

By Senator Garcia

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1 A bill to be entitled
2 An act relating to ticket sales; amending s. 817.355,
3 F.S.; providing enhanced criminal penalties for second
4 and subsequent violations concerning fraudulent
5 creation or possession of admission tickets; providing
6 criminal penalties for persons who commit such
7 violations involving more than a specified number of
8 tickets; reordering and amending s. 817.36, F.S.;
9 providing definitions; providing criminal penalties
10 for persons who intentionally use or sell software for
11 specified purposes; providing for recovery of damages
12 for specified violations; deleting a provision
13 relating to use of software for specified purposes;
14 requiring ticket brokers to register with the
15 Department of Agriculture and Consumer Services;
16 requiring ticket brokers and resale websites to make
17 specified disclosures to prospective buyers;
18 prohibiting ticket brokers and resale websites from
19 using specified intellectual property in certain
20 circumstances; providing for civil and administrative
21 remedies for violations; providing criminal penalties;
22 requiring rulemaking; creating s. 817.362, F.S.;
23 providing that specified provisions do not affect the
24 initial sale of tickets; defining the term "ticket";
25 providing that an admission ticket represents a
26 revocable license; providing an effective date.

27
28 Be It Enacted by the Legislature of the State of Florida:
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30 Section 1. Section 817.355, Florida Statutes, is amended to
31 read:

32 817.355 Fraudulent creation or possession of admission
33 ticket.—

34 (1) (a) Except as provided in paragraph (b) and subsection
35 (2), a ~~Any~~ person who counterfeits, forges, alters, or possesses
36 a ~~any~~ ticket, token, or paper designed for admission to or the
37 rendering of services by a ~~any~~ sports, amusement, concert, or
38 other facility offering services to the general public, with the
39 intent to defraud such facility, commits ~~is guilty of~~ a
40 misdemeanor of the first degree, punishable as provided in s.
41 775.082 or s. 775.083.

42 (b) A person who commits a second or subsequent violation
43 of paragraph (a) commits a felony of the third degree,
44 punishable as provided in s. 775.082 or s. 775.084 or by a fine
45 of up to \$10,000.

46 (2) A person who counterfeits, forges, alters, or possesses
47 10 or more tickets, tokens, or papers designed for admission to
48 or the rendering of services by a sports, amusement, concert, or
49 other facility offering services to the general public, with the
50 intent to defraud such facility, commits a felony of the third
51 degree, punishable as provided in s. 775.082 or s. 775.084 or by
52 a fine of up to \$10,000.

53 Section 2. Section 817.36, Florida Statutes, is reordered
54 and amended to read:

55 817.36 Resale of tickets.—

56 (2)~~(1)~~ A person or entity that offers for resale or resells
57 a ~~any~~ ticket may charge only \$1 above the admission price
58 charged therefor by the original ticket seller of the ticket for

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59 the following transactions:

60 (a) Passage or accommodations on any common carrier in this
61 state. However, this paragraph does not apply to travel agencies
62 that have an established place of business in this state and are
63 required to pay state, county, and city occupational license
64 taxes.

65 (b) Multiday or multievent tickets to a park or
66 entertainment complex or to a concert, entertainment event,
67 permanent exhibition, or recreational activity within such a
68 park or complex, including an entertainment/resort complex as
69 defined in s. 561.01(18).

70 (c) Event tickets originally issued by a charitable
71 organization exempt from taxation under s. 501(c)(3) of the
72 Internal Revenue Code for which no more than 3,000 tickets are
73 issued per performance. The charitable organization must issue
74 event tickets with the following statement conspicuously printed
75 on the face or back of the ticket: "Pursuant to s. 817.36,
76 Florida Statutes, this ticket may not be resold for more than \$1
77 over the original admission price." This paragraph does not
78 apply to tickets issued or sold by a third party contractor
79 ticketing services provider on behalf of a charitable
80 organization otherwise included in this paragraph unless the
81 required disclosure is printed on the ticket.

82 (d) Any tickets, other than the tickets in paragraph (a),
83 paragraph (b), or paragraph (c), that are resold or offered
84 through a ~~an Internet~~ website, unless such website is authorized
85 by the original ticket seller or makes and posts the following
86 guarantees and disclosures on ~~through Internet~~ web pages on
87 which are visibly posted, or links to web pages on which are

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88 posted, text to which a prospective purchaser is directed before
89 completion of the resale transaction:

90 1. The website operator guarantees a full refund of the
91 amount paid for the ticket including any servicing, handling, or
92 processing fees, if such fees are not disclosed, when:

93 a. The ticketed event is canceled;

94 b. The purchaser is denied admission to the ticketed event,
95 unless such denial is due to the action or omission of the
96 purchaser;

97 c. The ticket is not delivered to the purchaser in the
98 manner requested and pursuant to any delivery guarantees made by
99 the reseller and such failure results in the purchaser's
100 inability to attend the ticketed event.

