

HB 463

2015

1 A bill to be entitled

2 An act relating to ticket sales; amending s. 817.36,
3 F.S.; defining terms; revising provisions to include
4 digital platforms; revising certain presale disclosure
5 requirements; revising provisions relating to
6 prohibitions on bypassing portions of the ticket
7 buying process, disguising the identity of a buyer, or
8 circumventing security measures; providing criminal
9 penalties for violations; providing for recovery of
10 damages up to treble the amount of actual damages for
11 such violations; providing criminal penalties for
12 knowingly reselling a ticket in violation of statute;
13 requiring registration of ticket brokers; providing
14 registration requirements; requiring ticket brokers to
15 make specified disclosures before resale of a ticket;
16 restricting the use of intellectual property by
17 resellers without consent; providing exceptions;
18 authorizing declaratory judgments; authorizing
19 administrative penalties for certain violations;
20 providing criminal penalties for certain violations;
21 requiring rulemaking; deleting provisions imposing
22 penalties for intentionally using or selling software
23 to circumvent certain ticket seller security measures;
24 providing an effective date.

25
26 Be It Enacted by the Legislature of the State of Florida:

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

hb0463-00

27
28 Section 1. Section 817.36, Florida Statutes, is amended to
29 read:

30 817.36 Ticket sales ~~Resale of tickets.~~-

31 (1) As used in this section, the term:

32 (a) "Department" means the Department of Agriculture and
33 Consumer Services.

34 (b) "Face value" means the face price of a ticket, as
35 determined by the event presenter and printed or displayed on
36 the ticket.

37 (c) "Online marketplace" means a website, software
38 application for a mobile device, or any other digital platform
39 that provides a forum for the buying and selling of tickets, but
40 does not include a website, software application for a mobile
41 device, or any other digital platform operated by a reseller,
42 ticket issuer, event presenter, or agent of an owner or operator
43 of a place of entertainment.

44 (d) "Place of entertainment" means a privately owned and
45 operated entertainment facility or publicly owned and operated
46 entertainment facility in this state, such as a theater,
47 stadium, museum, arena, racetrack, or other place where
48 performances, concerts, exhibits, games, athletic events, or
49 contests are held and for which an entry fee is charged. A
50 facility owned by a school, college, university, or house of
51 worship is a place of entertainment only when an event is held
52 for which an entry fee is charged.

53 (e) "Resale website" means a website, software application
54 for a mobile device, any other digital platform, or portion
55 thereof, that facilitates the sale of tickets by resellers to
56 consumers or on which resellers offer tickets for sale to
57 consumers.

58 (f) "Ticket" means a printed, electronic, or other type of
59 evidence of the right, option, or opportunity to occupy space at
60 or to enter or attend an entertainment event even if not
61 evidenced by any physical manifestation of such right. A ticket
62 is a revocable license, held by the person in possession of the
63 ticket, to use a seat or standing area in a specific place of
64 entertainment for a limited time. The license represented by the
65 ticket may be revoked at any time, with or without cause, by the
66 ticket issuer.

67 (g)1. "Ticket broker" means a person, or persons acting in
68 concert, involved in the business of reselling tickets of
69 admission to places of entertainment.

70 2. The term does not include:

71 a. A person who does not regularly engage in the business
72 of reselling tickets, who resells less than 60 tickets or one-
73 third of all tickets purchased from a professional sports entity
74 during any 1-year period, and who obtained the tickets for the
75 person's own use or the use of the person's family, friends, or
76 acquaintances.

77 b. A person operating a website, software application for
78 a mobile device, or other digital platform whose primary

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79 business is to serve as an online marketplace for third parties
80 to buy and sell tickets, and whose primary business is not
81 engaging in the reselling of tickets.

82 ~~(2)~~(1) A person or entity that offers for resale or
83 resells any ticket may charge only \$1 above the admission price
84 charged therefor by the original ticket seller of the ticket for
85 the following transactions:

86 (a) Passage or accommodations on any common carrier in
87 this state. However, this paragraph does not apply to travel
88 agencies that have an established place of business in this
89 state and are required to pay state, county, and city
90 occupational license taxes.

