

HOUSE No. 177

The Commonwealth of Massachusetts

PRESENTED BY:

Carlo Basile

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act to reform the issuance and sale of sports and entertainment tickets.

PETITION OF:

NAME:

Carlo Basile

DISTRICT/ADDRESS:

1st Suffolk

HOUSE No. 177

By Mr. Basile of Boston, a petition (accompanied by bill, House, No. 177) of Carlo Basile for legislation reform the sale, resale and issuance of sports and entertainment tickets. Consumer Protection and Professional Licensure.

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

An Act to reform the issuance and sale of sports and entertainment tickets.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Notwithstanding Section 185A through Section 185D, inclusive, of
2 Chapter 140 of the General Laws or any other General or Special Law to the contrary, the
3 General Laws shall be amended by adding the following: --

4 Section 1. The Sports and Entertainment Ticket Sale and Resale Transparency Act.

5 As used in this Act the following words shall have the following meanings:

6 (a) "Event" means any concert, theatrical performance, sporting event,
7 exhibition, show, or similar scheduled activity taking place in the Commonwealth —

8 (i) that is open to the general public;

9 (ii) for which an admission fee is charged; and

10 (b) An "event ticket" means any physical, electronic, or other form of a
11 certificate, document, voucher, token or other evidence indicating that the bearer, possessor, or
12 person entitled to possession through purchase or otherwise has (i) a revocable or irrevocable
13 right, privilege or license to enter an event venue or occupy a particular seat or area in an event
14 venue with respect to one or more events, or (ii) an entitlement to purchase such a right,
15 privilege or license with respect to one or more future events.

16 (c) "Person" means any natural person, partnership, corporation, association, or
17 other legal entity.

18 (d) “Resale” includes any form of transfer or alienation, or offering for transfer
19 or alienation, of possession or entitlement to possession of an event ticket from one person to
20 another, with or without consideration, whether in person or by means of telephone, mail,
21 delivery service, facsimile, internet, email or other electronic means. “Resale” does not include
22 the initial sale of an event ticket by the ticket issuer.

23 (e) “Ticket issuer” means any person that makes event tickets available, directly
24 or indirectly, to the general public, and may include the operator of a venue; the sponsor or
25 promoter of an event; a sports team participating in an event or a league whose teams are
26 participating in an event; a theater company, musical group or similar participant in an event; or
27 an agent of any such person.

28 (g) “Venue” means the theater, stadium, field, hall or other facility where an
29 event takes place.

30 Section 3. (a) A ticket issuer, or its authorized agent, shall provide advance public notice
31 of its ticket policies for each event subject to this Act. Such notice shall include at least the
32 following information: (i) Identification of the specific event, including date, time, and location.
33 (ii) The total number of event tickets to be issued for the event, whether by public sale or
34 otherwise, and the number of such tickets for every class, tier or level of admission offered. (iii)
35 The total number of event tickets to the event that will be made available for purchase by
36 members of the general public as public sale tickets subject to this section, and the number of
37 such tickets for every class, tier or level of admission offered. (iv) The established price for each
38 class, tier or level of admission offered which will be designated as public sale tickets, including
39 the amount of any premium, service charge or other fee applicable to the sale of such ticket.

40 (v) The date and time when tickets are made available to any member of the general
41 public including but not limited to fan clubs, businesses, and for promotional activities. (on-sale
42 date and time)

43 (vi) A complete list of the outlets at which such public sale tickets will be made available
44 for sale to the general public on the date and at the time specified, including a list of all Internet
45 websites at which such tickets will be made available.

46 (b) Each public notice of ticket practices under this section shall be
47 accompanied by a certification that the party submitting the notice is, or is authorized to act on
48 behalf of, a ticket issuer within the meaning of this Act; that the ticket issuer is in compliance
49 with the consumer protection minimum standards set out in section 6 of this Act; that all tickets
50 designated as public sale tickets will in fact be made available for sale to the general public as
51 stated in the notice; and that all the information contained in the notice is true and correct to the
52 best of the knowledge and belief of the party submitting the notice.

53 (c) No public notice under this section shall be valid unless it is submitted to the
54 Commissioner of Public Safety, and otherwise made public in accordance with subsection (d), at
55 least 15 days prior to the on-sale date specified in the notice. A public notice shall be deemed to
56 have been submitted on the date and at the time it is received by the Department of Public
57 Safety.

58 (d) The Department of Public Safety shall post on its website, within 24 hours
59 after receipt, any public notice which substantially complies with this section. The ticket issuer
60 or its authorized agent shall cause the public notice to be publicly displayed at each place where
61 public sale tickets are to be sold, and on each website where such tickets are to be sold. Nothing
62 in this section shall be construed to prevent a ticket issuer or its authorized agent from using
63 other methods of public notification in addition to those methods which are required by this Act.

64 (e) In addition to the failure to comply with any other provision of this section,
65 the following acts shall be unlawful and shall be punishable as violations of this Act:

66 Material false or misleading statements made knowingly, or in reckless disregard
67 of their falsity, by or on behalf of a ticket issuer, in connection with a public notice under this
68 section.