101 2. The website operator discloses that it is not the
102 issuer, original seller, or reseller of the ticket or items and
103 does not control the pricing of the ticket or items, which may
104 be resold for more than their original value.

105 (3)~~(2)~~ This section does not authorize any individual or
106 entity to sell or purchase tickets at any price on property
107 where an event is being held without the prior express written
108 consent of the owner of the property.

109 (4)~~(3)~~ Any sales tax due for resales under this section
110 shall be remitted to the Department of Revenue in accordance
111 with s. 212.04.

112 (5) (a) A person may not sell, use, or cause to be used by
113 any means, method, technology, devices, or software that is
114 designed, is intended, or functions to bypass portions of the
115 ticket-buying process or disguise the identity of the ticket
116 purchaser or circumvent a security measure, an access control

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117 system, or other control, authorization, or measure on a ticket
118 issuer's or resale ticket agent's website.

119 (b) A person may not use or cause to be used any means,
120 method, or technology that is designed, is intended, or
121 functions to disguise the identity of the purchaser with the
122 purpose of purchasing or attempting to purchase via online sale
123 a quantity of tickets to a place of entertainment in excess of
124 authorized limits established by the owner or operator of the
125 place of entertainment or of the entertainment event or an agent
126 of any such person.

127 (c) A person who violates this subsection commits a
128 misdemeanor of the second degree, punishable as provided in s.
129 775.082 or s. 775.083. Each ticket purchase, sale, or violation
130 of this subsection constitutes a separate offense.

131 (d) A party that has been injured by wrongful conduct in
132 violation of this subsection may bring an action to recover all
133 actual damages suffered as a result of any of such wrongful
134 conduct. The court in its discretion may award damages up to
135 three times the amount of actual damages.

136 (6)(4) A person who knowingly resells a ticket or tickets
137 in violation of this section is liable to the state for a civil
138 penalty equal to treble the amount of the price for which the
139 ticket or tickets were resold.

140 (7) (a) A ticket broker shall register with the department
141 by April 1, 2015, or within 30 days after commencing business as
142 a ticket broker in this state, whichever is later, and maintain
143 an active registration with the department. To have and maintain
144 an effective registration, a ticket broker must:

145 1. Maintain a permanent office or place of business in this

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146 state for the purpose of engaging in the business of a ticket
147 broker.

148 2. Submit the ticket broker's business name, a street
149 address in this state, and other information as requested on a
150 form designated by the department.

151 3. Certify that the broker does not use, sell, give,
152 transfer, or distribute software that is primarily designed for
153 the purpose of interfering with the operations of any ticket
154 seller in violation of this section.

155 4. Pay an annual registration fee as determined by the
156 department sufficient to reimburse the department for the
157 administration of this subsection.

158 5. Renew the registration annually.

159 6. Register for sales and use tax purposes under chapter
160 212.

161 (b) Upon registration, the department shall issue each
162 ticket broker a unique registration number and publish a list of
163 registered ticket brokers, including registration numbers, on
164 the department's website. A person who has been convicted of a
165 felony and who has not been pardoned or had his or her civil
166 rights other than voting restored under chapter 940 may not
167 register as a ticket broker.

168 (8) A ticket broker or resale website must clearly and
169 conspicuously disclose to a prospective ticket resale purchaser,
170 whether on the ticket broker's resale website, online
171 marketplace, or in person, before a resale:

172 (a) The face value and exact location of the seat offered
173 for sale, including a section, row, and seat number or area
174 specifically designated as accessible seating that is printed on

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175 the ticket.

176 (b) Whether the ticket offered for sale is in the actual
177 possession of the reseller and available for delivery.

178 (c) If the ticket is not in the actual physical possession
179 of the reseller, the period of time when the reseller reasonably
180 expects to have the ticket in actual possession and available
181 for delivery.

182 (d) Whether the reseller is actively making an offer to
183 procure the ticket.

184 (e) The refund policy of the ticket broker or resale
185 website in connection with the cancellation or postponement of
186 an entertainment event.

187 (f) That it is a resale website and ticket prices often
188 exceed face value.

