

By Senator Simpson

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1 A bill to be entitled
2 An act relating to ticket sales; amending s. 817.36,
3 F.S.; authorizing a specified phrase to be printed or
4 displayed on the ticket; requiring certain guarantees
5 and disclosures for tickets sold through a mobile
6 application or digital platform; deleting the
7 requirement that the ticket seller guarantee a refund
8 if the seller cannot transmit tickets to the buyer in
9 the buyer's preferred method, resulting in the buyer's
10 inability to attend the event; including mobile
11 applications and digital platforms as prohibited
12 places where an individual may not sell or purchase
13 tickets absent the property owner's consent;
14 prohibiting a person from selling, using, or causing
15 to be used specified means to bypass portions of the
16 ticket-buying process or disguise the identity of the
17 ticket purchaser under certain circumstances;
18 providing that a person who violates such prohibitions
19 commits a misdemeanor of the second degree;
20 authorizing an injured party to bring a claim to
21 recover damages; authorizing a court to award damages
22 up to three times the amount of actual damages;
23 deleting a civil penalty and upgrading the severity of
24 a certain offense to a misdemeanor of the second
25 degree; deleting a provision to conform to changes
26 made by the act; establishing registration
27 requirements for a ticket broker; requiring a ticket
28 broker to register with the Department of Agriculture
29 and Consumer Services by a specified date; prohibiting

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30 certain persons from registering as a ticket broker;
 31 requiring a ticket broker, resale website, mobile
 32 application, or other digital platform to disclose
 33 specified information; prohibiting a website, mobile
 34 application, or digital platform from using a
 35 trademark or service mark without written consent;
 36 providing an exception; authorizing an aggrieved
 37 person to bring a lawsuit and obtain certain remedies;
 38 authorizing the recovery of damages, attorney fees,
 39 and court costs; authorizing the department to impose
 40 one or more specified penalties against a person in
 41 specified circumstances; providing for a penalty or a
 42 fine; requiring the department to adopt rules to
 43 implement the registration provisions; defining terms;
 44 making technical changes; providing an effective date.

45
 46 Be It Enacted by the Legislature of the State of Florida:

47
 48 Section 1. Section 817.36, Florida Statutes, is reordered
 49 and amended to read:

50 817.36 Ticket sales ~~Resale of tickets.~~-

51 (2)~~(1)~~ A person or entity that offers for resale or resells
 52 a any ticket may charge only \$1 more than ~~above~~ the admission
 53 price charged ~~therefor~~ by the original ~~ticket~~ seller of the
 54 ticket for the following transactions:

55 (a) Passage or accommodations on any common carrier in this
 56 state. However, this paragraph does not apply to travel agencies
 57 that have an established place of business in this state and are
 58 required to pay state, county, and city occupational license

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59 taxes.

60 (b) Multiday or multievent tickets to a park or
61 entertainment complex, or to a concert, entertainment event,
62 permanent exhibition, or recreational activity within such a
63 park or complex, including an entertainment/resort complex as
64 defined in s. 561.01(18).

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

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

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

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

94 a. The ticketed event is canceled.;

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

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

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

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

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

114 (6)~~(4)~~ A person who knowingly resells a ticket ~~or tickets~~
115 in violation of this section commits a misdemeanor of the second
116 degree, punishable as provided in s. 775.082 or s. 775.083 ~~is~~

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117 ~~liable to the state for a civil penalty equal to treble the~~
118 ~~amount of the price for which the ticket or tickets were resold.~~

119 (5) (a) A person may not sell, use, or cause to be used by
120 any means, method, technology, device, or software that is
121 designed or intended to, or that functions to, bypass portions
122 of the ticket-buying process or to disguise the identity of the
123 ticket purchaser or circumvent a security measure, an access
124 control system, or other control, authorization, or measure on a
125 ticket issuer's or resale ticket agent's website, mobile
126 application, or digital platform.

127 (b) A person may not use or cause to be used by any means,
128 method, technology, device, or software that is designed or
129 intended to, or that functions to, disguise the identity of the
130 purchaser with the purpose of purchasing or attempting to
131 purchase via online sale a quantity of tickets to a place of
132 entertainment in excess of the authorized limits established by
133 the owner or operator of the place of entertainment or of the
134 entertainment event or an agent of any such person.

135 (c) A person who violates this subsection commits a
136 misdemeanor of the second degree, punishable as provided in s.
137 775.082 or s. 775.083. Each ticket purchase, ticket sale, or
138 violation of this subsection constitutes a separate offense.

139 (d) A person injured by wrongful conduct that occurs during
140 the commission of a violation of this subsection may bring an
141 action to recover all actual damages suffered as a result of
142 such conduct. The court, in its discretion, may award damages up
143 to 3 times the amount of actual damages.

144 ~~(5) A person who intentionally uses or sells software to~~
145 ~~circumvent on a ticket seller's Internet website a security~~

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146 ~~measure, an access control system, or any other control or~~
147 ~~measure that is used to ensure an equitable ticket buying~~
148 ~~process is liable to the state for a civil penalty equal to~~
149 ~~treble the amount for which the ticket or tickets were sold.~~

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

155 1. Maintain a permanent office or place of business in this
156 state for the purpose of engaging in the business of ticket
157 brokering.

158 2. Submit the ticket broker's business name, physical
159 address in this state, and other information as requested on a
160 form adopted by the department by rule.

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

165 4. Pay an annual registration fee, as determined by
166 department rule, which must cover the cost to the department of
167 the administration of this subsection.

