

**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.)

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Prepared By: The Professional Staff of the Committee on Regulated Industries

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BILL: SB 1024

INTRODUCER: Senator Hukill

SUBJECT: Ticket Websites

DATE: February 13, 2018

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kraemer	McSwain	RI	<b>Pre-meeting</b>
2.			CM	
3.			RC	

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**I. Summary:**

SB 1024 regulates the content of certain Internet website addresses used by operators of ticket websites that advertise the sale or resale of tickets for events at Florida venues (such as stadiums and concert halls). The bill prohibits the intentional, unauthorized use by a website operator of an Internet website address that contains venue identifiers, such as all or part of the venue name, the name of the exhibition or performance, or the names of performers. A website operator authorized by a venue to act upon its behalf is exempt from the prohibitions in the bill relating to the use of venue identifiers.

A website operator that uses an Internet website address that contains prohibited venue identifiers is subject to a fine of up to \$2,500 for each violation.

SB 1024 does not have an impact on state government.

The bill provides an effective date of July 1, 2018.

**II. Present Situation:**

Until the Internet became popular, transactions by consumers for the sale of tickets to attend scheduled sporting or other entertainment events were transacted in person or by mail with the authorized "box office" of a stadium, concert hall, theater, or similar venue. With the advent of Internet applications providing various services, consumers are able to seek out information regarding local and out-of-town events, select desired seats, and purchase tickets online.

Increased ticket purchasing using Internet applications has resulted in consumers raising issues relating to inaccurate online information, ticket authenticity and pricing, undisclosed service fees, and customer service issues. Some website operators include the name of the venue in Internet addresses, which could be misleading to ticket purchasers who seek to transact

purchases directly with the official online “box office” of a venue. When multiple website operators include venue names in Internet website addresses,<sup>1</sup> a search on the Internet by a consumer for “tickets to the ABC concert at XYZ venue,” often results in a consumer concluding, in error, they have accessed the official website of the event venue.

### **Federal Trade Commission Settlement**

The Federal Trade Commission (FTC) and the State of Connecticut have addressed Internet advertisements and websites alleged to have misled consumers, resulting in the consumers believing they were buying event tickets (at face value) directly from an original venue. In a case settled in 2014, the FTC alleged that the third largest online exchange for resale event tickets, and two of its sales partners (online ticket sellers,) used misleading advertising techniques. These techniques included the design of online advertisements and corresponding websites to mimic genuine venue names, by combining them with the terms “official” and “box office,” to make it appear the misleading websites were the websites of the actual venue or performer.<sup>2</sup>

The FTC alleged the online ticket sellers paid for advertisements that conveyed “the impression that [the advertisement] was for the official Radio City Music Hall site”, and consumers who clicked on the advertisement accessed a website “prominently titled ‘Radio City Music Hall’ which featured photos, text, and other material designed to look like the official Radio City Music Hall website.”<sup>3</sup> Instead, the website was an online ticket seller site “selling resale tickets, often at a price higher than original face value.”<sup>4</sup>

Under the FTC settlement order, the online ticket sellers are prohibited from:

- Misrepresenting, directly or by implication, that a resale ticket site is a venue site or is offering tickets at face value; and
- Using the word “official” in any ad, URL,<sup>5</sup> website, or other advertising for resale tickets, except in very narrow circumstances.<sup>6</sup>

Additionally, the online ticket sellers are required to:

- Affirmatively disclose that:
  - Their websites are resale marketplaces and not venues or box offices;
  - The ticket price may exceed the ticket’s face value; and

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<sup>1</sup> According to the Department of Agriculture and Consumer Services, the Internet Corporation for Assigned Names and Numbers (ICANN) is a multi-stakeholder nonprofit organization that coordinates domain names and web addresses worldwide. *See Agency Legislative Bill Analysis by the Department of Agriculture and Consumer Services* for SB 1024, dated Dec. 19, 2017 (on file with Senate Committee on Regulated Industries) at page 1, and *see* <https://www.icann.org/resources/pages/what-2012-02-25-en> (last visited Feb. 8, 2018) discussing the role of ICANN to ensure unique identifiers, stability, and coordination for locating Internet content.

<sup>2</sup> *See* <https://www.consumer.ftc.gov/blog/2014/07/ticket-resellers-settle-misleading-advertising-charges> (last visited Feb. 8, 2018).

<sup>3</sup> *See* <https://www.ftc.gov/news-events/press-releases/2014/07/ticketnetwork-marketing-partners-ryadd-secure-box-office-settle> (last visited Feb. 8, 2018).