91 (b) Multiday or multievent tickets to a park or
92 entertainment complex or to a concert, entertainment event,
93 permanent exhibition, or recreational activity within such a
94 park or complex, including an entertainment/resort complex as
95 defined in s. 561.01(18).

96 (c) Event tickets originally issued by a charitable
97 organization exempt from taxation under s. 501(c)(3) of the
98 Internal Revenue Code for which no more than 3,000 tickets are
99 issued per performance. The charitable organization must issue
100 event tickets with the following statement conspicuously printed
101 or displayed on the face or back of the ticket: "Pursuant to s.
102 817.36, Florida Statutes, this ticket may not be resold for more
103 than \$1 over the original admission price." This paragraph does
104 not apply to tickets issued or sold by a third party contractor

105 ticketing services provider on behalf of a charitable
106 organization otherwise included in this paragraph unless the
107 required disclosure is printed or displayed on the ticket.

108 (d) Any tickets, other than the tickets in paragraph (a),
109 paragraph (b), or paragraph (c), that are resold or offered
110 through a an Internet website, software application for a mobile
111 device, or any other digital platform, unless such website,
112 software application for a mobile device, or other digital
113 platform, is authorized by the original ticket seller or makes
114 and posts the following guarantees and disclosures on through
115 ~~Internet~~ web pages on which are visibly posted, or links to web
116 pages on which are posted, text to which a prospective purchaser
117 is directed before completion of the resale transaction:

118 1. The website, software application for a mobile device,
119 or digital platform operator guarantees a full refund of the
120 amount paid for the ticket including any servicing, handling, or
121 processing fees, if such fees are not disclosed, when:

122 a. The ticketed event is canceled; or

123 b. The purchaser is denied admission to the ticketed
124 event, unless such denial is due to the action or omission of
125 the purchaser;

126 ~~e. The ticket is not delivered to the purchaser in the~~
127 ~~manner requested and pursuant to any delivery guarantees made by~~
128 ~~the reseller and such failure results in the purchaser's~~
129 ~~inability to attend the ticketed event.~~

130 2. The website, software application for a mobile device,

131 or digital platform operator discloses that it is not the
132 issuer, original seller, or reseller of the ticket or items and
133 does not control the pricing of the ticket or items, which may
134 be resold for more than their face ~~original~~ value.

135 ~~(3)(2)~~ This section does not authorize any individual or
136 entity to sell or purchase tickets at any price on property or
137 place of entertainment where an event is being held without the
138 prior express written consent of the owner of the property or
139 place of entertainment.

140 ~~(4)(3)~~ Any sales tax due for resales under this section
141 shall be remitted to the Department of Revenue in accordance
142 with s. 212.04.

143 (5) (a) A person may not sell, use, or cause to be used by
144 any means, method, technology, devices, or software that is
145 designed, intended, or functions to bypass portions of the
146 ticket-buying process or disguise the identity of the ticket
147 purchaser or circumvent a security measure, an access control
148 system, or other control, authorization, or measure on a ticket
149 issuer's or resale ticket agent's website, software application
150 for a mobile device, or digital platform.

151 (b) A person may not use or cause to be used any means,
152 method, or technology that is designed, intended, or functions
153 to disguise the identity of the purchaser with the purpose of
154 purchasing or attempting to purchase via online sale a quantity
155 of tickets to a place of entertainment in excess of authorized
156 limits established by the owner or operator of a place of

157 entertainment or of the entertainment event or an agent of any
158 such person.

159 (c) A person who violates this subsection commits
160 misdemeanor of the second degree, punishable as provided in s.
161 775.082 or s. 775.083. Each ticket purchase, sale, or violation
162 of this subsection constitutes a separate offense.

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

168 (6)-(4) A person who knowingly resells a ticket or tickets
169 in violation of this section commits misdemeanor of the second
170 degree, punishable as provided in s. 775.082 or s. 775.083 is
171 liable to the state for a civil penalty equal to treble the
172 amount of the price for which the ticket or tickets were resold.