168 5. Renew the registration annually.

169 6. Register for sales and use tax purposes under chapter
170 212.

171 (b) Upon registration, the department shall issue each
172 ticket broker a unique registration number and publish a list of
173 registered ticket brokers, including their respective
174 registration numbers, on its website. A person who has been

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175 convicted of a felony and who has not been pardoned or had his
176 or her civil rights, beyond only voting rights, restored either
177 by the relevant civil rights restoration authority or
178 automatically by operation of law may not register as a ticket
179 broker.

180 (8) A ticket broker, directly, or a resale website, mobile
181 application, or other digital platform, through a clear and
182 conspicuous posting on its website, mobile application, or
183 digital online marketplace, must disclose to the purchaser,
184 before completion of the sale:

185 (a) The face value and exact location of the seat offered
186 for sale, including a section, row, and seat number, or the area
187 specifically designated as accessible seating.

188 (b) Whether the ticket offered for sale is in the actual
189 possession of the reseller and available for delivery. If the
190 ticket is not in the actual physical possession of the reseller,
191 the disclosure must include the time that the reseller
192 reasonably expects to have the ticket in its actual possession
193 and available for delivery.

194 (c) Whether the reseller is actively making an offer to
195 procure the ticket.

196 (d) The refund policy of the ticket broker or resale
197 website, mobile application, or digital platform in connection
198 with the cancellation or postponement of an entertainment event.

199 (e) The ticket prices of a resale website, mobile
200 application, or other digital platform often exceed face value.

201 (9) A resale website, mobile application, or digital
202 platform may not use the name of a venue, artist, or team
203 trademark or service mark without the express written consent of

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204 the intellectual property owner; however, such use is
205 permissible when it constitutes fair use and is consistent with
206 applicable laws, including full disclosure or attribution of the
207 true intellectual property owner.

208 (10) (a) In addition to any other remedy or relief to which
209 a person may be entitled, a person aggrieved by a violation of
210 this section may bring an action to obtain a declaratory
211 judgment that an act or practice violates this section and may
212 institute a civil action for injunctive relief to enjoin a
213 person from engaging in any activity in violation of this
214 section.

215 (b) In an action brought by a person who has suffered a
216 loss as a result of a violation of this section, the person may
217 recover actual damages, plus attorney fees and court costs.

218 (11) (a) The department may enter an order imposing one or
219 more of the following penalties against a person who violates
220 this section or rules adopted under this section, or who
221 impedes, obstructs, hinders, or otherwise prevents or attempts
222 to prevent the department from performing its duties in
223 connection with this section:

224 1. Imposition of an administrative fine not to exceed
225 \$1,000 per occurrence.

226 2. Revocation or suspension of registration.

227 (b) Except as otherwise provided in this section, and in
228 addition to any noncriminal penalties provided in this section,
229 a person who knowingly violates this section commits a felony of
230 the third degree, punishable as provided in s. 775.082 or s.
231 775.084 or by a fine of up to \$10,000.

232 (12) The department shall adopt rules to administer the

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233 registration process under this section.

234 (1)(6) As used in this section, the term:

235 (a) "Department" means the Department of Agriculture and
236 Consumer Services.

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

240 (c) "Online marketplace" means a website, mobile
241 application, or any other digital platform that provides a forum
242 for the buying and selling of tickets, but does not include a
243 website, mobile application, or any other digital platform
244 operated by a reseller, ticket issuer, event presenter, or agent
245 of an owner or operator of a place of entertainment.

246 (d) "Place of entertainment" means a privately owned and
247 operated entertainment facility or publicly owned and operated
248 entertainment facility in this state, such as a theater,
249 stadium, museum, arena, racetrack, or other place where
250 performances, concerts, exhibits, games, athletic events, or
251 contests are held and for which an entry fee is charged. A
252 facility owned by a school, college, university, or house of
253 worship is a place of entertainment only when an event is held
254 for which an entry fee is charged.

255 (e) "Resale website" means a website, mobile application,
256 or any other digital platform or portion thereof which
257 facilitates the sale of tickets by resellers to consumers or on
258 which resellers offer tickets for sale to consumers.

259 (f) "Software" means computer or application-based programs
260 that are primarily designed or produced for the purpose of
261 interfering with the operation of any person or entity that

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262 sells, over the Internet, tickets of admission to a sporting
263 event, theater, musical performance, or place of public
264 entertainment or amusement of any kind.

265 (g) "Ticket" means a printed, electronic, or other type of
266 evidence of the right, option, or opportunity to occupy space
267 at, or to enter or attend, an entertainment event even if there
268 is no physical manifestation of such right. A ticket is a
269 revocable license, held by the person in possession of the
270 ticket, to use a seat or occupy a standing area in a specific
271 place of entertainment for a limited time. The license
272 represented by the ticket may be revoked at any time, with or
273 without cause, by the ticket issuer.

274 (h) "Ticket broker" means a person, or persons acting in
275 concert, involved in the business of reselling tickets of
276 admission to places of entertainment. The term does not include:

277 1. A person who does not regularly engage in the business
278 of reselling tickets; who, in any given 12-month period, resells
279 fewer than 60 tickets or fewer than one-third of all tickets
280 purchased from a professional sports entity, whichever is less;
281 and who obtains the tickets for his or her own use or the use of
282 his or her family members, friends, or acquaintances.

283 2. A person operating a website, mobile application, or
284 other digital platform whose primary business is to serve as an
285 online marketplace where third parties may buy and sell tickets,
286 and whose primary business is not the reselling of tickets.

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