

AMENDED IN ASSEMBLY APRIL 25, 2013

AMENDED IN ASSEMBLY APRIL 18, 2013

AMENDED IN ASSEMBLY MARCH 21, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 329

Introduced by Assembly Member Pan
(Coauthors: Assembly Members Fong and Wieckowski)
(Coauthors: Senators Beall and Cannella)

February 13, 2013

An act to amend Sections 22501, 22502, 22502.1, 22502.2, 22502.3, and 22507 of, to amend the heading of Chapter 21 (commencing with Section 22500) of Division 8 of, to amend and renumber Section 22500 of, to add Section 22500 to, to repeal Sections 22503.5, 22503.6, and 22511 of, and to repeal and add Sections 22503, 22504, 22506, 22508, 22509, and 22510 of, 22505.5 to the Business and Professions Code, relating to business.

LEGISLATIVE COUNSEL'S DIGEST

AB 329, as amended, Pan. ~~Ticket issuers and resellers.~~ *sellers: equitable online ticket buying process: sale or use of circumventing software.*

Existing law provides for the comprehensive regulation of ticket sellers, and, among other things, requires disclosure of specified information to consumers and the maintenance of records and a permanent business address. Existing law provides that a violation of the laws regulating ticket sellers is a misdemeanor.

This bill would ~~revise and recast these provisions to regulate ticket issuers and extend certain requirements to ticket resellers, as defined,~~

regarding, among other things, restrictions placed on the resale of event tickets, as defined, consumer protection requirements, and the imposition of civil penalties for a violation of specified requirements. The bill would further *additionally* provide that a person who intentionally uses software to circumvent a security measure, access control system, or other control or measure on a ticket issuer's or ticket reseller's *seller's* Internet Web site that is used to ensure an equitable ticket buying process is guilty of a misdemeanor. The bill would authorize the Department of Consumer Affairs to issue regulations to implement these provisions, as specified.

Because this bill would create a new crime and expand the scope of an existing 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.

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

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

1 SECTION 1. ~~The heading of Chapter 21 (commencing with~~
2 ~~Section 22500) of Division 8 of the Business and Professions Code~~
3 ~~is amended to read:~~

4
5 CHAPTER 21. ~~TICKET ISSUERS AND TICKET RESELLERS~~

6
7 SEC. 2. ~~Section 22500 is added to the Business and Professions~~
8 ~~Code, to read:~~

9 22500. ~~For purposes of this chapter:~~
10 (a) ~~“Event” means any concert, theatrical performance, sporting~~
11 ~~event, exhibition, show, or similar scheduled activity taking place~~
12 ~~in the state that is open to the general public, for which an~~
13 ~~admission fee is charged, and that is held in a venue~~
14 ~~accommodating more than 1,000 people, including, but not limited~~
15 ~~to, venues for which public funding has been provided for the~~
16 ~~construction, maintenance, or operation of the venue or any~~
17 ~~infrastructure related thereto or that are located on property owned~~
18 ~~by a municipality or other government entity.~~

1 (b) “Event ticket” means any physical, electronic, or other form
2 of a certificate, document, voucher, token, or other evidence
3 indicating that the bearer, possessor, or person entitled to
4 possession through purchase or otherwise has either a revocable
5 or irrevocable right, privilege, or license to enter an event venue
6 or occupy a particular seat or area in a venue with respect to one
7 or more events or an entitlement to purchase that right, privilege,
8 or license with respect to one or more future events.

9 (c) “Online marketplace” means an Internet Web site that
10 provides a forum for the resale of event tickets. “Online
11 marketplace” does not include the Internet Web site of a reseller
12 or ticket issuer, unless that reseller or ticket issuer provides a forum
13 for the resale of event tickets on its Internet Web site.

14 (d) “Person” means any natural person, partnership, corporation,
15 association, or other legal entity.

