

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1287

Resale of Tickets

SPONSOR(S): Holder

TIED BILLS:

IDEN./SIM. BILLS: SB 2074

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Agriculture & Natural Resources Policy Committee		Thompson	Reese
2) Public Safety & Domestic Security Policy Committee			
3) General Government Policy Council			
4)			
5)			

SUMMARY ANALYSIS

Secondary ticketing, otherwise known as ticket scalping, is a large economic enterprise and a significant component of the sports and entertainment industries.¹ Current Florida law prohibits reselling tickets for more than \$1 above the original admission price for the following transactions:

- Passage or accommodations on any common carrier in this state, except this prohibition does not apply to travel agencies that have an established place of business in this state that are required to pay state, county, and city occupational license taxes.
- Multiday or multievent tickets to a park or entertainment complex or to a concert, entertainment event, permanent exhibition, or recreational activity within such park or entertainment complex.
- Any other tickets that are resold through an internet website (this prohibition does not apply to tickets sold through an Internet website that is authorized by the original ticket seller or if the website makes and posts certain guarantees and disclosures).

Current law does not specifically regulate the resale of tickets for events sponsored by or benefiting organizations described in section 501(c)(3), of the Internal Revenue Code, commonly referred to as charitable organizations.

The bill prohibits the resale of tickets at a price in excess of \$1 above the admission price for events sponsored by such charitable organizations. Also, the bill affords any such organization the choice to prohibit ticket purchases for resale by any person or firm and allows the organizations to require binding contractual agreements with registered ticket resellers for purchasing, remarketing, or reselling event or entertainment tickets.

Finally, the bill provides that a person who resells a ticket or tickets in violation of the prohibitions included in this statute is liable to the state for a civil penalty equal to triple the amount for which the ticket or tickets were sold.

The bill does not appear to have a fiscal impact on state or local government. To the extent resellers incur civil penalties for violations, there may be an indeterminate negative fiscal impact on the private sector.

This bill's effective date is July 1, 2009.

¹ Paul J. Criscuolo, *Reassessing the Ticket Scalping Dispute: The Application, Effects, and Criticisms of Current Anti-Scalping Legislation*, Seton Hall Journal of Sport Law, 5 SHJSL (1995).

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1287.ANR.doc

DATE: 3/12/2009

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Ticket Scalping

Ticket scalping is an activity that has been around since the 1850's.² Otherwise known as secondary ticketing, ticket scalping is commonly defined as the reselling of tickets at a price higher than the established value.³ Ticket scalping is a large economic enterprise and a significant component of the sports and entertainment industries.⁴ Legislation limiting or prohibiting ticket scalping has been criticized as limiting free enterprise. Despite the enactment of such legislation, ticket scalping continues as a multi-billion dollar business.

Proponents of ticket scalping argue that once a person purchases a ticket, that person should be able to resell the ticket at any price.⁵ Further, it has been argued that ticket scalping provides a service to those who are not willing or unable to purchase tickets directly from a facility or promoter.⁶ A contrary view is that ticket scalping limits the number of reasonably priced tickets because professional ticket scalpers purchase such a large number of the tickets from the promoter and limit the ability of the public to purchase tickets at retail prices.⁷ As a result, ticket prices become inflated, which may cause customer dissatisfaction with the promoters and sponsors of the event and a decline in future sales.⁸

In addition to inflating ticket prices, scalping also creates congestion, annoyance and inconvenience in areas where crowds must move rapidly and safely. In this respect, scalping may actually be dangerous to individual patrons.⁹

² Consumereports.org; February, 19, 2008, The Scoop on Ticket Scalping

³ Paul J. Criscuolo, *Reassessing the Ticket Scalping Dispute: The Application, Effects, and Criticisms of Current Anti-Scalping Legislation*, Seton Hall Journal of Sport Law, 5 SHJSL 189, 189 (1995).

⁴ *Id.* at 190

⁵ *Id.* at 189-90.

⁶ *Id.* at 191.

⁷ *Id.* at 192.

⁸ *Id.* at 192.

⁹ *Id.* at 192.

