

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 Criminal Justice

BILL: CS/SB 742

INTRODUCER: Commerce and Tourism Committee and Senator Simpson

SUBJECT: Ticket Sales

DATE: April 10, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Siples</u>	<u>McKay</u>	<u>CM</u>	Fav/CS
2.	<u>Sumner</u>	<u>Cannon</u>	<u>CJ</u>	Favorable
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 742 amends provisions of law that govern ticket sales in Florida. Specifically, the bill:

- Expands the prohibition on the use of technology that acts to circumvent security measures or purchase restrictions on a ticket seller's website, mobile application, or other digital platform;
- Creates criminal penalties for the use of technology that circumvent security measures on a ticket sellers website, mobile application, or other digital platform;
- Creates a private right of action for a person harmed by the use of such technology;
- Requires a person, resale website, or online marketplace to make certain disclosures to the prospective ticket buyer prior to purchase;
- Prohibits a resale website or online marketplace from representing that it is affiliated with or endorsed by a venue or artist without express written consent, except when it constitutes fair use under federal law, and provides criminal sanctions for violations;
- Allows an aggrieved individual to bring an action for declaratory and injunctive relief, and allows for the recovery of actual damages, plus attorney fees and costs;
- Authorizes the Department of Agriculture and Consumer Services to investigate suspected violations of the provisions of the bill, and bring a civil action and to seek any appropriate relief, and authorizes the Office of Attorney General or a state attorney civil or criminal actions; and
- Creates a second degree felony for any violation of s. 817.36, F.S., unless other specific criminal sanctions are provided.

II. Present Situation:

A “ticket” is defined as “a slip of paper containing a certificate” entitling the holder to some right or privilege.¹ It is generally held that “in the absence of statute, a mere license to witness the performance, which the owner of proprietor may revoke at will, either before or after admission of the ticket holder, and it is immaterial whether the ticket is one for general admission, or for particular seats, or to a designated portion of the place of amusement.”² Admissions tickets are generally considered revocable licenses.³ As such, a ticket can be revoked by the proprietor at any time.⁴ When the proprietor “revokes or denies the holder’s admission to a performance, the holder has a cause of action for breach of contract.”⁵ There has been some case law to suggest that under certain circumstances, season tickets can be regarded as a property right.⁶ Generally, there is little regulation on the initial sale of tickets by the original ticket issuers. While traditionally tickets have been sold by venues or promoters, or resold by scalpers outside of venues where the events are taking place, the Internet has come to dominate the ticket sale industry. Some examples of online ticket sellers include Tickets.com,⁷ Ticketmaster,⁸ StubHub,⁹ and eBay.¹⁰ Some ticket sellers will also “hold-back” tickets from primary sale.¹¹

Resale of Tickets in Florida

Current Florida law provides that any person or entity offering a resale of a ticket may only charge \$1 over the admission price charged by the original ticket seller for the following transactions:

- Tickets sold for passage or accommodation on any common carrier in Florida;¹²
- Multiday or multi-event tickets 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;¹³

¹ Black’s Law Dictionary, *What is TICKET?*, available at <http://thelawdictionary.org/ticket/> (last visited Mar. 16, 2015).

² 27A Am. Jur. 2d Entertainment and Sports Law s. 42.

³ *Jacksonville Bulls Football, Ltd. v. Blatt*, 535 So. 2d 626 (Fla. 3d DCA 1988).

⁴ *Id* at 629.

⁵ *Id* at 630. (citing *Marrone v. Washington Jockey Club*, 227 U.S. 633 (1913); *Burnham v. Flynn*, 189 N.Y. 180 (App. Ct. N.Y. 1907); *Boswell v. Barnum & Bailey*, 135 Tenn. 35 (Tenn. 1916)).

⁶ *Grossman v. Boston Red Sox Baseball Club Ltd. P’ship. (In re Platt)*, 292 B.R. 12, 17 (US Bankr. Ct. for the Dist. Of Mass. 2003).

⁷ Tickets.com, *About Us*, available at <http://www.tickets.com/about-us/> (last visited Mar. 16, 2015).

⁸ Ticketmaster.com, *Who We Are*, available at http://www.ticketmaster.com/about/about-us.html?tm_link=tm_i_abouttm (last visited Mar. 16, 2015). Ticketmaster also owns *LiveNation*, which allows people to sell their TM+ event tickets through this website. Live Nation.com, *Frequently Asked Questions*, available at http://concerts.livenation.com/h/help.html?tm_link=help_nav_4_top10 (last visited Mar. 16, 2015).

⁹ “StubHub is an eBay company.” StubHub.com, *Overview*, available at <http://www.stubhub.com/about-us/> (last visited Mar. 16, 2015).

