

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 388

INTRODUCER: Senator Bradley

SUBJECT: Resale of Tickets

DATE: March 10, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McMillan	McKay	CM	Pre-meeting
2.			JU	
3.			RC	

I. Summary:

SB 388 provides that any tickets, other than tickets for passage or accommodations on a common carrier in Florida, multiday or multievent tickets, or event tickets originally issued by a charitable organization, may be donated, transferred, or resold via any method, or on any ticket marketplace, of the ticket holder's choosing. Additionally, the bill establishes that the original seller must have the ability to request the legal name, e-mail address, or telephone number from a subsequent ticket holder for the purpose of venue security, provided the information requested is not more extensive than that collected at the original point of sale.

The bill establishes that the original ticket seller may not penalize, discriminate against, or deny access to an event to a person who purchases or resells a ticket in an authorized manner.

The bill requires an Internet website to prominently display certain disclosures and guarantees on their homepage or ticket landing page if the Internet website wants to offer any ticket for resale or resell any ticket for more than \$1 above the admission price charged by the original ticket seller.

The bill defines the terms "original ticket seller" and "original seller" as the issuer of such ticket or a person or firm that provides distribution services or ticket sales services under a contract with such issuer.

The bill provides that regulation of the sale or resale of tickets is preempted to the state.

The bill takes effect July 1, 2023.

II. Present Situation:

Pricing of Resold Admission Tickets

The resale pricing of certain tickets is governed by Florida law. Section 817.36, F.S., provides that a person or entity that offers for resale or resells any ticket (with the exception of travel agencies under certain conditions¹) may charge only \$1 above the admission price charged by the original ticket seller, for the following:

- Passage or accommodations on any common carrier in this state;
- Multiday or multievent tickets to a park or entertainment complex, or to a concert, entertainment event, permanent exhibition, or recreational activity within such a park or complex, including an entertainment/resort complex;² and
- Event tickets originally issued by a tax-exempt charitable organization, when no more than 3,000 tickets are issued per performance. The following must be conspicuously printed on the face or back of each such ticket: “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 ticketing service on behalf of a charitable organization, unless the statement is on the ticket.

The limitation of an additional \$1 above the original price of a ticket also applies to any tickets that are resold or offered through an Internet website (except those described above), unless the website:

- Is authorized by the original ticket seller; or
- Makes and posts the following guarantees and disclosures through Internet web pages, or links to web pages, in text to which a prospective purchaser is directed before completion of the resale transaction:
 - The website operator guarantees a full refund of the ticket price including any servicing, handling, or processing fees, if such fees are not disclosed, when:
 - The ticketed event is canceled;
 - The purchaser is denied admission to the ticketed event, unless such denial is due to the action or omission of the purchaser;
 - The ticket is not delivered to the purchaser as requested and pursuant to delivery guarantees made by the reseller and such failure results in the purchaser’s being unable to attend the event; and
 - The website operator discloses that it is not the issuer, original seller, or reseller of the ticket and does not control the pricing of the ticket, which may be resold for more than its original value.

¹ To qualify for this exception, travel agencies must have an established place of business in Florida and pay state, county, and city occupational license taxes. *See* s. 817.36(1)(a), F.S.

² An “Entertainment/resort complex” means a theme park comprised of at least 25 acres of land with permanent exhibitions and a variety of recreational activities, which has at least 1 million visitors annually who pay admission fees thereto, together with any lodging, dining, and recreational facilities located adjacent to, contiguous to, or in close proximity to the theme park, as long as the owner(s)/operator(s) of the theme park, or a parent or related company or subsidiary thereof, has an equity interest in the lodging, dining, or recreational facilities or is in privity therewith. Close proximity shall include an area within a 5-mile radius of the theme park complex. *See* s. 561.01(18), F.S.

Individuals or entities are not authorized to sell or purchase tickets at any price on property where an event is being held (i.e., outside a stadium) without the prior express written consent of the owner of the property.³

Sales tax is due on resold tickets.⁴

A person who knowingly resells a ticket or tickets in violation of the requirements in s. 817.36, F.S., is liable to the state for a civil penalty equal to three times the amount of the price for which the ticket or tickets were resold.⁵

Persons who intentionally use or sell software to circumvent a security measure, an access control system, or any other control or measure on a ticket seller's Internet website which is used to ensure an equitable ticket-buying process, is liable to the state for a civil penalty equal to three times the amount for which any ticket was sold.⁶

Purchasers and resellers of tickets may also be subject to civil penalties under the Florida Deceptive and Unfair Trade Practices Act (FDUTPA).⁷ In the absence of a contract with the original ticket seller to distribute or sell tickets, a person who knowingly purchases from the original ticket seller, with the intent of resale, a quantity of event tickets which exceeds the posted⁸ maximum ticket limit per purchaser, violates FDUTPA.⁹

Preemption

Local governments have broad authority to legislate on any matter that is not inconsistent with federal or state law. A local government enactment may be inconsistent with state law if (1) the Legislature has preempted a particular subject area or (2) the local enactment conflicts with a state statute. Where state preemption applies, it precludes a local government from exercising authority in that particular area.¹⁰

Florida law recognizes two types of preemption: express and implied. Express preemption requires a specific legislative statement; it cannot be implied or inferred.¹¹ Express preemption of

³ See s. 817.36(2), F.S.

