

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 463 Ticket Sales

**SPONSOR(S):** Regulatory Affairs Committee; Business & Professions Subcommittee; Ingoglia

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 742

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	10 Y, 3 N, As CS	Butler	Luczynski
2) Agriculture & Natural Resources Appropriations Subcommittee	9 Y, 3 N	Lolley	Massengale
3) Regulatory Affairs Committee	17 Y, 0 N, As CS	Butler	Hamon

### SUMMARY ANALYSIS

Several sections of chapter 817, F.S., prohibit certain fraudulent types of activities related to admission tickets and provide for civil or criminal penalties.

The bill amends s. 817.36, F.S., to:

- Provide definitions for “department” to mean the Department of Agriculture and Consumer Services (Department), “face value,” “online marketplace,” “place of entertainment,” “resale website,” and “ticket”;
- Clarify when a ticket may be resold or offered for resale for more than \$1 over face value;
- Clarify the required guarantees and disclosures for ticket resale websites and online marketplaces;
- Require a resale website or online marketplace to make certain disclosures to a prospective ticket resale purchaser prior to a resale transaction, if the “place of entertainment” was constructed without taxpayer funds;
- Prohibit a resale website or online marketplace from making any representation of affiliation or endorsement with a venue or artist without the express consent of the venue or artist, unless such use constitutes fair use under federal law;
- Provide penalties for violations: a person who violates a provision of s. 817.36, F.S., related to the resale of a ticket, uses or distributes software to circumvent the ticket buying process, or makes a false representation of affiliation or endorsement commits a misdemeanor of the second degree, a person who operates a website that makes false representations of affiliation or endorsement and who was previously convicted at least twice of making such false representations, commits a misdemeanor of the first degree;
- Resale websites and online marketplaces are not liable for the representations of resellers who use their service; however, the resale website or online marketplace may not allow a ticket to be offered for sale unless the reseller provides the required disclosures;
- Allow a person to bring a declaratory action in certain circumstances; and
- Allow for actual damages, including attorney fees and court costs, in certain circumstances.

The bill is expected to have an insignificant fiscal impact on state government and an indeterminate fiscal impact on local government and the private sector. The Criminal Justice Impact Conference (CJIC) met March 27, 2015, and determined this bill will have an insignificant impact on state prison beds. See the Fiscal Analysis & Economic Impact Statement for more details.

The bill provides an effective date of October 1, 2015.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Current Situation

##### Tickets – Definition and Use

Absent 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, before or after admission of the ticketholder.<sup>1</sup> Florida law does not currently address whether an event or admission ticket is deemed to be a license or a property interest.

Without a statutory definition, 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.

Generally, a person or entity offering to resell a ticket may only charge \$1 above the admission price charged by the initial ticket seller. A person or entity must abide by these restrictions for tickets for passage or accommodations on a common carrier unless the person or entity is a travel agency,<sup>2</sup> multiday or multievent tickets to a theme park or entertainment complex,<sup>3</sup> and tickets issued by a charitable organization that offers no more than 3,000 tickets per performance.<sup>4</sup>

Any other tickets may be resold for a price greater than \$1 above the admission price if the person or website is:

- Authorized to do so by the original ticket seller; or,
- Makes and posts certain guarantees and disclosures.<sup>5</sup>

A person or website offering tickets for resale that is not authorized by the original ticket seller must guarantee a full refund, including all fees, when a ticketed event is canceled, the purchaser is denied admission except when such denial is the fault of the purchaser, or the ticket is not delivered in the manner requested by the purchaser.<sup>6</sup> Further, such person or website operator must disclose that it is not the issuer, original seller, or reseller of the ticket does not control the pricing, and the ticket may be resold for more than its original value.<sup>7</sup>

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 a civil penalty equal to three times the amount for which the ticket or tickets were sold.<sup>8</sup>

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.

"Software" is defined in s. 817.36(6), F.S., 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

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<sup>1</sup> 27A Am. Jur. 2d Entertainment and Sports Law § 42.

<sup>2</sup> s. 817.36(1)(a), F.S.