¹⁰ eBay.com, *Even Ticket Resale Policy*, available at <http://pages.ebay.com/help/policies/event-tickets.html> (last visited Mar. 16, 2015).

¹¹ Scott Simon, *Note: If You Can’t Beat ‘Em, Join ‘Em: Implications for New York’s Scalping Law in Light of Recent Developments in the Ticket Business*, 72 Fordham L. Rev. 1171, 1181.

¹² Section 817.36(1)(a), F.S. However, this provision does not apply to travel agencies that have an established place of business in this state and are required to pay state, county, and city occupational license taxes.

¹³ Section 817.36(1)(b), F.S.

- Tickets for events for which 3,000 or fewer tickets are issued by a 501(c)(3) charitable organization;¹⁴ and
- Tickets resold or offered through an Internet website unless authorized by the original ticket seller or when the website makes and posts the following certain guarantees and disclosures:
 - A full refund guarantee, including any servicing, handling, or processing fees, when the ticketed event is canceled, the purchaser is denied admission to the event through no fault of his or her own, or the ticket is not delivered in the requested manner and in accordance with any delivery guarantee made by the reseller and such failure results in the purchaser's inability to attend the ticketed event.
 - Disclosure that the website is not the issuer, original seller, or reseller of the ticket and does not control the pricing of the ticket.¹⁵

Any ticket outside the four categories listed above may be sold at any amount over the original admissions price. 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.¹⁶

Section 817.36(4), F.S., imposes a civil penalty on an individual or entity who knowingly resells a ticket or tickets in violation of this section equal to three times the amount of the price of the ticket or tickets that were resold. An individual or entity that uses or sells software to circumvent security measures used to ensure equitable ticket-buying on a ticket seller's website is subject to a civil penalty, paid to the state, equal to three times the amount of the price of the ticket or tickets sold.

Regulation of Fraudulent Ticket Sales

Pursuant to s. 817.361, F.S., it is a second degree misdemeanor¹⁷ to offer for sale, sell, or transfer, with or without consideration, any nontransferable multiuse ticket¹⁸ that has been used at least once for admission. A second or subsequent violation of this section results in a third degree felony.¹⁹

¹⁴ Section 817.36(1)(c), F.S. However, the ticket must be printed with the following statement: "Pursuant to s. 817.36, Florida Statutes, this ticket may not be resold for more than \$1 over the original admission price." This provision does not apply to tickets issued or sold by a third party contractor ticketing services on behalf of a charitable organization unless the required disclosure is printed on the ticket.

¹⁵ Section 817.36(1)(d), F.S.

¹⁶ Section 817.36(3), F.S. Section 212.04, F.S., imposes a tax on sale of admissions and also provides exceptions to this rule.

¹⁷ Section 775.082(4)(b), F.S., provides that a misdemeanor of the second degree is punishable by a term of imprisonment not exceeding 60 days. Section 775.083(1)(e), F.S., provides that a person convicted of a misdemeanor of the second degree is subject to a fine not to exceed \$500.

¹⁸ A multiuse ticket is a ticket that is designed for admission to more than one theme park complex or to more than one amusement location in a theme park complex, or for admission for more than 1 day or more than once in the same day to one or more such locations or facilities in a theme park complex.

¹⁹ Section 775.082(3)(e), F.S., provides that a felony of the third degree is punishable by a term of imprisonment not exceeding 5 years. Section 775.083(1)(c), F.S., provides that a person convicted of a felony of the third degree is subject to a fine not to exceed \$5,000. Section 775.082, F.S., provides for enhanced penalties for habitual offenders.

Pursuant to s. 817.355, F.S., it is a first degree misdemeanor²⁰ to counterfeit, forge, alter, or possess a ticket with the intent to defraud a facility.

Pursuant to s. 817.357, F.S., it is a violation of the Florida Deceptive and Unfair Trade Practices Act²¹ to knowingly purchase a quantity of tickets exceeding the maximum ticket limit with the intent to resell the tickets. This section does not apply to the original ticket seller.²²

III. Effect of Proposed Changes:

The bill amends s. 817.36, F.S., governing the sale of tickets in this state by regulating technology used to circumvent controls, providing disclosures that must be made by a reseller prior to a resale, providing enforcement of the bill's provisions, and revising definitions.

New Definitions

The bill provides for the following definitions:

- Department means the Department of Agriculture and Consumer Services;
- 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 a forum for the buying and selling of tickets, but does not include a website, mobile application, or any other digital platform operated by a reseller, ticket issuer, event presenter, or agent of an owner or operator of a place of entertainment;
- 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, or other place where performances, concerts, exhibits, games, athletic events, or contests are held 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, or any other digital platform or portion of a website, whose primary purpose is to facilitate the resale of tickets to consumers, but excludes an online marketplace; and
- Ticket means a printed, electronic, or other type of evidence of the right, option, or opportunity to occupy space at, or to enter or attend an entertainment event even if there is no physical manifestation of such right.