<sup>4</sup> *Id.*

<sup>5</sup> The term “uniform resource locator” or “URL” is defined as the address of a resource (such as a document or website) on the Internet; a URL often includes information such as directory and file names. *See* <https://www.merriam-webster.com/dictionary/URL> (last visited Feb. 8, 2018).

<sup>6</sup> *See supra* note 3.

- The website is not owned by the venue, sports team, performer, or promoter.
- Sign written contracts in which all partners promise to adhere to the settlement order;
- Take disciplinary action when partners violate the settlement order;
- Appropriately handle consumer complaints about venue confusion; and
- Pay a total of \$1.4 million to the state of Connecticut.<sup>7</sup>

### **Sale and Resales of Event Admission Tickets in Florida**

Florida law provides a criminal prohibition for the fraudulent creation or possession of admission tickets to events.<sup>8</sup> A person who counterfeits, forges, alters, clones, or possesses a ticket, card, wristband, or other medium that accesses or is associated with an admission ticket, token, or paper, with the intent to defraud a sports, amusement, concert, or other facility offering services to the general public, commits a first degree misdemeanor.<sup>9</sup> A second or subsequent violation is commit a third degree felony.<sup>10</sup>

A person who counterfeits, forges, alters, clones, or possesses 10 or more tickets, cards, wristbands, or other media that access or are associated with an admission ticket, token, or paper, with the intent to defraud a sports, amusement, concert, or other facility offering services to the general public, commits a third degree felony.<sup>11</sup>

Purchasers and resellers of tickets may also be subject to civil penalties under the Florida Deceptive and Unfair Trade Practices Act (FDUTPA), as discussed below.<sup>12</sup> 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 posted<sup>13</sup> maximum ticket limit per purchaser, violates FDUTPA.<sup>14</sup>

### ***Florida Deceptive and Unfair Trade Practices Act***

Part II of ch. 501, F.S., the “Florida Deceptive and Unfair Trade Practices Act” (FDUTPA) addresses protection of the public and legitimate business enterprises from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce. Unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful.<sup>15</sup>

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<sup>7</sup> *Id.*

<sup>8</sup> See s. 817.355, F.S., and part I of ch. 817, F.S., relating to false pretenses and frauds.

<sup>9</sup> See s. 817.355(1), F.S. Section 775.082, F.S., provides a misdemeanor of the first degree is punishable by a term of imprisonment not to exceed one year. Section 775.083, F.S., provides a misdemeanor of the first degree is punishable by a fine not to exceed \$1,000.

<sup>10</sup> See s. 817.355(2), F.S. Section 775.082, F.S., provides a felony of the third degree is punishable by a term of imprisonment not to exceed five years. Section 775.083, F.S., provides a felony of the third degree is punishable by a fine not to exceed \$5,000.

<sup>11</sup> See s. 817.355(3), F.S.

<sup>12</sup> See part II of ch. 501, F.S., relating to consumer protection (ss. 501.201-501.213, F.S.).

<sup>13</sup> 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.

<sup>14</sup> See s. 817.357, F.S.

<sup>15</sup> See s. 501.202, F.S.

Section 501.203(2), F.S., provides that the FDUTPA may be enforced by the:

- Office of the state attorney when a violation occurs in or affects the judicial circuit under the jurisdiction of that state attorney; or
- Department of Legal Affairs, if the violation occurs in or affects more than one judicial circuit, or if the office of the state attorney defers to the department in writing, or fails to act upon a violation within 90 days after a written complaint has been filed with the state attorney.

(Hereafter, an “enforcing authority.”)

An enforcing authority may:

- Obtain a declaratory judgment that an act or practice violates the FDUTPA;
- Enjoin any person who has violated, is violating, or is otherwise likely to violate, the FDUTPA; and
- Recover the actual damages caused by an act or practice in violation of the FDUTPA, on behalf of one or more consumers or governmental entities, except that damages are not recoverable against a retailer who has in good faith engaged in the dissemination of claims of a manufacturer or wholesaler without actual knowledge that it violated the FDUTPA.<sup>16</sup>

Any person, firm, corporation, association, or entity, or any agent or employee of such persons, who is willfully using, or has willfully used, a method, act, or practice declared unlawful, or who is willfully violating any of the rules of the Department of Agriculture and Consumer Services (DACS) adopted under part II of ch. 501, F.S., is liable for a civil penalty of not more than \$10,000 for each such violation.<sup>17</sup>

Willful violations occur when the person knew or should have known that his or her conduct was unfair or deceptive or prohibited by rule.<sup>18</sup> The civil penalty may be recovered in any action brought under FDUTPA by an enforcing authority; or an enforcing authority may terminate an investigation or action under an the agreement by which a violator pays a civil penalty<sup>19</sup>

The DACS or a court may waive a civil penalty if the violator or his agents and employees have made full restitution or reimbursement or has paid actual damages to the consumers or governmental entities injured by the unlawful act or practice or rule violation.<sup>20</sup> If civil penalties are assessed, the enforcing authority is entitled to reasonable attorney’s fees and costs; the civil penalty accrues to the state.<sup>21</sup>

Violations of the FDUTPA involving senior citizens, those with disabilities, or active duty or veteran members of the United States Armed Forces, may result in penalties of not more than

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<sup>16</sup> See s. 501.207(1), F.S.