16 (e) “Public funding” means the provision by the state, any
17 county, city and county, municipality, or other subdivision of the
18 state, or by any local development corporation or similar
19 instrumentality whose creation was authorized by the state or by
20 any county, city and county, municipality, or other subdivision of
21 the state, of funding, grants, payments, or financial support,
22 including the use of public funds through or from the use of the
23 issuance of tax-exempt bonds, payments in lieu of taxes, property
24 tax abatements, lotteries, sales taxes, or levies on parking, hotels,
25 alcohol, car rentals, cigarettes, or other goods or services.

26 (f) “Resale” includes any form of transfer or alienation, or
27 offering for transfer or alienation, of possession or entitlement to
28 possession of an event ticket from one person to another, with or
29 without consideration, whether in person or by means of telephone,
30 mail, delivery service, facsimile, Internet, email, or other electronic
31 means. “Resale” does not include the initial sale of an event ticket
32 by a ticket issuer.

33 (g) “Ticket issuer” means any person that makes event tickets
34 available, directly or indirectly for initial sale, to the general public,
35 and may include the operator of a venue, the sponsor or promoter
36 of an event, a sports team participating in an event or a league
37 whose teams are participating in an event, a theater company,
38 musical group, or similar participant in an event, or an agent of
39 any such person. “Ticket issuer” does not include a person involved
40 in, or facilitating, event ticket resale, an officially appointed agent

1 of an air carrier, ocean carrier, or motor coach carrier who
2 purchases or sells event tickets in conjunction with a tour package
3 accomplished through a primary event promoter or his or her agent
4 by written agreement, or a nonprofit charitable organization that
5 is exempt from tax under Section 501(c)(3) of the Internal Revenue
6 Code.

7 (h) “Ticket reseller” means any person engaging in the resale
8 of event tickets. “Ticket reseller” does not include a person who
9 resells no more than 80 event tickets in any 12-month period.

10 (i) “Venue” means the theater, stadium, field, hall, or other
11 facility where an event takes place.

12 SEC. 3. Section 22500 of the Business and Professions Code
13 is amended and renumbered to read:

14 22500.5. (a) A ticket issuer or ticket reseller shall have a
15 permanent business address from which tickets may only be sold
16 and that address shall be included in any advertisement or
17 solicitation. A ticket issuer or ticket reseller shall be duly licensed
18 as may be required by any local jurisdiction.

19 (b) A violation of this section shall constitute a misdemeanor
20 punishable by imprisonment in a county jail not exceeding six
21 months, or by fine not exceeding two thousand five hundred dollars
22 (\$2,500), or by both.

23 (c) Any person who engages, has engaged, or proposes to engage
24 in a violation of this section shall be liable for a civil penalty not
25 to exceed two thousand five hundred dollars (\$2,500) for each
26 violation, which may be assessed and recovered in a civil action
27 brought in the name of the people of the State of California by the
28 Attorney General, or a district attorney, or a city attorney of a city
29 having a population in excess of 750,000, and, with the consent
30 of the district attorney, by a city prosecutor in any city, county, or
31 city and county having a full-time prosecutor in any court of
32 competent jurisdiction. Payment of the civil penalty shall be made
33 pursuant to the provisions of subdivision (b) of Section 17206. For
34 the purposes of this section, each event ticket sold or offered for
35 sale in violation of this section shall constitute a separate violation.
36 The remedies provided by this section are cumulative to each other
37 and to the remedies or penalties available under all other laws of
38 this state.

39 SEC. 4. Section 22501 of the Business and Professions Code
40 is amended to read:

1 ~~22501. A ticket issuer or ticket reseller shall maintain records~~
2 ~~of event ticket sales, deposits, and refunds.~~

3 ~~SEC. 5. Section 22502 of the Business and Professions Code~~
4 ~~is amended to read:~~

5 ~~22502. (a) A ticket issuer or ticket reseller shall, prior to sale,~~
6 ~~disclose to the purchaser by means of description or a map the~~
7 ~~location of the seat or seats represented by the event ticket or~~
8 ~~tickets.~~