69 (f) Nothing in this section shall be construed to impose any restrictions on the
70 sale or resale, or the offer to sell or to resell, any ticket of admission to any event that has not
71 been identified in a public notice as a public sale ticket, in compliance with this section;

72 Section 4. Except as otherwise provided in this Act, it shall be unlawful for any ticket
73 issuer to

74

75 (a) Employ a form of paperless ticketing that is not readily transferable to another
76 customer through a transaction that is independent of the operator or operator's agent, unless a
77 purchaser is given the option at the time of first public sale to purchase the same tickets at the
78 same established price in some other form, including, but not limited to, paper tickets, that are
79 readily transferable through a transaction that is independent of the operator or operator's agent.
80 For the purposes of this section, the use of a will call window or other service operated by the
81 operator or the operator's agent to facilitate the transaction of tickets between independent
82 parties shall not be considered a transaction that is independent of the operator or operator's
83 agent and shall not be mandated by the operator or operator's agent as the sole option to facilitate
84 such transfers or set as a condition for initial purchase of any ticket. Further, nothing in this
85 article shall be construed to prohibit an operator of a place of entertainment or such operator's
86 agent, from restricting the resale of tickets that are opened as part of a targeted promotion, at a
87 discounted price, or for free, to specific individuals or groups of individuals because of their
88 status as, or membership in, a specific community or group, including, but not limited to, persons

89 with disabilities, students, religious or civic organizations, or persons demonstrating economic
90 hardship; provided, however that tickets offered promotionally to the general public shall not be
91 considered as tickets offered to specific individuals or groups of individuals. Any promotional
92 discounted or free tickets for which the operator or operator's agent restricts resale must be
93 clearly marked as such.

94 (b) Activities prohibited to ticket issuers by this Act include, but are not limited to:

95 (i) purporting to impose license or contractual terms on the initial sale of event tickets
96 (including but not limited to terms printed on the back of a physical ticket) that prohibit resale of
97 the ticket, or that restrict the price or other terms and conditions under which a ticket may be
98 resold;

99 (ii) requiring the purchaser of a ticket, whether for a single event or for a series or season
100 of events, to agree not to resell the ticket, or to resell the ticket only through a specific channel
101 approved by the ticket issuer;

102 (iii) bringing legal action, based on an unlawful prohibition or restriction on resale of an
103 event ticket, against (A) a purchaser who resells or offers to resell an event ticket without
104 permission of the ticket issuer, or in violation of a restriction purportedly imposed by the ticket
105 issuer;

106 (B) persons who facilitate or provide services for the resale of event tickets without such
107 permission or in alleged violation of such a restriction; or

108 (C) the operator of a physical or electronic marketplace in which a ticket is offered for
109 resale without such permission or in alleged violation of such a restriction;

110 (iv) imposing any penalty on a ticket purchaser who resells or offers to resell an event
111 ticket without permission or in violation of a restriction purportedly imposed by the ticket issuer,
112 or treating such a purchaser in any material way less favorably than a similarly situated
113 purchaser who does not resell or offer to resell an event ticket, or who complies with resale
114 restrictions purportedly imposed by the ticket issuer;

115 (v) employing technological means for the purpose or with the foreseeable effect of
116 prohibiting or restricting the resale of event tickets, including but not limited to issuing event
117 tickets in an electronic form that is not readily transferrable to a subsequent purchaser, or
118 conditioning entry into the venue on presentation of a token (such as the original purchaser's
119 credit card or state-issued identification card) that cannot be readily transferred to a subsequent
120 purchaser; or

121 (vi) Seeking to limit or restrict the price, or to impose a minimum or maximum price, at
122 which an event ticket may be resold.

123 Section 5. (a) It shall be unlawful for any person to engage in the primary or
124 secondary market for event ticket sales as a trade or business in any manner specified in
125 subsection (b) without complying with the consumer protection minimum standards specified in
126 this section. (b) This section applies to all persons engaged in the trade or business of: (i)
127 acting as a ticket issuer; (ii) engaging in the resale of event tickets; or (iii) providing a physical or
128 electronic marketplace for the sale or resale of event tickets by other persons. (c) An individual
129 who resells no more than [80] event tickets in any 12-month period shall not be considered to be
130 engaged in the trade or business of reselling event tickets for purposes of this section. (d) All
131 persons subject to this section shall: (i) maintain a toll-free telephone number for complaints and
132 inquiries regarding its activities in the sale or resale of event tickets; (ii) implement and
133 reasonably publicize a standard refund policy that meets the minimum standards stated in
134 subsection (e). A person subject to this section by engaging in the resale of event tickets may
135 satisfy the requirements of this section by engaging in such resale in a physical or electronic
136 marketplace that fully complies with this section. (e) The standard refund policy referenced in
137 subsection (d)(i) shall provide a consumer who purchases an event ticket a full refund if :

