

SENATE BILL 609

By Yager

AN ACT to amend Tennessee Code Annotated, Title 62,
relative to professions.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 62, is amended by adding the following language as a new, appropriately designated chapter:

62-45-101. This chapter shall be known and may be cited as the "Fairness in Ticketing Act of 2013."

62-45-102. The general assembly finds:

(1) The sports and entertainment industries are among this state's most important, attracting millions of paying fans to games, concerts and performances, generating hundreds of millions of dollars of economic impact and creating a cultural brand known to fans around the world;

(2) A free market for tickets in the sports and entertainment industry is too often violated by bad actors in the ticket resale market who prey on fans of live entertainment in this state;

(3) Professional scalpers routinely purchase as many of the best seats as possible the second they go on sale, often using computer software in violation of this state's law to facilitate those purchases, and hide behind the anonymity of the Internet, for the sole purpose of reselling tickets to make a profit, depriving consumers of the opportunity to purchase tickets at the price set by performers, clubs and arenas along with depriving artists and sports clubs of the ability to set prices for their own performances;

(4) A free market depends on informed consumers, yet professional scalpers rarely inform consumers about original ticket prices, or that consumers are shopping on ticket resale web sites where prices often exceed face value, or that the seats offered on these web sites may not be in the possession of the professional scalpers; and

(5) The general assembly must act to ensure a free market for tickets whereby consumers know what they are buying, artists and teams have the ability to ensure that fans have access to great seats at fair prices, and deceptive, anonymous resale and deceptive Internet marketing practices are prohibited.

62-45-103. As used in this chapter:

(1) "Affinity group":

(A) Means an identifiable group of people who receive special privileges as members of the group and who:

(i) Are members of the same organization; or

(ii) Are customers of the same person; and

(B) Does not mean customers of a reseller;

(2) "Athletic contest" means:

(A) Any intercollegiate sporting event;

(B) Any sporting event staged by any professional club; or

(C) Any sporting event staged by any sanctioning body;

(3) "Commissioner" means the commissioner of commerce and insurance;

(4) "Department" means the department of commerce and insurance;

(5) "Entertainment event" means any performance of music, comedy, dance, film, lecture or theater, or exhibition of art, for which an admission price is charged;

(6) "Face value" means the face price of a ticket, as determined by the event presenter and printed on the ticket, inclusive of all applicable taxes, service charges and fees;

(7) "Initial sale" means:

(A) The first sale of a ticket for a specific entertainment event by:

(i) The owner or operator of a place of entertainment or of the entertainment event; or

(ii) An agent of any such owner or operator;

(B) "Initial sale" includes the distribution of tickets by a producer, promoter, or place of entertainment, pursuant to a written agreement for the presentation of an entertainment event or athletic contest;

(8) "Performance agent" means an employee of a place of entertainment or of its agent, or a producer, promoter, performer, or any other person associated with an event, who lawfully controls any tickets prior to their release for sale to the general public;

(9) "Online marketplace":

(A) Means an Internet web site that provides a forum for the buying and selling of tickets; and

(B) Does not include a reseller, ticket issuer or an agent of an owner or operator of a place of entertainment;

(10) "Original purchaser" means a person who buys one (1) or more tickets to an athletic contest or entertainment event with the intention of using such tickets solely for the use by such person or the original purchaser's invitees or agents;

(11) "Person" means any individual, partnership, firm, association, corporation, limited liability company, or combination of individuals or legal entities;

(12) "Place of entertainment" means any entertainment facility within this state, whether publicly or privately owned or operated, such as a theater, stadium, museum, arena, racetrack or other place where entertainment events or athletic contests are held, and for which an admission fee is charged;

(13) "Pre-sale" means a sale of tickets, conducted prior to any sale to the general public to members of an affinity group by a person who is:

(A) An owner or operator of a place of entertainment; or

(B) An agent of an owner or operator of a place of entertainment;

(14) "Producer" means a person who stages entertainment events, such as a performance, concert, exhibit, game or athletic contest, held at a place of entertainment;

(15) "Professional club" means any club organized under the rules and regulations of:

(A) Major League Baseball;

(B) The National Association of Professional Baseball Clubs;

(C) The National Football League;

(D) The National Basketball Association;

(E) The Southern Professional Hockey League; or

(F) The National Hockey League;

(16) "Promoter" means a person who organizes financing and publicity for an entertainment event;

(17) "Public sale tickets" means tickets that are offered for sale to the general public;

(18) "Resale" means a sale, other than a pre-sale or initial sale, of a ticket by a person other than the owner or operator of a place of entertainment, or an agent of any such person;

(19) "Resale web site" means an Internet web site, or portion of a web site, whose primary purpose is to facilitate the resale of tickets to consumers;

(20) "Resell" means to offer for resale or to consummate a resale;

(21) "Reseller" means any person who resells a ticket;

(22) "Sanctioning body" means:

(A) Any association that organizes and sanctions national sporting competitions, whether professional or amateur, including, but not limited to, the Professional Golf Association, United States Golf Association, NASCAR, the U.S. Tennis Association, World Tennis Association, U.S. Olympic Committee, and Ultimate Fighting Championship; and

(B) Organizations that sanction individuals or teams for participation in international sporting competitions on behalf of the United States;

(23) "Ticket" means a printed, electronic or other type of evidence of the right, option or opportunity to occupy space at or to enter or attend an entertainment event even if not evidenced by any physical manifestation of such right;

(24)

(A) "Ticket broker" means any person in the business of reselling tickets to events at places of entertainment in this state, and who charges a premium in excess of the face value of the ticket;

(B) "Ticket broker" does not include:

(i) An individual who does not regularly engage in the business of reselling tickets, who resells less than sixty (60) tickets during any one-year period, and who initially obtained any tickets he or she sold to others for personal use, or the use of immediate family members, friends or known acquaintances; or

(ii) Any person operating an Internet web site whose primary business is to serve as a resale marketplace whereby third parties can buy and sell tickets, and who does not otherwise engage in the business of reselling tickets; and

(25) "Ticket issuer"

(A) Means any person, other than an online marketplace or reseller, that makes tickets available directly or indirectly, at an initial sale or pre-sale, to the general public; and

(B) May include the owner or operator of a place of entertainment, the producer or sponsor of an entertainment event, a sports team or sports league of teams participating in an entertainment event, a theater company, musical group or similar participant in an entertainment event, or an agent of any such person mentioned above.

62-46-104.

(a) A ticket broker shall register with the department within one hundred eighty (180) days of the effective date of this act or within thirty (30) days of commencing business as a ticket broker in this state, whichever is later, and maintain an active registration with the department. To have and maintain an effective registration, a ticket broker shall:

(1) Maintain a permanent office or place of business in this state for the purpose of engaging in the business of a ticket broker;

(2) Submit the ticket broker's business name, a Tennessee street address, and other information as requested on a form designated by the department;

(3) Certify the broker does not use, sell, give, transfer, or distribute software that is primarily designed for the purposes of interfering with the operations of any ticket seller, in violation of § 39-17-1105;

(4) Pay an annual registration fee as determined by the department sufficient to reimburse the department for the administration of this chapter;

(5) Renew the registration annually; and

(6) Register for sales and use tax purposes pursuant to title 67, chapter 6, part 6.

(b) Upon registration, the department shall issue each ticket broker a unique registration number, and publish a list of registered ticket brokers, including registration numbers, on the department's website. No person shall register as a ticket broker who has been convicted of a felony and who has not been pardoned or had restoration of such person's citizenship pursuant to title 40, chapter 29.

62-45-105.

