

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1114 (Delegate Frick, *et al.*)
Economic Matters

Commercial Law - Consumer Protection - Nontransferable Ticketing Systems

This bill prohibits a ticket issuer from using a nontransferable ticketing system except in specified circumstances. In addition, the bill prohibits a ticket issuer from penalizing or discriminating against a purchaser or seller of a ticket or denying to that purchaser or seller access to an entertainment event solely on the grounds that a ticket was resold or purchased on a particular ticket platform. The bill authorizes a ticket issuer, as specified, to (1) maintain and enforce any policies regarding conduct, behavior, or age at a venue; (2) establish limits on the quantity of tickets purchased; (3) revoke or restrict season tickets for reasons related to violations of venue policies; and (4) opt not to offer tickets in transferable form in specified circumstances.

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:

- “Nontransferable ticketing system” is defined as a ticketing system that restricts, through contractual or technological means, the ability of a ticket purchaser to freely use, give away, or resell the purchaser’s ticket.
- “Ticket issuer” means a person that (directly or indirectly) issues tickets for an entertainment event. A ticket issuer includes (1) a musician or musical group; (2) an operator of a venue; (3) a sponsor or a promoter of an entertainment event; (4) a sports team participating in an entertainment event; (5) a sports league whose teams are participating in an entertainment event; (6) a theater company; and (7) an agent of any of these entities.
- “Ticket platform” means a marketplace that enables a consumer to purchase and sell tickets.
- “Venue” means a theater, a stadium, a field, a hall, or any other facility at which an entertainment event takes place.

The bill prohibits a ticket issuer from using a nontransferable ticketing system unless the ticket issuer offers a purchaser of a ticket an option to purchase the same ticket in a transferable form that allows the purchaser to give away or resell the ticket (independent of the preferred ticket platform of the issuer). The option to purchase in transferable form must be offered (1) at the time of initial sale of the ticket and (2) without penalty or discrimination.

A ticket issuer may opt not to offer tickets in a transferable form if the tickets in nontransferable form are sold or given to individuals or groups as part of a targeted promotion or at a discounted price because of the individuals’ or groups’ status. This option includes groups or individuals characterized by a disability, membership in a religious or civic organization, or economic hardship. The option also requires that tickets sold to certain 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.

In addition, a ticket issuer may opt not to offer or sell tickets in a transferable form if the tickets are for an event not open to the general public.

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.

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 engage in the bill's prohibited practices need to alter their ticket sale practices. On the other hand, small businesses engaged in the activities protected under the bill may benefit.

Additional Information

Prior Introductions: None.

Cross File: SB 892 (Senator Feldman, *et al.*) - Finance.

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

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