

AMENDED IN ASSEMBLY MARCH 21, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 329

Introduced by Assembly Member Pan

February 13, 2013

An act to ~~amend Section 22500~~ *repeal and add Chapter 21 (commencing with Section 22500) of Division 8 of the Business and Professions Code, relating to ticket-sellers issuers.*

LEGISLATIVE COUNSEL'S DIGEST

AB 329, as amended, Pan. ~~Ticket-sellers.~~ *issuers and resale ticket agents.*

Existing law provides comprehensive regulation of ticket sellers, including requiring disclosure of specified information to consumers, maintaining records, and maintaining a permanent business address, among other provisions. Existing law provides that a violation of the laws regulating ticket sellers is a misdemeanor.

This bill would repeal and revise these provisions to regulate ticket issuers and resale ticket agents, as defined, regarding, among other things, restrictions placed on the resale of event tickets, consumer protection requirements, and the imposition of civil penalties based on a violation of these provisions. The bill would further provide that a person who intentionally uses software to circumvent a measure on a ticket issuer's or resale ticket agent's website that is used to ensure an equitable ticket buying process is guilty of a misdemeanor.

Because this bill would create a new crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state.

Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Existing law provides a comprehensive scheme for the regulation of ticket sellers and, among other things, requires ticket sellers, as defined, to have a permanent business address from which tickets may only be sold, to include that address in advertisements, and to be licensed, as specified.

This bill would make technical, nonsubstantive changes to that provision.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes. State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 21 (commencing with Section 22500) of
2 Division 8 of the Business and Professions Code is repealed.

3 SEC. 2. Chapter 21 (commencing with Section 22500) is added
4 to Division 8 of the Business and Professions Code, to read:

5
6 CHAPTER 21. TICKET ISSUERS AND RESALE TICKET AGENTS

7
8 22500. For purposes of this chapter:

9 (a) "Event" means any concert, theatrical performance, sporting
10 event, exhibition, show, or similar scheduled activity taking place
11 in the state that is open to the general public, for which an
12 admission fee is charged, and that is held in a venue
13 accommodating more than 1,000 people, including, but not limited
14 to, venues for which public funding has been provided for the
15 construction, maintenance, or operation of the venue or any
16 infrastructure related thereto or that are located on property owned
17 by a municipality or other government entity.

18 (b) "Event ticket" means any physical, electronic, or other form
19 of a certificate, document, voucher, token, or other evidence
20 indicating that the bearer, possessor, or person entitled to
21 possession through purchase or otherwise has either a revocable
22 or irrevocable right, privilege, or license to enter an event venue
23 or occupy a particular seat or area in a venue with respect to one

1 *or more events or an entitlement to purchase that right, privilege,*
2 *or license with respect to one or more future events.*

3 (c) *“Person” means any natural person, partnership,*
4 *corporation, association, or other legal entity.*

5 (d) *“Public funding” means the provision by the state, any*
6 *county, city and county, municipality, or other subdivision of the*
7 *state, or by any local development corporation or similar*
8 *instrumentality whose creation was authorized by the state or by*
9 *any county, city and county, municipality, or other subdivision of*
10 *the state, of funding, grants, payments, or financial support,*
11 *including the use of public funds through or from the use of the*
12 *issuance of tax-exempt bonds, payments in lieu of taxes, property*
13 *tax abatements, lotteries, sales taxes, or levies on parking, hotels,*
14 *alcohol, car rentals, cigarettes, or other goods or services.*

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

22 (f) *“Resale ticket agent” means any person engaging in the*
23 *resale of tickets or any person providing a physical or electronic*
24 *marketplace for the sale or resale of event tickets by other persons.*
25 *A “resale ticket agent” shall not include a person who resells no*
26 *more than 80 event tickets in any 12-month period.*

27 (g) *“Ticket issuer” means any person that makes event tickets*
28 *available, directly or indirectly for initial sale, to the general*
29 *public, and may include the operator of a venue, the sponsor or*
30 *promoter of an event, a sports team participating in an event or a*
31 *league whose teams are participating in an event, a theater*
32 *company, musical group, or similar participant in an event, or an*
33 *agent of any such person. “Ticket issuer” shall not include a*
34 *person involved in, or facilitating, event ticket resale, an officially*
35 *appointed agent of an air carrier, ocean carrier, or motor coach*
36 *carrier who purchases or sells tickets in conjunction with a tour*
37 *package accomplished through a primary event promoter or his*
38 *or her agent by written agreement, or a nonprofit charitable*
39 *organization that is exempt from tax under Section 501(c)(3) of*
40 *the Internal Revenue Code.*

1 (h) “Venue” means the theater, stadium, field, hall, or other
2 facility where an event takes place.