9 ~~(b) A ticket issuer or ticket reseller shall disclose that a service~~
10 ~~charge is imposed by the ticket issuer or ticket reseller and is added~~
11 ~~to the actual event ticket price by the issuer or ticket reseller in~~
12 ~~any advertisement or promotion for any event by the ticket issuer~~
13 ~~or ticket reseller.~~

14 ~~(c) A ticket issuer or ticket reseller who includes tickets to an~~
15 ~~event in conjunction with the sale of a tour or event package,~~
16 ~~including, among other things, transportation, meals, lodging, or~~
17 ~~beverages, shall disclose in any advertisements or promotional~~
18 ~~materials the price charged or allotted for the event tickets.~~

19 ~~SEC. 6. Section 22502.1 of the Business and Professions Code~~
20 ~~is amended to read:~~

21 ~~22502.1. (a) It shall be unlawful for a ticket issuer or ticket~~
22 ~~reseller to contract for the sale of event tickets or accept~~
23 ~~consideration for payment in full or for a deposit for the sale of~~
24 ~~event tickets unless the ticket issuer or ticket reseller meets one or~~
25 ~~more of the following requirements:~~

26 ~~(1) The ticket issuer or ticket reseller has the event ticket in his~~
27 ~~or her possession.~~

28 ~~(2) The ticket issuer or ticket reseller has a written contract to~~
29 ~~obtain the offered event ticket at a certain price from a person in~~
30 ~~possession of the event ticket or from a person who has a~~
31 ~~contractual right to obtain the event ticket from the primary~~
32 ~~contractor.~~

33 ~~(3) The ticket issuer or ticket reseller informs the purchaser~~
34 ~~orally at the time of the contract or receipt of consideration,~~
35 ~~whichever is earlier, and in writing within two business days, that~~
36 ~~the seller does not have possession of the event tickets, has no~~
37 ~~contract to obtain the offered event ticket at a certain price from~~
38 ~~a person in possession of the event ticket or from a person who~~
39 ~~has a contractual right to obtain the event ticket from the primary~~

1 contractor, and may not be able to supply the event ticket at the
2 contracted price or range of prices.

3 (b) ~~Nothing in this section shall prohibit a ticket issuer or ticket
4 reseller from accepting a deposit from a prospective purchaser as
5 part of an agreement that the ticket issuer or ticket reseller will
6 make best efforts to obtain an event ticket at a specified price or
7 price range and within a specified time, provided that the ticket
8 issuer or ticket reseller informs the purchaser orally at the time of
9 the contract or receipt of consideration, whichever is earlier, and
10 in writing within two days, of the terms of the deposit agreement,
11 and includes in the oral and written notice the disclosures otherwise
12 required by this section.~~

13 ~~SEC. 7. Section 22502.2 of the Business and Professions Code
14 is amended to read:~~

15 ~~22502.2. It shall be unlawful for a ticket issuer or ticket reseller
16 to represent that he or she can deliver or cause to be delivered an
17 event ticket at a specific price or within a specific price range and
18 to fail to deliver within a reasonable time or by a contracted time
19 the event tickets at or below the price stated or within the range
20 of prices stated.~~

21 ~~SEC. 8. Section 22502.3 of the Business and Professions Code
22 is amended to read:~~

23 ~~22502.3. In addition to other remedies, a ticket issuer or ticket
24 reseller who violates Section 22502.1 or 22502.2 and fails to supply
25 an event ticket at or below a contracted price or within a contracted
26 price range shall be civilly liable to the event ticket purchaser for
27 two times the contracted price of the event ticket, in addition to
28 any sum expended by the purchaser in nonrefundable expenses
29 for attending or attempting to attend the event in good faith reliance
30 on seat or space availability, and reasonable attorney's fees and
31 court costs.~~

32 ~~SEC. 9. Section 22503 of the Business and Professions Code
33 is repealed.~~

34 ~~SEC. 10. Section 22503 is added to the Business and
35 Professions Code, to read:~~

36 ~~22503. (a) Except as otherwise provided in this chapter, it
37 shall be unlawful for any ticket issuer or its authorized agent to do
38 any of the following:~~