189 (9) A resale website may not use the name of the venue or
190 artist or a team trademark or service mark without the consent
191 of the owner of the name of the venue, the artist, or the owner
192 of the team trademark or service mark, except when it
193 constitutes fair use and is consistent with applicable laws,
194 including full disclosure or attribution of the true owner.

195 (10) (a) A person aggrieved by a violation of this section
196 may, without regard to any other remedy or relief to which the
197 person is entitled, bring an action to obtain a declaratory
198 judgment that an act or practice violates this section and to
199 enjoin a person who has violated, is violating, or is otherwise
200 likely to violate this section.

201 (b) In any action brought by a person who has suffered a
202 loss as a result of a violation of this section, such person may
203 recover actual damages, plus attorney fees and court costs.

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204 (11) (a) The department may enter an order imposing one or
205 more of the following penalties against any person who violates
206 the requirements of this section or rules adopted under this
207 section or who impedes, obstructs, hinders, or otherwise
208 prevents or attempts to prevent the department in the
209 performance of its duties in connection with this section:

210 1. Imposition of an administrative fine of not more than
211 \$1,000 per occurrence.

212 2. Revocation or suspension of the registration.

213 (b) Except as otherwise provided in this section, and in
214 addition to any noncriminal penalties provided in this section,
215 a person who knowingly violates this section commits a felony of
216 the third degree, punishable as provided in s. 775.082 or s.
217 775.084 or may be fined up to \$10,000.

218 (12) The department shall adopt rules to implement the
219 registration provisions of this section.

220 ~~(5) A person who intentionally uses or sells software to~~
221 ~~circumvent on a ticket seller's Internet website a security~~
222 ~~measure, an access control system, or any other control or~~
223 ~~measure that is used to ensure an equitable ticket buying~~
224 ~~process is liable to the state for a civil penalty equal to~~
225 ~~treble the amount for which the ticket or tickets were sold.~~

226 (1) ~~(6)~~ As used in this section, the term:

227 (a) "Department" means the Department of Agriculture and
228 Consumer Services.

229 (b) "Online marketplace" means an Internet website that
230 provides a forum for the buying and selling of tickets, but does
231 not include a reseller, ticket issuer, or agent of an owner or
232 operator of a place of entertainment.

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233 (c) "Resale website" means a website, or portion of a
234 website, that facilitates the sale of tickets by resellers to
235 consumers or on which resellers offer tickets for sale to
236 consumers.

237 (d) "Software" means computer programs that are primarily
238 designed or produced for the purpose of interfering with the
239 operation of any person or entity that sells, over the Internet,
240 tickets for admission to a sporting event, theater, musical
241 performance, or other place of public entertainment or amusement
242 of any kind.

243 (e)1. "Ticket broker" means a person, or persons acting in
244 concert, involved in the business of reselling tickets of
245 admission to places of entertainment and who charge a premium in
246 excess of the price, plus taxes, printed on the tickets.

247 2. The term does not include:

248 a. An individual who does not regularly engage in the
249 business of reselling tickets, who resells less than 60 tickets
250 or one-third of all tickets purchased from a professional sports
251 entity during any 1-year period, and who obtained the tickets
252 for the person's own use or the use of the person's family,
253 friends, or acquaintances.

254 b. A person operating a website whose primary business is
255 to serve as an online marketplace for third parties to buy and
256 sell tickets, and whose primary business is not engaging in the
257 reselling of tickets.

258 Section 3. Section 817.362, Florida Statutes, is created to
259 read:

260 817.362 Initial sales of tickets unaffected.—In order to
261 preserve the rights of consumers to secure tickets to live

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262 entertainment events through safe and reliable means, nothing in
263 ss. 817.355-817.361 prevents operators of places of
264 entertainment, event presenters, or their agents from using any
265 ticketing methods for the initial sale of tickets, through any
266 medium, whether existing now or in the future.

267 Section 4. (1) As used in this section, the term "ticket"
268 means a physical, electronic, or other form of certificate,
269 document, voucher, or token, or other evidence indicating that
270 the bearer, possessor, or person entitled to possession through
271 purchase or otherwise has:

272 (a) A revocable right, privilege, or license to enter an
273 event venue or occupy a particular seat or area in an event
274 venue with respect to one or more events; or

275 (b) An entitlement to purchase such a right, privilege, or
276 license with respect to one or more future events.

277 (2) An admission ticket represents a revocable license,
278 held by the person in possession of the ticket, to use a seat or
279 standing area in a specific place of an event for a limited
280 time. The license represented by the ticket may be revoked at
281 any time, with or without cause, by the ticket issuer.

282 Section 5. This act shall take effect October 1, 2014.