

**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: SB 394

INTRODUCER: Senator Hays

SUBJECT: Ticketholders' Rights

DATE: April 5, 2013

REVISED: \_\_\_\_\_

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

**I. Summary:**

SB 394 specifies that an event or admission ticket purchased by an individual is “personal property” and any attempt to restrict the transfer or resale of the ticket by the ticket seller or its agent is void. Further, any restrictions imposed on the means or methods of the transfer or resale of the ticket, either by imposing conditions or prescribing the transaction, are void.

This bill creates s. 501.166, F.S.

**II. Present Situation:**

Tickets and 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 season 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. Many ticket issuers place restrictions on tickets to limit liability, refuse admission to intoxicated ticket holders, remove unruly spectators from the facility, or require searches of

<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); 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); and Rustmann, Rachel, “It’s a Brand New Ballgame: How to Bequest Season Tickets for Your Favorite Sports Team’s Games,” 4 EPCPLJ 396 (Summer 2012).

belonging before entering a facility. As long as there is adequate notice of restrictions, including resale restrictions, courts have generally held that the restrictions may be enforced.<sup>3</sup>

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. “Some prohibit the reselling of tickets over the face-value; some prohibit the reselling over a specific resale maximum; still others prohibit selling at certain locations; and some prohibit the reselling at any price.”<sup>4</sup>

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>5</sup> 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.”<sup>6</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>7</sup> Ticketmaster,<sup>8</sup> StubHub,<sup>9</sup> and EBay.<sup>10</sup>

Much of the debate between whether a ticket is a license or property interest is created because of the secondary ticket market. If original ticket issuers can control the transfer of a ticket, then the original ticket issuer can make money from the resale of a ticket by requiring resale through the issuer. If original issuers cannot control the transfer of a ticket, then the secondary ticket marketers can make money off the resale of tickets.<sup>11</sup> 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

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<sup>3</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, 768 – 772 (Spring 2007).

<sup>4</sup> See Dreyer, 17 FDMIPMELJ at 772.

<sup>5</sup> Benitah, Jonathan C., “Anti-Scalping Laws: Should They Be Forgotten?” 6 TXRESL 55, 60 (2005).

<sup>6</sup> See Dryer, 17 FDMIPMELJ at 756.

<sup>7</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 4/4/2013).

<sup>8</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 4/4/2013).

<sup>9</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 4/4/2013).

<sup>10</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 4/4/2013). See also Happel, 28 JLCOM at pp. 163-173 for a detailed chart and information on the companies and organization of primary and secondary ticket markets.

<sup>11</sup> See Happel, 28 JLCOM at 185 – 191; Dryer, 17 FDMIPMELJ at 781.

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.<sup>12</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 tickets for:

- Passage or accommodation on any common carrier in Florida;<sup>13</sup>
- Multiday or multi-event 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;<sup>14</sup>
- Events for which 3,000 or fewer tickets are issued by a 501(c)(3) charitable organization;<sup>15</sup> and
- Sale through an internet website unless authorized by the original ticket seller or when the website makes and posts certain guarantees and disclosures.<sup>16</sup>

Any ticket outside the four categories listed above may be sold at any amount over the original admissions price. Additionally, an 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. 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>17</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>18</sup>

#### 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.<sup>19</sup> 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 sale of any counterfeit, forged, altered ticket, or possession of any ticket with the intention to defraud a facility, a first degree misdemeanor.

<sup>12</sup> 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).

<sup>13</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>14</sup> Section 817.36(1)(b), F.S. "Entertainment/resort complex" is defined in s. 516.01(18), F.S.

<sup>15</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>16</sup> Section 817.36(1)(d), F.S.

<sup>17</sup> Section 817.36(3), F.S. Section 212.04, F.S., imposes a tax on the sales price or actual value of admissions.

<sup>18</sup> Section 817.36(4) and (5), F.S.

<sup>19</sup> Second degree misdemeanors are punishable by up 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.

Section 817.357, F.S., states that it is a violation of the Florida Deceptive and Unfair Trade Practices Act<sup>20</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.”

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

SB 394 creates s. 501.166, F.S., to specify that an event or admission ticket purchased by an individual is “personal property” and any attempt to restrict the transfer or resale of the ticket by the ticket seller or its agent is void. Further, any restrictions imposed on the means or methods of the transfer or resale of the ticket, either by imposing conditions or prescribing the transaction, are void.

The bill provides that the provisions do not affect the applicability or enforcement of, or authorize any activity that would violate, ss. 817.355, 817.357, 817.36, or 817.361, F.S.

The bill has 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.

### **V. Fiscal Impact Statement:**

#### **A. Tax/Fee Issues:**

None.

#### **B. Private Sector Impact:**

Individuals may be able to resell tickets without restrictions, except as otherwise provided in law.

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<sup>20</sup> Sections 501.201 – 501.213, F.S. The associated civil penalty for a violation of the act is up to \$10,000 per violation.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The bill does not specify if the prohibition only applies to tickets sold in Florida, or only to tickets purchased by Florida residents.

The bill creates the prohibition within Part I of ch. 501, F.S., dealing with general provisions related to consumer protection, but does not prescribe any remedies for violation of the prohibition.

**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.