3 22501. (a) Except as otherwise provided in this chapter, it
4 shall be unlawful for any ticket issuer to do any of the following:

5 (1) Prohibit or restrict the resale or offering for resale of an
6 event ticket by a lawful possessor thereof.

7 (2) Purport to impose license or contractual terms on the initial
8 sale of event tickets that prohibit resale of the event ticket,
9 including, but not limited to, terms printed on the back of a physical
10 event ticket, or that restrict the price or other terms and conditions
11 under which an event ticket may be resold or transferred.

12 (3) Require the purchaser of an event ticket, whether for a single
13 event or for a series or season of events, to agree not to resell the
14 event ticket, or to resell the event ticket only through a specific
15 means approved by the ticket issuer.

16 (4) Bring legal action based on an unlawful prohibition or
17 restriction on the resale of an event ticket against any of the
18 following:

19 (A) A purchaser who resells or offers to resell an event ticket
20 without permission of the ticket issuer or in violation of a
21 restriction purportedly imposed by the ticket issuer.

22 (B) A person or persons who facilitate or provide services for
23 the resale of event tickets without the permission of the ticket issuer
24 or in violation of a restriction purportedly imposed by the ticket
25 issuer.

26 (C) An operator of a physical or electronic marketplace in which
27 an event ticket is offered for resale without the permission of the
28 ticket issuer or in violation of a restriction purportedly imposed
29 by the ticket issuer.

30 (4) Impose a penalty on a ticket purchaser that resells or offers
31 to resell an event ticket without permission of the ticket issuer or
32 in violation of a restriction purportedly imposed by the ticket issuer
33 or treat that ticket purchaser in any material way less favorably
34 than a similarly situated ticket purchaser that does not resell or
35 offer to resell an event ticket or that complies with any resale
36 restrictions purportedly imposed by the ticket issuer.

37 (5) Employ technological means for the purpose, or with the
38 foreseeable effect of, prohibiting or restricting the resale of event
39 tickets, including, but not limited to, issuing event tickets in an
40 electronic form that is not readily transferrable to a subsequent

1 purchaser or conditioning entry into the venue on presentation of
2 a token, like the original purchaser's credit card or state-issued
3 identification card, that cannot be readily transferred to a
4 subsequent purchaser.

5 (6) Seek to limit or restrict the price, or to impose a minimum
6 or maximum price, at which an event ticket may be resold.

7 (b) Except as otherwise provided in this chapter, it shall be
8 unlawful for a resale ticket agent or ticket issuer to fail to meet
9 the requirements of Section 22503.

10 22502. (a) A resale ticket agent or ticket issuer shall maintain
11 a toll-free telephone number for complaints and inquiries regarding
12 its activities in the sale or resale of event tickets.

13 (b) A resale ticket agent or ticket issuer shall implement and
14 reasonably publicize a standard refund policy that meets the
15 minimum standards stated in subdivision (c).

16 (c) A standard refund policy shall do the following:

17 (1) Provide a consumer who purchases an event ticket a full
18 refund if the event is canceled before the scheduled occurrence of
19 the event and is not rescheduled, the event ticket received by the
20 purchaser is counterfeited, the event ticket is canceled by the ticket
21 issuer for nonpayment by the original purchaser or for any reason
22 other than an act or omission of the consumer, the event ticket
23 materially, and to the detriment of the consumer, fails to conform
24 to the description provided by the seller or reseller, or the event
25 ticket was not delivered to the consumer prior to the occurrence
26 of the event, unless the failure of delivery was due to any act or
27 omission of the consumer.

28 (2) Include in a full refund the full price paid by the consumer
29 for the event ticket, together with any fees charged in connection
30 with that purchase, including, but not limited to, convenience fees,
31 processing fees, at-home printing charges, shipping and handling
32 charges, and delivery fees.

33 (d) A standard refund policy may condition entitlement to a
34 refund upon timely return of the event ticket purchased and may
35 include reasonable safeguards against abuse of the policy.

36 (e) Nothing in this section shall be construed to prohibit any
37 person subject to this section from implementing consumer
38 protection policies that exceed the minimum standards set forth
39 in this section and that are otherwise in compliance with this
40 chapter.