Technology to Circumvent Controls

The bill amends s. 817.36, F.S., to protect against technology that would circumvent controls by providing the following:

²⁰ Section 775.082(4)(a), F.S., provides that a misdemeanor of the first degree is punishable by a term of imprisonment not to exceed 1 year. Section 775.083(1)(d), F.S., provides that a person convicted of a misdemeanor of the first degree is subject to a fine not to exceed \$1,000.

²¹ Sections 501.201-501.213, F.S.

²² "Original ticket seller" means the issuer of the ticket or a person or firm who provides distribution services or ticket sales services under a contract with such issuer.

- A person may not sell or use any means, technology, devices, or software that functions to bypass portions of the ticket-buying process or disguise the identity of the ticket purchaser with the intent to circumvent a security measure on a ticket issuer's or resale ticket agent's website, software application, or digital platform;
- A person may not use any means or technology that functions to disguise the identity of the purchaser with the purpose of purchasing, via online sale, a quantity of tickets to a place of entertainment in excess of authorized limits established by the owner or operator of the place of entertainment or of the entertainment event;
- A violation of these provisions is punishable as a second-degree misdemeanor or by a fine of no more than \$10,000, and each ticket purchase, sale, or violation constitutes a separate offense;
- Repeal of a provision that imposed a civil penalty, to be paid to the state, on a person who used or sold technology that would circumvent controls on a ticket seller's website; and
- Creation of a private right of action for any person injured by wrongful conduct in violation of these provisions to recover all actual damages; and authorizing the court to award up to three times the amount of actual damages.

Disclosures

The bill requires a person, resale website, or online marketplace to clearly and conspicuously disclose to a prospective ticket resale purchaser:

- The refund policy of the person, 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 that the ticket prices can often exceed face value;²³
- If the ticket is in the physical possession of the reseller, the face value and exact location of the seat offered for sale, including a section, row, and seat number or area specifically designated as accessible seating; and
- If the ticket is not in the physical possession of the reseller:
 - That the ticket is not in the actual possession of the reseller;
 - The period of time the reseller reasonably expects to have the ticket in its actual possession and available for delivery; and
 - Whether the reseller is actively making an offer to procure the ticket.

The bill provides that these disclosures do not apply to a person who is not regularly engaged in the business of reselling tickets and who, in any given 12-month period, resells less than 60 tickets or less than one-third of all tickets purchased from a given sports entity, whichever is less; and who obtains the tickets for personal use or use by his or her family members, friends, or acquaintances.

The bill provides that a resale website or online marketplace may not infer any representation, affiliation, or endorsement of a venue or artist without express written consent of the venue or

²³ The bill defines face value as the face price of a ticket, as determined by the event presenter and printed or displayed on the ticket.

artist, except when it constitutes fair use²⁴ and is consistent with applicable laws. A violation of this provision is punishable as a third degree felony or by a fine of no more than \$10,000, or both.

Enforcement

In addition to any other remedy or relief to which a person is entitled, the bill provides that a person who is aggrieved by a violation of s. 817.36, F.S., may bring an action to obtain a declaratory judgment that an act or practice violated the provisions of the bill and to enjoin a person from engaging in an activity in violation of the law. In such an action, a person suffering a loss may recover actual damages, plus attorney fees and court costs.

The bill authorizes the Department of Agriculture and Consumer Services (department) to investigate suspected violations, including conducting hearings, subpoena witnesses and evidence, and administer oaths and affirmations. If the department believes that a violation has occurred, it may, in coordination with the Office of the Attorney General or a state attorney having jurisdiction, bring a civil action and may seek other relief, such as injunctive relief, as deemed appropriate by the court. The bill authorizes the Office of the Attorney General or a state attorney having jurisdiction, to bring a civil or criminal action for violations of s. 817.36, F.S. The department is authorized to share information with any law enforcement agency or other regulatory agency.

The bill repeals a provision that subjected a person who knowingly resells a ticket in violation of the law to a civil penalty, payable to the state, of three times the price of the ticket. The bill provides that, unless provided otherwise, a person who knowingly resells a ticket in violation of the provisions of the bill commits a second degree felony,²⁵ or may be fined up to \$10,000, unless another specific criminal sanction is provided. Each violation constitutes a separate offense.

The department must adopt rules to implement the bill.

Section 2 provides that the bill takes effect October 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

²⁴ 17 U.S.C. s. 107, governs fair use under the Copyright Law of the United States of America. Generally, fair use of copyrighted work is not considered an infringement on a copyright. However, to determine whether a particular use is considered fair use, the following factors should be considered: (1) the purpose and character of the use; (2) the nature of the copyrighted work; (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and (4) the effect of the use on the potential market for or value of the copyrighted work.