<sup>17</sup> See s. 501.2075, F.S.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

\$15,000 for each violation, if the violator knew or should have known the conduct was unfair or deceptive.<sup>22</sup>

### ***Pricing of Resold Admission Tickets***

The resale pricing of certain tickets is also 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 conditions<sup>23</sup>) may charge only \$1.00 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 defined in s. 561.01(18), F.S.
- 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 \$1.00 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:
    - a. The ticketed event is canceled;
    - b. The purchaser is denied admission to the ticketed event, unless such denial is due to the action or omission of the purchaser;
    - c. 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.
  - 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.

Individual 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.<sup>24</sup>

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<sup>22</sup> See s. 501.2077, F.S.

<sup>23</sup> 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.

<sup>24</sup> See s. 817.36(2), F.S.

Sales tax is due on resold tickets.<sup>25</sup>

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.<sup>26</sup>

Persons intentionally using or selling 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.<sup>27</sup>

### ***Sale or Transfer of Multiuse Tickets to Theme Parks***

Florida law also provides that the sale or transfer of multiuse tickets for admission to a theme park complex<sup>28</sup> is also a crime in certain circumstances.<sup>29</sup>

A multiuse ticket is a ticket, other medium, or right for admission to:

- One or more theme park complexes;
- One or more amusement locations or other facilities in a theme park complex; or
- One or more such locations or facilities in a theme park complex for more than one day or more than once in the same day.<sup>30</sup>

A multiuse ticket is nontransferable unless the phrase “may be used by more than one person” is printed clearly on the ticket by the issuer or the issuer explicitly states on its website that the multiuse ticket may be used by more than one person.<sup>31</sup>

A person who offers for sale, sells, or transfers, in a commercial transaction (whether or not money changes hands), a nontransferable multiuse ticket<sup>32</sup> after the nontransferable multiuse ticket has already been used for admission at least once, commits a first degree misdemeanor, but a second or subsequent violation is a third degree felony.<sup>33</sup>

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<sup>25</sup> See s. 817.36(4)

<sup>26</sup> See s. 817.36(5), F.S.

<sup>27</sup> *Id.* Section 817.36(6), F.S., 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.

<sup>28</sup> Section 361.361(1)(c), F.S., defines the term “theme park complex” as “an area comprised of at least 25 acres of land owned by the same business entity and which contains rides or other recreational activities.”

<sup>29</sup> See s. 817.361, F.S.

<sup>30</sup> See s. 817.361(1), F.S.

<sup>31</sup> See s. 817.361(2), F.S.

<sup>32</sup> A violation occurs when a card, wristband, or other medium that accesses or is associated with nontransferable multiuse ticket, is offered for sale, sold, or transferred after being used at least once for admission. *Id.*

<sup>33</sup> See s. 817.361, F.S. Sections 775.082 and 775.083, F.S., provide a misdemeanor of the first degree is punishable by a term of imprisonment not to exceed one year and by a fine not to exceed \$1,000; those sections provide that a felony of the third degree is punishable by a term of imprisonment not to exceed five years and by a fine not to exceed \$5,000.

### III. Effect of Proposed Changes:

SB 1024 regulates the content of Internet website addresses by operators of ticket websites that advertise the sale of tickets, or offer tickets for sale or resale, for events at Florida venues, including arenas, stadiums, theaters, concert halls, or other places of exhibition or performance.

The bill prohibits the intentional, unauthorized use by a website operator of an Internet domain name or subdomain name in a website operator's uniform resource locator (Internet website address),<sup>34</sup> if the domain or subdomain names contain "venue identifiers" described as:

- All or part of the name of the venue.
- All or part of the name of the exhibition or performance, including the name of the person or entity scheduled to perform or appear at the venue.
- Any name substantially similar name.

The term "Internet domain name" is defined in the bill to mean the same as in s. 668.602, F.S., Florida's Electronic Mail Communications Act."<sup>35</sup>

[A] globally unique, hierarchical reference to an Internet host or service, which is assigned through centralized Internet naming authorities and which is comprised of a series of character strings separated by periods, with the right-most string specifying the top of the hierarchy.<sup>36</sup>

The term "subdomain name" is not defined in current law or by the bill.