173 (7) (a) A ticket broker shall register with the department
174 by April 1, 2016, or within 30 days after commencing business as
175 a ticket broker in this state, whichever is later, and maintain
176 an active registration with the department. To have and maintain
177 an effective registration, a ticket broker must:

178 1. Maintain a permanent office or place of business in
179 this state for the purpose of engaging in the business of a
180 ticket broker.

181 2. Submit the ticket broker's business name, a street
182 address in this state, and other information as requested on a

183 form designated by the department.

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

188 4. Pay an annual registration fee as determined by the
 189 department sufficient to reimburse the department for the
 190 administration of this subsection.

191 5. Renew the registration annually.

192 6. Register for sales and use tax purposes under chapter
 193 212.

194 (b) Upon registration, the department shall issue each
 195 ticket broker a unique registration number and publish a list of
 196 registered ticket brokers, including registration numbers on the
 197 department's website. A person who has been convicted of a
 198 felony and who has not been pardoned or had his or her civil
 199 rights other than voting restored under chapter 940 may not
 200 register as a ticket broker.

201 (8) A ticket broker or resale website, software
 202 application for a mobile device, or other digital platform must
 203 clearly and conspicuously disclose to a prospective ticket
 204 resale purchaser, whether on the ticket broker's resale website,
 205 software application for a mobile device, or digital online
 206 marketplace, or in person, before a resale:

207 (a) The face value and exact location of the seat offered
 208 for sale, including a section, row, and seat number, or area

209 specifically designated as accessible seating.

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

212 (c) If the ticket is not in the actual physical possession
213 of the reseller, the period of time when the reseller reasonably
214 expects to have the ticket in actual possession and available
215 for delivery.

216 (d) Whether the reseller is actively making an offer to
217 procure the ticket.

218 (e) The refund policy of the ticket broker or resale
219 website, software application for a mobile device, or digital
220 platform in connection with the cancellation or postponement of
221 an entertainment event.

222 (f) That it is a resale website, software application for
223 a mobile device, or digital platform and prices of tickets can
224 often exceed face value.

225 (9) A resale website, software application for a mobile
226 device, or digital platform shall not use the name of a venue,
227 artist, or team trademark or service mark in any way without the
228 express written consent of the intellectual property owner,
229 except when it constitutes fair use and consistent with
230 applicable laws, including full disclosure or attribution of the
231 true intellectual property owner.

232 (10) (a) A person aggrieved by a violation of this section
233 may, without regard to any other remedy or relief to which the
234 person is entitled, bring an action to obtain a declaratory

235 judgment that an act or practice violates this section and to
236 enjoin a person who has violated, is violating, or is otherwise
237 likely to violate this section.

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

241 (11) (a) The department may enter an order imposing one or
242 more of the following penalties against any person who violates
243 the requirements of this section or rules adopted under this
244 section or who impedes, obstructs, hinders, or otherwise
245 prevents or attempts to prevent the department in the
246 performance of its duties in connection with this section:

247 1. Imposition of an administrative fine of not more than
248 \$1,000 per occurrence.

249 2. Revocation or suspension of the registration.

250 (b) Except as otherwise provided in this section and in
251 addition to any noncriminal penalties provided in this section,
252 a person who knowingly violates this section commits a felony of
253 the third degree, punishable as provided in s. 775.082 or s.
254 775.084 or may be fined up to \$10,000.

255 (12) The department shall adopt rules to implement this
256 section.

257 ~~(5) A person who intentionally uses or sells software to~~
258 ~~circumvent on a ticket seller's Internet website a security~~
259 ~~measure, an access control system, or any other control or~~
260 ~~measure that is used to ensure an equitable ticket buying~~

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261 ~~process is liable to the state for a civil penalty equal to~~
262 ~~treble the amount for which the ticket or tickets were sold.~~

263 ~~(6) As used in this section, the term "software" means~~
264 ~~computer programs that are primarily designed or produced for~~
265 ~~the purpose of interfering with the operation of any person or~~
266 ~~entity that sells, over the Internet, tickets of admission to a~~
267 ~~sporting event, theater, musical performance, or place of public~~
268 ~~entertainment or amusement of any kind.~~

269 Section 2. This act shall take effect October 1, 2015.