²⁵ Section 775.082(3)(e), F.S., provides that a felony of the third degree is punishable by imprisonment not exceeding 5 years. Section 775.083(1)(e), F.S., provides that a person convicted of a felony of the third degree is subject to a fine not to exceed \$5,000.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

For a court to exercise jurisdiction over a respondent, it must have subject matter jurisdiction and personal jurisdiction. State courts have general jurisdiction, and therefore a claim made under a state statute meets the subject matter jurisdiction requirement.²⁶ Personal jurisdiction is a constitutional requirement that a respondent have minimum contacts with the state in which the court sits so that the court may exercise power over the respondent.²⁷ A non-resident respondent may have sufficient contacts with Florida if he or she commits acts expressly enumerated in Florida's long-arm statute.²⁸ A few of the acts that would make a non-resident respondent subject to the long-arm statute include operating or conducting a business or business venture within this state, committing a tortious act within this state, or engaging in solicitation or service activities within this state.²⁹ Alternately, the non-resident respondent may be subject to a Florida court's personal jurisdiction because he or she has minimum contacts with the state that are otherwise unrelated to matter that brings him or her into court.³⁰ Examples of sufficient minimum contacts include frequent business travel to the state, owning a company with a Florida office branch, or subjecting oneself to the court's jurisdiction by presenting oneself in the Florida court.³¹ These jurisdictional requirements ensure that a respondent has sufficient notice and due process afforded to him or her under the U.S. Constitution before his or her rights are subjected to the court.³²

Whether a non-resident Internet company that sells tickets to Florida residents has sufficient minimum contacts with the state is a fact-specific question that would likely need to be addressed on a case-by-case basis by a court.³³

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

None.

²⁶ *Caiazza v. American Royal Arts Corp.*, 73 S. 3d 245, 250 (Fla. 4th DCA 2011).

²⁷ *Id.* (citing *Venetian Salami Co. v. Parthenais*, 554 So. 2d 499, 500 (Fla. 1989)).

²⁸ *Id.* Florida's long arm statute may be found in s. 48.193, F.S.

²⁹ Section 48.193, F.S.

³⁰ *Caiazza v. American Royal Arts Corp.*, 73 So. 3d 245, 250 (Fla. 4th DCA 2011).

³¹ *Id.*

³² *Id.* at 250-251.

³³ See *Caiazza v. American Royal Arts Corp.*, 73 So. 3d 245, (Fla. 4th DCA 2011); *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119, 1124 (W.D. Pa. 1997).

B. Private Sector Impact:

None.

C. Government Sector Impact:

To the extent that there are violations of the provisions of this bill, the office of the state attorney in the jurisdiction in which the violation occurred may incur a negative fiscal impact due to the enforcement of the new violation.

The Criminal Justice Impact Conference determined that CS/SB 742 would have a positive insignificant impact on prison beds.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill requires the Department of Agriculture and Consumer Services to adopt rules to administer the provisions of the bill. However, the bill provides only investigative powers to the department and the promulgation of rules may not be needed to implement the bill's provisions. Additionally, should the department determine that it is necessary to adopt rules, it has broad rulemaking authority under s. 570.07(23), F.S., to adopt rules to implement "provisions of law conferring duties upon it."

It is unclear whether "resale ticket agent's website" on line 132 is intended to mean "resale website" as defined in the bill.

VIII. Statutes Affected:

This bill substantially amends section 817.36 of the Florida Statutes.

IX. 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 March 30, 2015:

The committee substitute:

- Revises definitions and deletes a provision that defined a ticket as a revocable license;
- Specifies that a person may not use technology with the intent to circumvent security measures instituted by a ticket seller or reseller and that a violation is subject to a fine of up to \$10,000;
- Deletes the provisions requiring ticket brokers to register with the Department of Agriculture and Consumer Services (department);
- Requires in-person resales to meet the disclosure requirements required of resale websites and online marketplaces prior to the resale;

- Provides that the disclosures that resale websites and online marketplaces must make before a resale do not apply to specified individuals;
- Provides that a resale website or online marketplace that represents that they are affiliated with a venue or artist without express consent, and inconsistent with fair use and applicable laws is subject to a third degree felony or a fine not to exceed \$10,000, or both;
- Provides that the department may investigate suspected violations of s. 817.36, F.S., and may bring a civil action or seek any other appropriate relief;
- Provides that the Office of Attorney General or any state attorney having jurisdiction, may bring a civil or criminal action against individuals violating s. 817.36, F.S.; and
- Reduces all other violations of this section of law to a second degree misdemeanor from a third degree felony.

B. Amendments:

None.