony J. and Mitchell P. Schwartz, “Whose Game is it Anyway: Sports Teams’ Right to Restrict (and Control) Ticket Resale,” 17 FDMIPMELJ 753, 768 – 772 (Spring 2007).

reselling over a specific resale maximum; still others prohibit selling at certain locations; and some prohibit the reselling at any price.”²

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 is 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.³ States approach regulation of ticket resales in different manners, similar to those of original ticket issues discussed above. “In addition to state statutes limiting or prohibiting the resale of tickets, many municipalities impose their own restrictions on ticket resales.”⁴ Also, some states require individuals or entities to register as ticket resellers or ticket brokers in order to participate in this industry.

Efforts by issuers 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; the use of credit cards to purchase tickets, barcodes placed on tickets, and electronic tickets all provide ways for an original ticket issuer to link a ticket to a particular person and keep track of ownership of a ticket.⁵

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 tickets for:

- Passage or accommodation on any common carrier in Florida;⁶
- Multiday or multievent access 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;⁷
- Events for which 3,000 or fewer tickets are issued by a 501(c)(3) charitable organization;⁸ and
- Sale through an internet website unless authorized by the original ticket seller or when the website makes and posts certain guarantees and disclosures.⁹

Any ticket outside the four categories listed above may be sold at any amount over the original admissions price. Additionally, tickets may not be offered for resale or purchased at any price on property where an event is being held without the express written consent of the property owner.

² See Dreyer, 17 FDMIPMELJ at 772.

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

⁴ See Dreyer, 17 FDMIPMELJ at 756.

⁵ For example, Disney recently invested in a new form of ticket which is a wireless radio-frequency identification wristband. See Garcia, Jason, Orlando Sentential (March 29, 2013), available at <http://www.orlandosentinel.com/the-daily-disney/os-disney-nextgen-ticket-laws-20130329,0,2136300.story>; and Shaw Brown, Genevieve, ABC News (January 9, 2013), available at <http://abcnews.go.com/Travel/magicband-disney-park-entry/story?id=18161268> (last visited 4/4/2013).

⁶ 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.

⁷ Section 817.36(1)(b), F.S. “Entertainment/resort complex” is defined in s. 516.01(18), F.S.

⁸ 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.

⁹ Section 817.36(1)(d), F.S.

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.¹⁰

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.¹¹

Regulation of Fraudulent Ticket Sales in Florida

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.¹² A nontransferable ticket is one on which is clearly printed the phrase: "Nontransferable; must be used by the same person on all days" or a similar phrase.

Section 817.355, F.S., makes the counterfeit, forging, altering, 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 Act¹³ 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."

III. Effect of Proposed Changes:

CS/SB 394 amends provisions related to ticket sales to increase the penalties for sales of counterfeit tickets and sales of multiuse tickets.

Section 1 amends s. 817.355, F.S., to increase the criminal penalties for the fraudulent creation or possession of admission tickets.

Under current law, the counterfeit, forging, altering, or possession of any ticket with the intention to defraud a facility is a first degree misdemeanor. The bill creates a felony of the third degree for subsequent violations, punishable by a fine of \$10,000, a term of imprisonment not exceeding 5 years, or, in the case of a habitual offender a term of imprisonment not exceeding 10 years.¹⁴

The bill creates a third degree felony for the counterfeit, forging, altering, or possession of 10 or more tickets with the intention to defraud a facility. This crime is punishable by a fine of \$10,000, a term of imprisonment not exceeding 5 years, or, in the case of a habitual offender a term of imprisonment not exceeding 10 years.

¹⁰ Section 817.36(3), F.S. Section 212.04, F.S., imposes a tax on the sales price or actual value of admissions.

¹¹ Section 817.36(4) and (5), F.S.

¹² Second degree misdemeanors are punishable by up to 60 days imprisonment and a fine of up to \$500. First degree misdemeanors are punishable by up to 1 year imprisonment and a fine of up to \$1,000. ss. 775.082 and 775.083, F.S.

¹³ Sections 501.201 – 501.213, F.S. The associated civil penalty for a violation of the act is up to \$10,000 per violation.

¹⁴ Generally, a third degree felony is punishable by a fine of \$5,000. s. 775.083(1)(c), F.S.

Section 2 amends s. 817.361, F.S., to provide criminal penalties for the resale or repurchase of a multiuse ticket that has been used at least once for admission.

The bill defines a “multiuse ticket” as a ticket or other medium designed for admission to more than one amusement location or facility in a theme park or for more than 1 day to a theme park. A “theme park” is an area of at least 25 acres that contains rides or other recreation activities and is owned by the same business entity.

The bill increases the penalty to a first degree misdemeanor to offer for sale, sell, or transfer, with or without consideration, any nontransferable multiuse ticket that has been used at least once for admission. The bill also creates a first degree misdemeanor to purchase or offer to purchase, with the intent to defraud and with or without consideration, any nontransferable multiuse ticket that has been used at least once for admission.

Both first degree misdemeanors are punishable by a fine of \$10,000 or a definite term of imprisonment not exceeding 1 year.¹⁵

Any second or subsequent violation is a third degree felony, punishable by a fine of \$10,000, a term of imprisonment not exceeding 5 years, or, in the case of a habitual offender a term of imprisonment not exceeding 10 years.

Under current law, a ticket is transferable unless otherwise stated on the ticket itself. The bill repeals that provision, and instead states that a multiuse ticket is nontransferable. The bill provides two instances when a multiuse ticket is transferable:

- The phrase “may be used by more than one person” is printed clearly on the ticket; or
- The issuer of the ticket explicitly states on its website that the ticket may be used by more than one person.

Section 3 provides an effective date of July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹⁵ Generally, a first degree misdemeanor is punishable by a fine of \$1,000. s. 775.083(1)(c), F.S.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Individuals who counterfeit tickets or sell or transfer used multiuse tickets will be subject to increased criminal penalties. Additionally, individuals who purchase a used multiuse ticket with the intent to defraud will be subject to criminal penalties.

However, individuals will no longer be subject to criminal penalties for the resale or transfer of multiday or multievent tickets to entertainment venues other than theme parks.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

Criminal fines imposed under s. 775.083, F.S., are deposited by the clerk of the court in the county's fine and forfeiture fund, except for fines imposed when adjudication is withheld, which are sent to the Department of Revenue for deposit in the General Revenue Fund. The bill does not state where the new fines imposed are to be deposited.

VII. Related Issues:

There may be confusion as to when a multiuse ticket is transferrable. The bill does not provide any direction to an issuer how to "explicitly state" on its website when a ticket is may be used by more than one person.

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 Commerce and Tourism on April 8, 2012:**

The committee substitute:

- Increases the criminal penalties related to counterfeit tickets; and
- Creates criminal penalties for reselling or purchasing "multiuse tickets" to theme parks.

B. Amendments:

None.