

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 Commerce and Tourism

BILL: SB 1344

INTRODUCER: Senator Smith

SUBJECT: Resale of Tickets

DATE: February 5, 2016

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|--------------------|
| 1. | Little | McKay | CM | Pre-meeting |
| 2. | | | ATD | |
| 3. | | | FP | |

I. Summary:

SB 1344 amends provisions of law that govern ticket resales in Florida. The bill bars operators of a place of entertainment and operator's agents from restricting the resale of tickets under certain circumstances, by prohibiting them from doing any of the following:

- Restricting the resale of tickets included in a subscription or season ticket package as a condition of purchase, as a condition of the right to retain tickets for the duration of the subscription or season, or as a condition to purchase future subscription or season ticket packages;
- Denying access to an individual who possesses a resold subscription or season ticket to an event based solely on the grounds that the ticket has been resold;
- Using a paperless ticketing system, unless the paperless ticket may be transferred by the consumer without fee or restriction, or the consumer is given an option to purchase tickets in another transferable form, such as a paper or electronic ticket, at the time of purchase; or
- Selling or conveying tickets to any secondary ticket reseller owned or controlled by the operator or the operator's agent.

The bill also provides that the consumer must be able to transfer the ticket independently of the operator or the operator's agent and the price of the ticket shall be the same regardless of the form or transferability of the ticket. The ability to transfer a ticket does not constitute a service charge.

The bill does not prohibit policies related to behavior or conduct at a place of entertainment, nor does it prohibit restrictions on the resale of tickets offered as part of a targeted promotion, sold at a discounted price, or provided free of charge to specified individuals.

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 Admission 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, online sales have 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 Feb. 2, 2016).

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 Feb. 2, 2016).

⁸ Ticketmaster.com, *Who We Are*, available at http://www.ticketmaster.com/about/about-us.html?tm_link=tm_i_abouttm (last visited Feb. 2, 2016). 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 Feb. 2, 2016).

⁹ “StubHub is an eBay company.” StubHub.com, *Overview*, available at <http://www.stubhub.com/about-us/> (last visited Feb. 2, 2016).

¹⁰ eBay.com, *Even Ticket Resale Policy*, available at <http://pages.ebay.com/help/policies/event-tickets.html> (last visited Feb. 2, 2016).

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.¹⁷

Regulation of Fraudulent Ticket Sales

Pursuant to s. 817.361, F.S., it is a second degree misdemeanor¹⁸ to offer for sale, sell, or transfer, with or without consideration, any nontransferable multiuse ticket¹⁹ that has been used at least once for admission. A second or subsequent violation of this section results in a third degree felony.²⁰

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 service 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 817.36(5), F.S.

¹⁸ 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.

¹⁹ 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.

²⁰ 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 misdemeanor²¹ 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 Act²² 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.²³

III. Effect of Proposed Changes:

The bill amends s. 817.36, F.S., governing the resale of tickets in this state, by regulating the restrictions that may be placed on tickets by an operator of a place of entertainment or the operator's agent. The bill defines "ticket" as a license issued by the operator of a place of entertainment for admission to that place of entertainment at the date and time specified on the ticket, subject to the terms and conditions specified by the operator.

The bill prohibits an operator of a place of entertainment or the operator's agent from doing any of the following:

- Restricting the resale of tickets included in a subscription or season ticket package as a condition of purchase, as a condition of the right to retain tickets for the duration of the subscription or season, or as a condition to purchase future subscription or season ticket packages;
- Denying access to an individual who possesses a resold subscription or season ticket to an event based solely on the grounds that the ticket has been resold; or
- Using a paperless ticketing system unless the paperless ticket may be transferred by the consumer without fee or restriction or the consumer is given an option to purchase tickets in another transferable form, such as a paper or electronic ticket, at the time of purchase.

The bill also requires that the consumer must be able to transfer the ticket independently of the operator or the operator's agent and the price of the ticket must be the same regardless of the form or transferability of the ticket. The ability to transfer a ticket does not constitute a service charge.

The bill does not prohibit an operator or an operator's agent from maintaining and enforcing policies related to conduct and behavior at the place of entertainment, including, but not limited to, policies necessary for the protection and safety of patrons or policies that address fraud or misconduct. The bill does not prohibit an operator or an operator's agent from restricting the resale of tickets that are sold as part of a targeted promotion, sold at a discount price, or provided free of charge to specific individuals or groups.

²¹ 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.

²² Sections 501.201-501.213, F.S.

²³ "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.

The bill also prohibits an operator or an operator's agent from selling or conveying tickets to any secondary ticket reseller owned or controlled by the operator or the operator's agent.

The bill takes effect on July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill does not define a "place of entertainment," which may cause confusion as to which businesses are subject to the provisions under the bill.

Line 68 of the bill provides that the new subsection (7) created by the bill "may not be construed to prohibit" other specified activities by an operator or operator's agent. The provision could be reworded to state that the new subsection "does not prohibit" those other specified activities, to more directly state the law.

VIII. Statutes Affected:

This bill substantially amends section 817.36 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