⁴ See s. 817.36(3), F.S.

⁵ See s. 817.36(4), F.S.

⁶ *Id.* Section 817.36(5), F.S. See also s. 817.36(6), F.S., which defines the term "software" 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 Internet, tickets of admission to a sporting event, theater, musical performance, or place of public entertainment or amusement of any kind." Similar federal legislation was enacted in 2016 to prohibit circumvention of ticket website security or control measures and the subsequent sale of the fraudulently obtained tickets by someone who knew or should have known about the violation. See The Better Online Ticket Sales Act, at 15 U.S.C. s. 45c.

⁷ See part II of ch. 501, F.S., relating to consumer protection (ss. 501.201-501.213, F.S.).

⁸ Posting of a quantity limit occurs at the point of original sale or is printed on the tickets by or on behalf of the original ticket seller. See s. 817.357, F.S.

⁹ See s. 817.357, F.S.

¹⁰ See James R. Wolf and Sarah Harley Bolinder, *The Effectiveness of Home Rule: A Preemptions and Conflict Analysis*, 83 Fla. B.J. 92 (June 2009).

¹¹ See *City of Hollywood v. Mulligan*, 934 So.2d 1238, 1243 (Fla. 2006); *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So.2d 1011, 1018 (Fla. 2d DCA 2005), approved in *Phantom of Brevard, Inc. v. Brevard County*, 3 So.3d 309 (Fla. 2008).

a field by the Legislature must be accomplished by clear language stating that intent.¹² In cases where the Legislature expressly or specifically preempts an area, there is no problem with ascertaining what the Legislature intended.¹³

In cases determining the validity of ordinances enacted in the face of state preemption, the effect has been to find such ordinances null and void.¹⁴ Implied preemption is actually a decision by the courts to create preemption in the absence of an explicit legislative directive.¹⁵ Preemption of a local government enactment is implied only where the legislative scheme is so pervasive as to evidence an intent to preempt the particular area, and strong public policy reasons exist for finding preemption.¹⁶ Implied preemption is found where the local legislation would present the danger of conflict with the state's pervasive regulatory scheme.¹⁷

III. Effect of Proposed Changes:

The bill provides that any tickets, other than tickets for passage or accommodations on a common carrier in Florida,¹⁸ multiday or multievent tickets,¹⁹ or event tickets originally issued by a charitable organization,²⁰ may be donated, transferred, or resold via any method, or on any ticket marketplace, of the ticket holder's choosing. Additionally, the bill establishes that the original seller must have the ability to request the legal name, e-mail address, or telephone number from a subsequent ticket holder for the purpose of venue security, provided the information requested is not more extensive than that collected at the original point of sale.²¹

The bill establishes that the original ticket seller may not penalize, discriminate against, or deny access to an event to a person who purchases or resells a ticket in an authorized manner.

The bill requires an Internet website to prominently display certain disclosures and guarantees on their homepage or ticket landing page if the Internet website wants to offer any ticket for resale or resell any ticket for more than \$1 above the admission price charged by the original ticket seller.

The bill defines the terms "original ticket seller" and "original seller" as the issuer of such ticket or a person or firm that provides distribution services or ticket sales services under a contract with such issuer.

¹² *Mulligan*, 934 So.2d at 1243.

¹³ *Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So.3d 880, 886 (Fla. 2010).

¹⁴ *See, e.g., Nat'l Rifle Ass'n of Am., Inc. v. City of S. Miami*, 812 So.2d 504 (Fla. 3d DCA 2002).

¹⁵ *Phantom of Clearwater, Inc.*, 894 So.2d at 1019.

¹⁶ *Id.*

¹⁷ *Sarasota Alliance for Fair Elections, Inc.*, 28 So.3d at 886.

¹⁸ This does not apply to travel agencies that have an established place of business in Florida and are required to pay state, county, and city occupational license taxes.

¹⁹ More specifically, this exception pertains to multiday or multievent tickets to a park or entertainment complex or to a concert, entertainment event, permanent exhibition, or recreational activity within such a park or complex, including an entertainment/resort complex as defined in s. 561.01(18), F.S.

²⁰ More specifically, this exception pertains to event tickets originally issued by a charitable organization exempt from taxation under s. 501(c)(3) of the Internal Revenue Code for which no more than 3,000 tickets are issued per performance.

²¹ The bill provides that the collection of data from a subsequent ticket holder must not inhibit the gifting, donation, transfer, or resale of a ticket.

The bill provides that regulation of the sale or resale of tickets is preempted to the state.

The bill takes effect July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None Identified.

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:

None.

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.