Federal Law

There are no federal laws directly governing ticket resales, but at least sixteen states prohibit or regulate the resale of tickets: Arizona, Arkansas, California, Connecticut, Delaware, Florida, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, New Mexico, Ohio, Rhode Island and Wisconsin.¹⁰ Regulatory schemes include allowing resales for no more than face value, permitting resales for higher prices by licensed ticket brokers, or allowing resales for a specified amount above face value.¹¹ In almost all instances where ticket scalping is prohibited or there is a resale without a license, the offense is a misdemeanor.¹²

In 2008, federal legislation was introduced¹³ to prohibit the counterfeiting and sale of inaugural tickets that were supposed to be free. In a statement of intent, the sponsor of the legislation said: "This legislation is meant to immediately stop the unscrupulous behavior of those who obtain these tickets for free and then seek to profit by selling them, often at dramatically inflated prices."¹⁴

State Law

The 2006 Legislature adopted HCB 6003 CS relating to resale of tickets. This bill deleted a provision of law making the sale or marketing of certain admission tickets at a price in excess of \$1 above the retail admission price charged by the original seller a violation of the Sellers of Travel Act. Also, the bill created s. 817.357, F.S., to provide that purchasing tickets in excess of a specified quantity, with the intent to resell those tickets, is a violation of the Florida Deceptive and Unfair Trade Practices Act.

Section 817.36, F.S., prohibits reselling tickets for more than \$1 above the original admission price for the following transactions:

- Passage or accommodations on any common carrier in this state, except this prohibition does not apply to travel agencies that have an established place of business in this state that are required to pay state, county, and city occupational license taxes.
- Multiday or multievent tickets to a park or entertainment complex or to a concert, entertainment event, permanent exhibition, or recreational activity within such park or entertainment complex.
- Any other tickets that are resold through an internet website (this prohibition does not apply to tickets sold through an Internet website that is authorized by the original ticket seller or if the website makes and posts certain guarantees and disclosures).

Charitable Organizations

Section 501(c)(3) of the Internal Revenue Code provides federal tax benefits to certain not-for-profit and charitable organizations.¹⁵ Organizations described in section 501(c)(3) are commonly referred to as charitable organizations. To be tax exempt, an organization must be organized and operated exclusively for charitable purposes such as educational, religious, scientific, literary, fostering national or international sports competition, preventing cruelty to children or animals, or testing for public safety. Such organizations are reliant upon community support through contributions, grants, sponsorships, and ticket sales as sources of revenue. Current law does not specifically restrict the resale of event tickets of not-for-profit or charitable organizations.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ S. 3685

¹⁴ The Washington Post; Nikita Stewart, "Sen. Feinstein Introduces Anti-Ticket Scalping Legislation"; Inaugural Watch.

¹⁵ <http://www.irs.gov/charities/charitable/article/0,,id=96099,00.html>

Proposed Changes

The bill amends current law¹⁶ to prohibit the resale of tickets at a price in excess of \$1 above the admission price for events sponsored by or benefiting a federally exempt charitable organization.¹⁷ Also, the bill affords any such organization, whose ticket transactions are regulated under this provision, the choice to prohibit ticket purchases for resale by any person or firm. In addition, the bill allows such not-for-profit organizations to require binding contractual agreements with registered ticket resellers for purchasing, remarketing, or reselling event or entertainment tickets. Finally, the bill provides that a person who resells a ticket or tickets in violation of the prohibitions in this statutory section is liable to the state for a civil penalty equal to triple the amount for which the ticket or tickets were sold for.

B. SECTION DIRECTORY:

Section 1. Amends s. 817.36, F.S., providing for restrictions on the resale of event tickets by or benefiting tax-exempt charitable organizations, authorizing tax-exempt charitable organizations as an original ticket issuer or seller to have the choice to prohibit ticket purchases for resale or to require contractual agreements for certain transactions, providing for penalties.

Section 2. Provides an effective date of July 1, 2009.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill prohibits the resale of tickets at a price in excess of \$1 above the admission price for events sponsored by or benefiting a federally exempt charitable organization. The bill provides penalties for violations of the current and the additional prohibitions that are equal to triple the amount for which the ticket or tickets were sold for. To the extent resellers may incur civil penalties for violations, there may be an indeterminate negative fiscal impact on the private sector.

D. FISCAL COMMENTS:

None.

¹⁶ s. 817.36, F.S.

¹⁷ s. 501(c)(3), Internal Revenue Code

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES