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FISCAL AND POLICY NOTE
First Reader

Senate Bill 881
Finance

(Senator Jennings)

Commercial Law - Consumer Protection - Ticket Transfers, Sales, and Resales

This bill establishes specified customer service requirements and the circumstances under which the cost for a ticket to an entertainment event must be refunded. The provisions apply to a ticket issuer, a ticket seller, a primary ticket sales platform, and a secondary ticket exchange, as defined by the bill. The bill requires these entities to maintain a toll-free telephone number for complaints and inquiries and to implement a standard refund policy that provides a full refund or comparable replacement tickets in specified circumstances. The bill expands the ability of consumers to transfer, offer for resale, or resell a ticket by limiting the authority of these entities to impose restrictions on the transfer, offer for resale, or resale of a ticket. Violation of the bill is an unfair or deceptive trade practice under the Maryland Consumer Protection Act (MCPA), subject to MCPA's civil and criminal penalty provisions.

Fiscal Summary

State Effect: The bill's imposition of existing penalty provisions does not have a material impact on State finances or operations. If the Consumer Protection Division of the Office of the Attorney General receives fewer than 50 complaints per year stemming from the bill, the additional workload can be handled with existing resources.

Local Effect: The bill's imposition of existing penalty provisions does not have a material impact on local government finances or operations.

Small Business Effect: Meaningful.

Analysis

Bill Summary: The bill defines several terms related to ticket transfers, sales, and resales. As in current law, “ticket” is defined as a ticket for admission to an entertainment event; “entertainment event” is defined as a performance, recreation, amusement, diversion, spectacle, show, or any similar event, and includes a theatrical or musical performance, concert, film, game, ride, or sporting event.

- “Primary ticket sales platform” is a marketplace operated by or on behalf of a ticket issuer for consumers to make an initial purchase of tickets from a ticket issuer.
- “Resale” means any purchase of a ticket subsequent to the initial purchase of the ticket from a ticket issuer, regardless of the method of delivery or transfer of the ticket.
- “Secondary ticket exchange” means an electronic marketplace that enables consumers to sell, purchase, and resell tickets.
- “Ticket issuer” means any person that issued tickets, directly or indirectly, for an entertainment event.
- “Ticket seller” means a person engaged in the sale or resale of tickets.
- “Venue” means a theater, stadium, field, hall, or any other facility at which an entertainment event takes place.

Ticket Refunds

The standard refund policy established by the bill requires a ticket issuer, ticket seller, primary ticket sales platform, or secondary ticket exchange to provide a full refund (or comparable replacement tickets) if:

- the entertainment event is cancelled without being rescheduled;
- the ticket a purchaser receives is counterfeit;
- the ticket issuer has cancelled the ticket for nonpayment of the ticket price by the initial purchaser or for any reason other than an act or omission of the purchaser;
- the ticket fails to conform to the description that the ticket seller provided;

- the purchaser did not receive the ticket before the occurrence of the entertainment event (unless the failure of the receipt was due to an act or omission of the purchaser); or
- the ticket did not provide the purchaser admission to the entertainment event for which the ticket was purchased.

The refund must include the full amount the purchaser paid for the ticket as well as all fees charged in connection with the purchase of the ticket (including download fees, delivery fees, and shipping fees). A ticket seller may satisfy the refund requirements by using a secondary ticket exchange that complies with the established requirements.

The bill's requirements may not be construed to prohibit a ticket issuer, ticket seller, primary ticket sales platform, or secondary ticket exchange from taking reasonable actions to remediate incidents of fraud, or from implementing consumer protection policies that exceed the standards established under the bill.

Prohibitions and Restrictions on Ticket Transfers, Resales, or Offers for Resale

A ticket issuer, ticket seller, primary ticket sales platform, or secondary ticket exchange may not:

- prohibit or restrict the transfer, resale, or offer for resale of a ticket;
- impose license or contractual terms on the initial sale of a ticket that include specified restrictions;
- require the purchaser of a ticket to agree (1) not to transfer, offer for resale, or resell the ticket or (2) to only transfer, offer for resale, or resell the ticket using a secondary ticket exchange (or other method) that the ticket issuer approves;
- penalize or discriminate against a purchaser of a ticket who transfers, offers for resale, or resells the purchaser's ticket;
- penalize, discriminate against, or deny access to a ticket holder solely on the grounds that the ticket was resold; or
- use specified technology or ticket delivery methods that have the effect of precluding or hindering the ability of the purchaser of a ticket to transfer, offer for resale, or resell the ticket.

Prohibitions on Legal Action

The bill also prohibits a ticket issuer or primary ticket sales platform from taking legal action that is based on an action of the ticket issuer or primary ticket sales platform that is a violation of specified provisions in the Commercial Law Article. Additionally, a ticket issuer or primary ticket sales platform may not take legal action that is against (1) a purchaser of a ticket who transfers, offers for resale, or resells a ticket; (2) a person that facilitates the resale of a ticket; (3) a person that provides services related to the resale of a ticket; or (4) the operator of a secondary ticket exchange.

An operator of a venue (or an agent of the operator) may (1) maintain and enforce any policies regarding conduct or behavior at the venue; (2) establish limits on the quantity of tickets purchased during an initial sale of tickets for an entertainment event; (3) revoke or restrict season tickets for specified reasons.

An operator of a venue (or agent of the operator) may also restrict the offer for resale or the resale of tickets initially sold or given to individuals or groups as part of a targeted promotion or a discounted price because of the individuals' or groups' status. The restriction includes groups or individuals characterized by a disability, membership in a religious or civic organization, or economic hardship. The restriction also requires that tickets sold to specified individuals or groups are (1) not offered promotionally to the general public and (2) marked clearly as a ticket restricted to the specified individuals or groups.

Current Law: A person may not intentionally sell or use software to circumvent a security measure, an access control system, or any other control or measure on a ticket seller's website that is used to ensure an equitable ticket buying process. A violation is an unfair or deceptive trade practice under MCPA.

An unfair or deceptive trade practice under MCPA includes, among other acts, any false, falsely disparaging, or misleading oral or written statement, visual description, or other representation of any kind which has the capacity, tendency, or effect of deceiving or misleading consumers. The prohibition against engaging in any unfair or deceptive trade practice encompasses the offer for or actual sale, lease, rental, loan, or bailment of any consumer goods, consumer realty, or consumer services; the extension of consumer credit; the collection of consumer debt; or the offer for or actual purchase of consumer goods or consumer realty from a consumer by a merchant whose business includes paying off consumer debt in connection with the purchase of any consumer goods or consumer realty from a consumer.

The Consumer Protection Division is responsible for enforcing MCPA and investigating the complaints of aggrieved consumers. The division may attempt to conciliate the matter, issue a cease and desist order, or file a civil action in court. A merchant who violates MCPA is subject to a fine of up to \$1,000 for the first violation and up to \$5,000 for each subsequent violation. In addition to any civil penalties that may be imposed, any person who violates MCPA is guilty of a misdemeanor and, on conviction, is subject to a fine of up to \$1,000 and/or imprisonment for up to one year.

Background: According to *The New York Times*, ticket sellers (including promoters, producers, artists, and sports teams) have increasingly opted to utilize a process known as “paperless ticketing,” in which tickets are purchased by credit card and the purchaser is required to present the same credit card as well as photo identification in order to gain entry to an event. Ticket sellers, including large-scale sellers like Ticketmaster, maintain that the restrictions are intended as safeguards to prevent scalping; bulk ticket purchases by automated software bots; and the use of counterfeit, stolen, or lost tickets. Critics of the practice, however, claim that the restrictions prevent purchasers from giving tickets as gifts or reselling them and that the restrictions actually target independent resale marketplaces (e.g., StubHub) where consumers can purchase tickets for less than face value. Of the more than 100 million live-event tickets sold each year, only about 1% are paperless tickets. In 2010, New York became the first state to pass legislation to specifically establish that consumers may transfer paperless tickets to others as they please. Several other states, including Minnesota, Massachusetts, Connecticut, North Carolina, Florida, and New Jersey, have introduced similar legislation.

Small Business Effect: Small businesses that sell tickets to entertainment events and that currently engage in the bill’s prohibited practices would need to alter their ticket sale practices and establish the bill’s required refund procedures. Such businesses would also need to establish the toll-free number required under the bill. On the other hand, small businesses currently engaged in the activities protected under the bill could benefit. Such businesses would also be protected from legal actions prohibited under the bill.

Additional Information

Prior Introductions: None.

Cross File: HB 1266 (Delegate Frick) - Economic Matters.

Information Source(s): Office of the Attorney General (Consumer Protection Division), *New York Times*, Department of Legislative Services

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