(a) In order to ensure that consumers of tickets for resale are fully informed as to the nature of resale transactions, a ticket broker shall:

(1) Post at its established place of business, and on any web site operated or employed by the ticket broker, the terms of the purchaser's right to cancel the purchase of a ticket from the ticket broker;

(2) Disclose to the purchaser the refund policy of the ticket broker should an athletic contest or entertainment event be canceled; and

(3) Disclose to any prospective ticket resale purchaser, whether on ticket broker's resale web site or in person, prior to any resale, the difference between the face value of the ticket and the amount the ticket broker is charging the purchaser for such ticket.

(b) Any ticket broker offering to resell tickets to an athletic contest or entertainment event through any printed, broadcast or Internet advertising shall include in such offering the registration number issued by the department to such ticket broker.

62-45-106.

(a) Resale web sites offering tickets to any entertainment event or athletic contest shall disclose, clearly and conspicuously, to any web site user in this state the following information:

(1) The face value and exact location of the seat offered for sale, including any section, row or seat number, or specifically designated as accessible seating printed on the ticket;

(2) If operated by a ticket broker, the broker's active registration number issued by the department;

(3) Whether the ticket offered for sale is within the actual possession of the reseller and available for delivery;

(4) Whether the reseller is actively seeking to procure the ticket; and

(5) If the ticket is not in the physical possession of the reseller, the period of time when the reseller reasonably expects to have the ticket in hand and available for delivery.

(b) Resale web sites shall disclose to users, clearly and conspicuously, any other disclosures required by this chapter, including the nature of the resale web site as a secondary web site, and that prices on the resale web site often vary from the initial sale price.

(c) To the extent that any use by a resale web site of a uniform resource locator (URL) incorporates a trademark rightfully owned by another, except in the post-domain path of the URL, such that said incorporation amounts to a violation of federal trademark law, such violation shall be a violation of the Tennessee Consumer Protection Act, compiled in title 47, chapter 18, part 1.

62-45-107. Notwithstanding any other provision of this chapter:

(1) No law shall prohibit the resale or offering for resale of any ticket to an athletic contest or entertainment event covered under this chapter by a resale web site, a ticket broker or a ticket broker's employees, agents, and assigns in any area where such resale or offering for resale is authorized in writing by the organizer of the entertainment event, and the owner or operator of the place of entertainment where such contest or event is held; and

(2) To preserve the rights of consumers to secure tickets to entertainment events through safe and reliable means and to protect freedom of enterprise, nothing in this chapter shall prevent operators of places of entertainment, event presenters or their agents from utilizing any ticketing methods for the initial sale of tickets, through any medium, whether existing now or in the future.

62-46-108. Any ticket broker who violates this chapter is subject to the suspension or revocation of its registration by the department. In addition to any civil remedy provided for herein, any person who knowingly violates this chapter commits a Class B misdemeanor offense; punishable only by fine.

62-45-109.

(a) This chapter shall not apply to any sale of tickets made pursuant to the Tennessee Education Lottery Implementation Law, compiled in title 4, chapter 51.

(b) This chapter shall not apply to any sale of tickets made by the operator, convention and visitors bureau, or of any hotel or other place of public accommodation, as described in title 62, chapter 7.

62-45-110. A ticket represents a revocable license, held by the person in possession of the ticket, to use a seat or standing area in a specific place of entertainment for a limited time.

62-45-111. Any person aggrieved by any violation of this chapter may file a written complaint with the division of consumer affairs or the attorney general and reporter. The

attorney general and reporter shall have authority to investigate and remediate any violation of this chapter, pursuant to title 47, chapter 18.

62-45-112.

(a) The department shall keep a public record of all applications for registration.

(b) All official records of the department, or affidavits by the commissioner as to the contents of the records, shall be prima face evidence of all matters required to be kept in the records.

(c) Written complaints made pursuant to § 62-45-111 shall be available for inspection and copying.

SECTION 2. The commissioner is authorized to promulgate rules and regulations to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with Tennessee Code Annotated, Title 4, Chapter 5.

SECTION 3. For purposes of promulgating rules and regulations, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect October 1, 2013, the public welfare requiring it.