138 (A) the event is cancelled before the scheduled occurrence of the event, and is not re-
139 scheduled; (B) the event ticket received by the purchaser is counterfeit;

140 (C) the event ticket has been cancelled by the ticket issuer for non-payment by the
141 original purchaser, or for any reason other than an act or omission of the consumer;

142 (D) the event ticket materially and to the detriment of the consumer fails to conform to
143 the description provided by the seller or reseller; or

144 (E) the event ticket was not delivered to the consumer prior to the occurrence of the
145 event, unless such failure of delivery was due to any act or omission of the consumer;

146 (ii) shall include in a full refund the full price paid by the consumer for the event ticket,
147 together with any fees charged in connection with that purchase, including but not limited to
148 convenience fees, processing fees, at-home printing charges, shipping and handling charges, or
149 delivery fees; and (iii) may condition entitlement to a refund upon timely return of the ticket
150 purchased, and may include reasonable safeguards against abuse of the policy. (f) Nothing in
151 this section shall be construed to prohibit any person subject to this section from implementing
152 consumer protection policies that exceed the minimum standard set forth in this section, and that
153 are otherwise compliant with this Act.

154 Section 6. (a) The Commissioner of Public Safety may bring a civil action for
155 enforcement of any violation of this section, in the same manner, by the same means, and with
156 the same jurisdiction, powers and duties, as apply to that office in its enforcement of other laws
157 of the Commonwealth for the protection of consumers or for the prevention of unfair or
158 deceptive acts or practices. (b) (i) Notwithstanding any other provision of law, in order to

159 remedy any violation of this Act, the Commissioner of may bring a civil action in a court of the
160 Commonwealth of appropriate jurisdiction:

161 (A) to enjoin further violation of this Act by the defendant; or

162 (B) to obtain damages on behalf of residents of the State, in a total amount equal to
163 the greater of (1) the actual monetary loss suffered by such residents; (2) the amount determined
164 under paragraph (ii).

165 (C) Statutory damages.

166 (A) In general. For purposes of paragraph (b)(1)(B)(ii), the amount determined under
167 this paragraph is the amount calculated by multiplying the number of violations by up to \$100,
168 with each ticket sold, resold or offered for sale or resale in violation of this Act counted as a
169 separate violation.

170 (B) Limitation. For any violation of this Act with respect to any one event, the amount
171 determined under subparagraph (A) may not exceed \$100,000.

172 (C) Aggravated damages. Notwithstanding subparagraph (A) or (B), the court may
173 increase a damage award to an amount equal to not more than three times the amount otherwise
174 available under this paragraph if the defendant was previously found to have violated this Act in
175 a civil action.

176 (iii) Attorney fees. In the case of any successful action under paragraph (i), the court, in
177 its discretion, may award the costs of the action and reasonable attorney fees to the State.

178 (iv) Construction. For purposes of bringing any civil action under paragraph (i), nothing
179 in this Act shall be construed to prevent the Department of Public Safety from exercising the
180 powers conferred upon it by the laws of the Commonwealth to:

181 (A) conduct investigations;

182 (B) administer oaths or affirmations; or

183 (C) Compel the attendance of witnesses or the production of
184 documentary and other evidence.

185 (v) Statute of limitations. No action may be brought under this
186 subsection unless such action is begun within 2 years of the date of the act complained of.

187 Section 7. Nothing in this Act shall be interpreted to invalidate restrictions on the resale
188 of tickets imposed by: (a) sponsors or promoters of events intended solely to benefit charitable
189 endeavors, for which all tickets are distributed free of charge; (b) not-for-profit educational

190 institutions, with respect to athletic events involving athletes or teams of such institutions, to the
191 extent that such restrictions apply to tickets initially distributed by the institution to:

192 (i) students, faculty, staff members or alumni without charge; or

193 (ii) Members of bona fide booster organizations consisting of those making substantial
194 financial contributions to the institution.

195 Section 8. The Commissioner of Public Safety is authorized, pursuant to Chapter 30A to
196 issue regulations to implement the provisions of this Act. Such regulations may include, but
197 shall not necessarily be limited to: (a) Modifying the 15-day advance notice period and other
198 provisions of Section 4, for certain defined categories of sporting events for which the date, time,
199 venue or participants are not likely to be ascertainable far enough in advance to permit full
200 compliance with that section; (b) Specifying further categories of information to be included in a
201 public notice under section 4; (c) Prescribing supplementary required methods of public
202 notification in addition to those specified in section 4(d); (d) Prescribing allowable methods for
203 marking of public sale tickets, as required by section 4(e), including in cases in which the ticket
204 does not take tangible form; (e) Defining categories of persons otherwise subject to this section
205 who are temporarily or indefinitely excluded from its provisions, or against whom the
206 Commissioner of Public Safety determines to forebear from enforcement of this Act in whole or
207 in part, if the Commissioner determines that the activities of such persons otherwise subject to
208 this section have a relatively insignificant impact on commerce in event tickets.