<sup>3</sup> s. 817.36(1)(b), F.S.

<sup>4</sup> s. 817.36(1)(c), F.S.

<sup>5</sup> s. 817.36(1)(d), F.S.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> s. 817.36(4), F.S.

internet, tickets of admission to a sporting event, theater, musical performance, or place of public entertainment or amusement of any kind.

### **Effect of the Bill**

The bill amends s. 817.36, F.S., to retitle the section from “Resale of tickets” to “Ticket sales.”

### **Definitions**

A new subsection is created to define the following terms:

“Department” means the Department of Agriculture and Consumer Services (Department).

“Face value” means “the face price of a ticket, as determined by the event presenter and printed or displayed on the ticket.”

“Online marketplace” means:

[A] website, software application for a mobile device, or any other digital platform that provides an online forum for the buying and selling of tickets in transactions between ticket resellers and purchasers.

“Place of entertainment” means:

[A] privately owned and operated entertainment facility or publicly owned and operated entertainment facility in this state, such as a theater, stadium, museum, arena, racetrack, entertainment/resort complex as defined in s. 561.01(18), or part thereof, or other place where performances, concerts, exhibits, games, athletic events, or contests are held and for which an entry fee is charged. A facility owned by a school, college, university, or house of worship is a place of entertainment only when an event is held for which an entry fee is charged.

“Resale website” means:

[A] website, software application for a mobile device, any other digital platform, or portion thereof, whose primary purpose is to facilitate the resale of tickets to consumers, but excludes an online marketplace.

“Ticket” means:

[A] printed, electronic, or other type of evidence of the right, option, or opportunity to occupy space at or to enter place of entertainment even if not evidenced by any physical manifestation of such right.

### **Ticket as a License**

As discussed above, a ticket generally is considered a license under common law absent a statute declaring otherwise, and the ticket seller is able to place restrictions upon the use of that ticket. The bill creates a definition for “ticket” that does not declare a ticket either as a license or personal property. A ticket will likely still be considered a license under common law, and provide whatever rights and privileges that entails.

## Resale of Tickets and Required Guarantees

The bill renumbers s. 817.36(1), F.S., to s. 817.36(2), F.S., and authorizes certain tickets resold or offered through a resale website or online marketplace to make the required guarantees and disclosures to sell a ticket for more than \$1 above the face value charged by the original ticket seller unless such resale website or online marketplace is authorized to sell such tickets by the original ticket seller.

A resale website or online marketplace that is not authorized to resell tickets by the original ticket seller may still resell tickets that are not common carrier tickets, tickets to a park or entertainment complex, or tickets from a charitable organization by guaranteeing a full refund of the amount paid for the ticket including fees if:

- The event is canceled and the purchaser requests a refund;
- The purchaser is denied admission through no fault of the purchaser; or,
- The ticket is not delivered pursuant to any delivery guarantee and such failure prevents attendance of the ticket event.

The bill removes the current requirement that a ticket reseller must deliver a ticket to the purchaser in the manner requested by the purchaser.

The bill renumbers the current s. 817.36(2) and (3), F.S., to s. 817.36(3) and (4), F.S., and includes the place of entertainment in the list of locations where an individual or entity may not sell or purchase a ticket without the prior written consent of the owner.

## Prohibition on Use of Technology to Circumvent Ticket Buying Security Measures

The bill removes the current s. 817.36(5) and (6), F.S., and replaces them with a new s. 817.36(5), F.S., which more explicitly defines and prohibits the use of technology to circumvent the ticket buying process. Specifically, a person may not:

- Sell, use, or cause to be used by any technology, devices, or software that is designed, intended, or functions to bypass portions of the ticket-buying process or circumvent a security measure, an access control system, or other control, authorization, or measure on a ticket issuer's or resale ticket agent's website, software application for a mobile device, or digital platform for the purpose of purchasing tickets for commercial resale.
- Use or cause to be used any technology that is designed or intended to disguise the identity of the purchaser with the purpose of purchasing tickets for resale or attempting to purchase tickets for resale via online sale a quantity of tickets to a place of entertainment in excess of authorized limits established by the owner or operator of a place of entertainment or of the entertainment event or an agent of any such person.