39 ~~(1) Impose any terms or conditions restricting the transferability
40 of an event ticket or otherwise prohibit a person from reselling the~~

1 ~~event ticket on an online marketplace not owned or operated by~~
2 ~~the ticket issuer or its authorized agent.~~

3 ~~(2) Impose any terms or conditions restricting the printing or~~
4 ~~forwarding of the event ticket, or impose any other pickup or~~
5 ~~transfer restrictions, for the purpose or with the foreseeable effect~~
6 ~~of prohibiting the resale or gratuitous transfer of an event ticket.~~

7 ~~(3) Employ technological measures for the purpose or with the~~
8 ~~foreseeable effect of prohibiting or restricting the resale or~~
9 ~~gratuitous transfer of an event ticket, including, but not limited to,~~
10 ~~issuing an event ticket in an electronic form that is not readily~~
11 ~~transferrable to a subsequent purchaser or user, or conditioning~~
12 ~~entry into the venue on presentation of a token, like the original~~
13 ~~purchaser's credit card or state-issued identification card, that~~
14 ~~cannot be readily transferred to a subsequent purchaser or user.~~

15 ~~(4) Seek to limit or restrict the price, or to impose a minimum~~
16 ~~or maximum price, at which an event ticket may be resold.~~

17 ~~(b) Except as otherwise provided in this chapter, it shall be~~
18 ~~unlawful for a ticket issuer or reseller to fail to meet the~~
19 ~~requirements of Section 22504.~~

20 ~~SEC. 11. Section 22503.5 of the Business and Professions~~
21 ~~Code is repealed.~~

22 ~~SEC. 12. Section 22503.6 of the Business and Professions~~
23 ~~Code is repealed.~~

24 ~~SEC. 13. Section 22504 of the Business and Professions Code~~
25 ~~is repealed.~~

26 ~~SEC. 14. Section 22504 is added to the Business and~~
27 ~~Professions Code, to read:~~

28 ~~22504. (a) A ticket issuer or ticket reseller shall maintain a~~
29 ~~toll-free telephone number for complaints and inquiries regarding~~
30 ~~its activities in the sale or resale of event tickets.~~

31 ~~(b) A ticket issuer or ticket reseller shall implement and~~
32 ~~reasonably publicize a standard refund policy that meets, at the~~
33 ~~minimum, the requirements of Section 22506. A standard refund~~
34 ~~policy may condition entitlement to a refund upon timely return~~
35 ~~of the event ticket purchased and may include reasonable~~
36 ~~safeguards against abuse of the policy.~~

37 ~~(c) Nothing in this section shall be construed to prohibit any~~
38 ~~person subject to this section from implementing consumer~~
39 ~~protection policies that exceed the minimum standards set forth~~

1 in this section and that are otherwise in compliance with this
2 chapter.

3 ~~SEC. 15. Section 22506 of the Business and Professions Code~~
4 ~~is repealed.~~

5 ~~SEC. 16. Section 22506 is added to the Business and~~
6 ~~Professions Code, to read:~~

7 ~~22506. A ticket issuer or ticket reseller shall do all of the~~
8 ~~following:~~

9 ~~(a) Provide a consumer who purchases an event ticket a full~~
10 ~~refund if the event is canceled before the scheduled occurrence of~~
11 ~~the event and is not rescheduled, the event ticket received by the~~
12 ~~purchaser is counterfeited, the event ticket is canceled by the ticket~~
13 ~~issuer for nonpayment by the original purchaser or for any reason~~
14 ~~other than an act or omission of the consumer, the event ticket~~
15 ~~materially, and to the detriment of the consumer, fails to conform~~
16 ~~to the description provided by the seller or reseller, or the event~~
17 ~~ticket was not delivered to the consumer prior to the occurrence~~
18 ~~of the event, unless the failure of delivery was due to any act or~~
19 ~~omission of the consumer.~~