1 22503. (a) (1) *A resale agent or ticket issuer that violates this*
 2 *chapter shall be subject to a civil action brought in the name of*
 3 *the people of the State of California by the Attorney General. The*
 4 *civil action may either enjoin further violation of this chapter by*
 5 *the defendant or impose a civil penalty, not to exceed one hundred*
 6 *thousand dollars (\$100,000), in a amount equal to the greater of*
 7 *the actual monetary loss suffered by those residents of the state*
 8 *or an amount determined under paragraph (2). Payment of the*
 9 *civil penalty shall be made pursuant to the provisions of subdivision*
 10 *(c) of Section 17206.*

11 (2) *The amount of damages determined under this paragraph*
 12 *shall be calculated by multiplying the number of violations of this*
 13 *chapter by an amount not greater than one hundred dollars (\$100).*
 14 *For the purposes this section, each ticket sold or offered for sale*
 15 *in violation of this chapter shall constitute a separate violation.*

16 (3) *Notwithstanding the civil penalty limitation in paragraph*
 17 *(1), a court may increase a civil penalty to an amount equal to not*
 18 *more than three times the amount otherwise available under this*
 19 *subdivision if the defendant was previously found to have violated*
 20 *this chapter in a civil action.*

21 (b) *In the case of a successful action under subdivision (a), a*
 22 *court, in its discretion, may award the costs of the action and*
 23 *reasonable attorney’s fees.*

24 (c) *Any claim made under this section shall be filed with a court*
 25 *of competent jurisdiction within two calendar years after the*
 26 *violation.*

27 22504. *A person who intentionally uses or sells software to*
 28 *circumvent a security measure, an access control system, or other*
 29 *control or measure on a ticket issuer’s or resale ticket agent’s*
 30 *Internet Web site that is used to ensure an equitable ticket buying*
 31 *process, is guilty of a misdemeanor.*

32 22505. *Nothing in this chapter shall be interpreted to invalidate*
 33 *restrictions on the resale of event tickets imposed by either:*

34 (a) *Sponsors or promoters of events intended solely to benefit*
 35 *charitable endeavors for which all event tickets are distributed*
 36 *free of charge.*

37 (b) *Nonprofit education institutions with respect to athletic*
 38 *events involving athletes or teams of those institutions, to the extent*
 39 *the restrictions apply to event tickets initially distributed to*
 40 *students, faculty, staff members, or alumni without charge or to*

1 *members of a bona fide booster organization consisting of those*
2 *making substantial financial contributions to the institution.*

3 22506. *The Department of Consumer Affairs may issue*
4 *regulations to implement the provisions of this chapter, including,*
5 *but not limited to, regulations that do both the following:*

6 (a) *Prescribe allowable methods for marking of public sales*
7 *tickets, including, but not limited to, the marking of event tickets*
8 *that are not tangible.*

9 (b) *Define categories of persons otherwise subject to this section*
10 *who are temporarily or indefinitely excluded from the provisions*
11 *of this chapter, or against whom the Attorney General determines*
12 *to forebear from enforcement of the chapter in whole or in part,*
13 *if the Attorney General determines the activities of those persons*
14 *have a relatively insignificant impact on commerce in event tickets.*

15 22507. *A ticket seller shall maintain records of ticket sales,*
16 *deposits, and refunds.*

17 22508. *Nothing in this chapter prohibits any local agency from*
18 *imposing any local fees or taxes.*

19 SEC. 3. *No reimbursement is required by this act pursuant to*
20 *Section 6 of Article XIII B of the California Constitution because*
21 *the only costs that may be incurred by a local agency or school*
22 *district will be incurred because this act creates a new crime or*
23 *infraction, eliminates a crime or infraction, or changes the penalty*
24 *for a crime or infraction, within the meaning of Section 17556 of*
25 *the Government Code, or changes the definition of a crime within*
26 *the meaning of Section 6 of Article XIII B of the California*
27 *Constitution.*

28 SECTION 1. ~~Section 22500 of the Business and Professions~~
29 ~~Code is amended to read:~~

30 22500. ~~(a) A ticket seller shall have a permanent business~~
31 ~~address from which tickets may only be sold and that address shall~~
32 ~~be included in any advertisement or solicitation, and shall be duly~~
33 ~~licensed as may be required by a local jurisdiction.~~

34 (b) ~~A violation of this section shall constitute a misdemeanor~~
35 ~~punishable by imprisonment in a county jail not exceeding six~~
36 ~~months, or by fine not exceeding two thousand five hundred dollars~~
37 ~~(\$2,500), or by both.~~

38 (c) ~~A person who engages, has engaged, or proposes to engage~~
39 ~~in a violation of this section shall be liable for a civil penalty not~~
40 ~~to exceed two thousand five hundred dollars (\$2,500) for each~~

1 violation, which may be assessed and recovered in a civil action
2 brought in the name of the people of the State of California by the
3 Attorney General, or a district attorney, or a city attorney of a city
4 having a population in excess of 750,000, and, with the consent
5 of the district attorney, by a city prosecutor in any city, county, or
6 city and county having a full-time prosecutor in any court of
7 competent jurisdiction. Payment of the civil penalty shall be made
8 pursuant to the provisions of subdivision (b) of Section 17206. For
9 the purposes of this section, each ticket sold or offered for sale in
10 violation of this section shall constitute a separate violation. The
11 remedies provided by this section are cumulative to each other and
12 to the remedies or penalties available under all of the other laws
13 of this state.

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