A website operator authorized by a venue to act upon the venue's behalf is exempt from the prohibitions in the bill.

The bill provides that a website operator that violates the prohibitions in the bill is subject to a fine of up to \$2,500 for each violation.

SB 1024 provides an effective date of July 1, 2018.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

<sup>34</sup> The term "uniform resource locator" or "URL" is defined as the address of a resource (such as a document or website) on the Internet; a URL often includes information such as directory and file names. See <https://www.merriam-webster.com/dictionary/URL> (last visited Feb. 8, 2018).

<sup>35</sup> See part III of ch. 668, F.S., relating to Electronic Mail Communications.

<sup>36</sup> See s. 668.602(10), F.S.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

SB 1024 seeks to regulate and prohibit conduct by persons outside Florida, who may engage in the conduct prohibited by Florida in jurisdictions other than Florida, and whose conduct may not be misleading to persons in Florida. Enforcement against such persons for the conduct regulated and prohibited in the bill may not be constitutionally permissible, in the absence of any requirement for conduct in Florida sufficient to assert legal jurisdiction over alleged violators.

The ability of the state to enforce regulations and prohibitions against out-of-state persons in court may be limited by the doctrine of *in personam* jurisdiction, also known as personal jurisdiction. This legal doctrine requires that a court must have a legal basis to exercise jurisdiction over a person. Florida residents and Florida-based businesses clearly fall within the jurisdiction of the state's courts, including the federal courts located in Florida, but out-of-state persons may not. Florida's state and federal courts have jurisdiction over a non-resident only if there are sufficient jurisdictional facts for the court to exercise its jurisdiction.<sup>37</sup>

A court's exercise of jurisdiction cannot violate due process. Due process is satisfied when a defendant has sufficient "minimum contacts" with the state and maintenance of the suit is reasonable, and does not violate "traditional notions of fair play and substantial justice."<sup>38</sup>

In addition to due process concerns, a defendant's acts must also satisfy the state's long-arm statute in s. 48.193, F.S., which sets forth the acts that could subject a non-resident to the jurisdiction of Florida's courts, including the federal courts in Florida. In pertinent part, these acts include "operating, conducting, engaging in, or carrying on a business or business venture in this state or having an office or agency in this state."<sup>39</sup> Courts have generally held that a non-resident operates or engages in a business in this state if he or she engages in a course of business activity in Florida for pecuniary gain, and has engaged in regular business dealings with Florida residents.<sup>40</sup>

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

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<sup>37</sup> A detailed discussion of personal jurisdiction issues may be found at Philip J. Padovano, *Florida Civil Procedure*, Vol. 5, 2004-2005 Edition, (West's Florida Practice Series), sections 1.2 and 8.7.

<sup>38</sup> *Int'l Shoe Co. v. State of Washington, Office of Unemployment Compensation & Placement*, 326 U.S. 310, 316 (1945).

<sup>39</sup> See s. 48.193(1)(a), F.S.

<sup>40</sup> See *Homeway Furniture Co. of Mount Airy, Inc. v. Horne*, 822 So.2d 533, 536 (Fla. 2<sup>nd</sup> DCA 2002).

**B. Private Sector Impact:**

SB 1024 may benefit venues selling or offering event tickets whose reputations might be affected by website operators that use venue identifiers and websites in a manner that confuses event ticket purchasers or that creates negative perceptions of the venues. The bill may affect ticket website operators that use the names of Florida venues in advertising and in the marketing of their services.

**C. Government Sector Impact:**

There is no fiscal impact to state government.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

Lines 28-30 of the bill prohibit use in a website's URL of "[a]ll or part of the name of the exhibition or performance, including the name of the person or entity scheduled to perform or appear at the venue." This could be construed to prohibit use of a performer's name in connection with a venue outside Florida, if that performer is scheduled to appear at a venue in Florida, even if no tickets to the performance in Florida are offered for sale or mentioned. Accordingly, consideration should be given to deleting those lines in the bill.

SB 1024 does not expressly apply to businesses that engage in conduct with Florida consumers and residents, and does not require any act in or any act connected to Florida. The prohibited use of Florida venue names in Internet domain names is unrestricted, and does not require any nexus, or connection, with consumers or Florida residents.

Required disclosure statements mandated in current law (see s. 817.36(1)(d), F.S.) for the resale of admission tickets through online websites, may also be applicable to the conduct addressed in the bill.

**VIII. Statutes Affected:**

This bill creates section 817.356 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.

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

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