20 ~~(b) Include in the full refund required under subdivision (a) the~~
21 ~~full price paid by the consumer for the event ticket, together with~~
22 ~~any fees charged in connection with that purchase, including, but~~
23 ~~not limited to, convenience fees, processing fees, at-home printing~~
24 ~~charges, shipping and handling charges, and delivery fees.~~

25 ~~SEC. 17. Section 22507 of the Business and Professions Code~~
26 ~~is amended to read:~~

27 ~~22507. (a) Any local jurisdiction may require a ticket issuer~~
28 ~~or ticket reseller to provide a bond of not more than fifty thousand~~
29 ~~dollars (\$50,000) to provide for any refunds that may be required~~
30 ~~by this section.~~

31 ~~(b) Nothing in this chapter prohibits any local agency from~~
32 ~~imposing any local fees or taxes.~~

33 ~~SEC. 18. Section 22508 of the Business and Professions Code~~
34 ~~is repealed.~~

35 ~~SEC. 19.~~

36 ~~SECTION 1. Section 22508 22505.5 is added to the Business~~
37 ~~and Professions Code, to read:~~

38 ~~22508.~~

39 ~~22505.5. A person who intentionally uses or sells software to~~
40 ~~circumvent a security measure, access control system, or other~~

1 control or measure on a ticket issuer's or ticket reseller's *seller's*
2 Internet Web site that is used to ensure an equitable ticket buying
3 process is guilty of a misdemeanor.

4 ~~SEC. 20. Section 22509 of the Business and Professions Code~~
5 ~~is repealed.~~

6 ~~SEC. 21. Section 22509 is added to the Business and~~
7 ~~Professions Code, to read:~~

8 ~~22509. Nothing in this chapter shall be construed to invalidate~~
9 ~~restrictions on the resale of event tickets imposed by either of the~~
10 ~~following:~~

11 ~~(a) Sponsors or promoters of events intended solely to benefit~~
12 ~~charitable endeavors for which all event tickets are distributed free~~
13 ~~of charge.~~

14 ~~(b) Nonprofit educational institutions with respect to athletic~~
15 ~~events involving athletes or teams of those institutions, to the extent~~
16 ~~the restrictions apply to event tickets initially distributed to~~
17 ~~students, faculty, staff members, or alumni without charge or to~~
18 ~~members of a bona fide booster organization consisting of those~~
19 ~~making substantial financial contributions to the institution.~~

20 ~~SEC. 22. Section 22510 of the Business and Professions Code~~
21 ~~is repealed.~~

22 ~~SEC. 23. Section 22510 is added to the Business and~~
23 ~~Professions Code, to read:~~

24 ~~22510. The Department of Consumer Affairs may issue~~
25 ~~regulations to implement the provisions of this chapter, including,~~
26 ~~but not limited to, regulations that do both of the following:~~

27 ~~(a) Prescribe allowable methods for marking of public sales~~
28 ~~tickets, including, but not limited to, the marking of event tickets~~
29 ~~that are not tangible.~~

30 ~~(b) Define categories of persons otherwise subject to this chapter~~
31 ~~who are temporarily or indefinitely excluded from the provisions~~
32 ~~of this chapter, or against whom the Attorney General determines~~
33 ~~to forbear the enforcement of this chapter in whole or in part, if~~
34 ~~the Attorney General determines the activities of those persons~~
35 ~~have a relatively insignificant impact on commerce in event tickets.~~

36 ~~SEC. 24. Section 22511 of the Business and Professions Code~~
37 ~~is repealed.~~

38 ~~SEC. 25.~~

39 ~~SEC. 2. No reimbursement is required by this act pursuant to~~
40 ~~Section 6 of Article XIII B of the California Constitution because~~

1 the only costs that may be incurred by a local agency or school
2 district will be incurred because this act creates a new crime or
3 infraction, eliminates a crime or infraction, or changes the penalty
4 for a crime or infraction, within the meaning of Section 17556 of
5 the Government Code, or changes the definition of a crime within
6 the meaning of Section 6 of Article XIII B of the California
7 Constitution.

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