A person who knowingly uses a technology, device, or software to violate subsection (5) commits a misdemeanor of the second degree, punishable as provided in s. 775.082, F.S.,<sup>9</sup> or s. 775.083, F.S.,<sup>10</sup> and each ticket purchase, sale, or violation of subsection (5) constitutes a separate offense.

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<sup>9</sup> s. 775.082(4)(b), F.S., provides that the penalty for a second degree misdemeanor shall be a term of imprisonment not exceeding sixty days.

<sup>10</sup> s. 775.083(1)(e), F.S., provides that the fine for a second degree misdemeanor shall be \$500, unless a higher amount is authorized by statute.

## Ticket Resale Disclosures

The bill creates s. 817.36(6), F.S., to require that a reseller selling a ticket to an event at a place of entertainment not constructed in whole or in part with taxpayer funds on a resale website or online marketplace must make certain disclosures to a prospective ticket purchaser prior to a resale transaction. Such disclosures may be on the resale website or online marketplace and include:

- The refund policy of the reseller, resale website, or online marketplace in connection with the cancellation or postponement of an entertainment event;
- That it is a resale website or online marketplace and prices of tickets can often exceed face value; and,
- If the ticket is in the actual physical possession of the reseller, the general location of the seat offered for sale, including a section and a range of rows not to exceed 5, or area specifically designated as accessible seating; or,
- If the ticket is not in the actual physical possession of the reseller:
  - That the ticket offered for sale is not in the actual physical possession of the reseller;
  - The period of time when the reseller reasonably expects to have the ticket in actual physical possession and available for delivery; and,
  - Whether the reseller is actively making an offer to procure the ticket.

It is unclear exactly how many places of entertainment have been constructed in whole or in part with taxpayer funds. Further, it is unclear what types of government programs (such as grants, in kind agreements, reduced interest government loans, etc.) would be considered “taxpayer funds.”

Based on a broad reading of “taxpayer funds,” a substantial majority of “places of entertainment” may have received “taxpayer funds” to assist in construction. Thus, the limitation that these disclosures only apply to “places of entertainment” not constructed in whole or in part with taxpayer funds may exempt a substantial number of resellers and tickets from the disclosure requirements of this bill.

## Prohibited Representations

The bill creates s. 817.36(7), F.S., to prohibit a resale website or online marketplace from making any representation of affiliation or endorsement with a venue or artist without the express consent of the venue or artist, except when it constitutes fair use and is consistent with applicable laws.

A person who knowingly violates subsection (7) commits a misdemeanor of the second degree, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S. A person who has previously been convicted two or more times of a violation of subsection (7), and who subsequently violates this subsection, commits a misdemeanor of the first degree, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S.

## Department Enforcement and Administrative, Civil, and Criminal Remedies

The bill creates s. 817.36(8), F.S., which provides that a person who is an aggrieved party may bring a declaratory action to enjoin persons who have violated, are violating, or are likely to violate this section. Persons who have suffered a loss as a result of a violation may recover actual damages, plus attorney fees and court costs.

The bill creates s. 817.36(9), F.S., to provide the Department authority to enforce the requirements of s. 817.36, F.S. The Department may, by its own inquiry or as a result of complaints, conduct an investigation, conduct hearings, subpoena witnesses and evidence, and administer oaths and affirmations if it has reason to believe that a violation of s. 817.36, F.S., has occurred or is occurring.

If, as a result of the investigation, the Department has reason to believe a violation of this section has occurred, the Department may coordinate with the Attorney General or any state attorney and bring a civil or criminal action and seek any other relief the court deems appropriate. The Department may also provide information to any law enforcement agency concerning a violation of s. 817.36, F.S.

The bill deletes s. 817.36(4), F.S., and creates a similar remedy under s. 817.36(10), F.S., which provides that it is a misdemeanor of the second degree, punishable as provided in s. 775.082, F.S.,<sup>11</sup> or s. 775.083, F.S.,<sup>12</sup> for someone who knowingly resells a ticket or tickets in violation of s. 817.36, F.S., unless another criminal remedy is provided for under a specific section. Each violation constitutes a separate offense.

The bill creates s. 817.36(11), F.S., to allow the Department to adopt rules to implement the section.

**B. SECTION DIRECTORY:**

**Section 1** amends s. 817.36, F.S., to define terms; to revise disclosure and guarantee requirements for ticket resellers; to revise provisions related to circumventing security measures; to provide criminal penalties; to provide Department of Agriculture and Consumer Services enforcement authority; and provides rulemaking.

**Section 2** provides an effective date of October 1, 2015.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

According to the department, consumer complaints will be handled with existing resources within the Division of Consumer Protection. The impact on the Office of Law Enforcement for violations is estimated to be minimal and current staff is expected to be able to handle the additional workload.

The Criminal Justice Impact Conference (CJIC) met March 27, 2015, and determined this bill would have an insignificant impact on state prison beds (10 or fewer beds).

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

The bill provides for several criminal penalties which may include fines up to \$500 for second degree misdemeanors and up to \$1,000 for first degree misdemeanors, which may have an indeterminate positive fiscal impact on local government.

2. Expenditures:

Section 817.36(10), F.S., provides that a person who violates this section commits a second degree misdemeanor. This may result in an indeterminate negative fiscal impact on local government for jail beds.

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

The provisions of the bill may require resale websites and online marketplaces to develop new systems to track certain information related to disclosures and guarantees.

**D. FISCAL COMMENTS:**

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<sup>11</sup> s. 775.082(4)(b), F.S., provides that the penalty for a second degree misdemeanor shall be a term of imprisonment not exceeding sixty days.

<sup>12</sup> s. 775.083(1)(e), F.S., provides that the fine for a second degree misdemeanor shall be \$500, unless a higher amount is authorized by statute.

None.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

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

Not Applicable. This bill does not appear to affect county or municipal governments.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

The Department may adopt rules to implement s. 817.36, F.S., to enforce and implement the civil and criminal penalties provided by the bill.

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

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 24, 2015, the Business & Professions Subcommittee considered and adopted one amendment. The amendment:

- Amends the definition of “ticket” to remove language declaring a ticket is a license;
- Amends the definition of “resale website” to clarify that an “online marketplace” is not a resale website;
- Removes the “general felony” provision for a violation of s. 817.36, F.S., and clarifies that only the use or distribution of software intended to circumvent the ticket buying process and misrepresenting oneself as affiliated or endorsed by a venue or artist are third-degree felonies;
- Removes the “ticket broker” registration scheme and the Department’s duty to implement and enforce the registration;
- Clarifies several guarantees and disclosures required for resale websites and online marketplaces;
- Clarifies the Department’s enforcement authority related to s. 817.36, F.S.

On April 14, 2015, the Regulatory Affairs Committee considered and adopted a strike-all amendment and four amendments to the strike-all.

The amendments:

- Clarifies the definitions of “online marketplace,” “place of entertainment,” and “ticket;”
- Provides that a purchaser must request a refund when an event is cancelled;
- Clarifies the disclosures required for a resale website or online marketplace, to require stating that the website is not the issuer or original ticket seller and that the prices of tickets often exceed face value;
- Provides that resellers must provide several disclosures required by this bill only for tickets that are from “places of entertainment” that were not constructed in whole or in part with “taxpayer funds;”
- Amends the information a reseller must provide to only include the general location of the seat being offered;
- Clarifies that that express consent for a resale website or online marketplace to make a representation of affiliation or endorsement does not have to be written;
- Reduces all criminal penalties in the bill to misdemeanors of the second degree, and provides that a person who was previously convicted twice for falsely representing affiliation or endorsement with a venue or artist commits a misdemeanor of the first degree for subsequent false representations;
- Provides that resale websites and online marketplaces are not liable for representations and disclosures made by resellers using their platforms; however, the resale website or online marketplace

may not allow a reseller to offer a ticket for resale unless the reseller provides the required disclosures and information.

The staff analysis is drafted to reflect the committee substitute.