

HOUSE BILL No. 5828

August 15, 2012, Introduced by Rep. Cotter and referred to the Committee on Government Operations.

A bill to regulate the issuance and resale of tickets to certain entertainment events; to provide consumer protections for ticket purchasers; to prescribe powers and duties of certain state governmental officers and agencies; to provide remedies; and to provide for the promulgation of rules.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the "event
2 tickets act".

3 Sec. 3. As used in this act:

4 (a) "Event" means a concert, theatrical performance, sporting
5 event, exhibition, show, or other similar scheduled activity held
6 in this state that meets all of the following:

7 (i) Is open to the general public.

8 (ii) An admission fee is charged to attend.

1 (iii) Is held in a venue that accommodates more than 1,000
2 individuals.

3 (b) "Event ticket" means a physical, electronic, or other form
4 of a certificate, document, voucher, token, or other evidence
5 indicating that the bearer, possessor, or person entitled to
6 possession through purchase or otherwise meets any of the
7 following:

8 (i) Has a revocable or irrevocable right, privilege, or license
9 to enter an event venue or occupy a particular seat or area in an
10 event venue for 1 or more events.

11 (ii) Is entitled to purchase a right, privilege, or license
12 described in subparagraph (i) for 1 or more future events.

13 (c) "Person" means an individual, corporation, limited
14 liability company, partnership, association, or other legal entity.

15 (d) "Resale" means any form of sale or other transfer of, or
16 offer to sell or transfer, possession or entitlement to possession
17 of an event ticket from 1 person to another, with or without
18 consideration, whether in person or by means of telephone, mail,
19 delivery service, facsimile, internet, email, or other electronic
20 means. The term does not include the initial sale of an event
21 ticket by the ticket issuer.

22 (e) "Ticket issuer" means a person that makes event tickets
23 available, directly or indirectly, for initial sale to the general
24 public. The term does not include a person that is involved in or
25 facilitates event ticket resales. The term may include any of the
26 following if the person makes event tickets available for initial
27 sale to the general public:

1 (i) The operator of a venue.

2 (ii) The sponsor or promoter of an event.

3 (iii) A sports team participating in an event or a league whose
4 teams are participating in an event.

5 (iv) A theater company, musical group, or similar participant
6 in an event.

7 (v) An agent of a person described in subparagraphs (i) to (iv).

8 (f) "Venue" means any public or nonpublic theater, stadium,
9 field, hall, or other facility where an event takes place.

10 Sec. 5. Except as otherwise provided in this act, a ticket
11 issuer shall not prohibit or restrict the resale or offering for
12 resale of an event ticket by any person that lawfully possesses
13 that ticket, including, but not limited to, engaging in any of the
14 following activities:

15 (a) Purporting to impose license or contractual terms on the
16 initial sale of an event ticket, including, but not limited to,
17 terms printed on the back of a physical event ticket, that prohibit
18 resale or free transfer of the ticket or that restrict the price or
19 other terms and conditions under which the ticket may be resold or
20 used by a person other than the original purchaser.

21 (b) Requiring the purchaser of an event ticket, whether for a
22 single event or for a series or season of events, to agree not to
23 resell the ticket or to resell the ticket only through a specific
24 channel approved by the ticket issuer.

25 (c) Bringing legal action based on an unlawful prohibition or
26 restriction on resale of an event ticket against any of the
27 following:

1 (i) A purchaser that resells or offers to resell an event
2 ticket without permission of the ticket issuer or in violation of a
3 restriction purportedly imposed by the ticket issuer.

4 (ii) A person that facilitates or provides services for the
5 resale of event tickets without permission of the ticket issuer or
6 in violation of a restriction purportedly imposed by the ticket
7 issuer.

8 (iii) An operator of a physical or electronic marketplace where
9 event tickets are offered for resale without permission of the
10 ticket issuer or in violation of a restriction purportedly imposed
11 by the ticket issuer.

12 (d) Imposing a penalty on a ticket purchaser that resells or
13 offers to resell an event ticket without permission or in violation
14 of a restriction purportedly imposed by the ticket issuer, or
15 treating that purchaser in any material way less favorably than a
16 similarly situated purchaser that does not resell or offer to
17 resell an event ticket or that complies with resale restrictions
18 purportedly imposed by the ticket issuer.

19 (e) Employing technological means for the purpose or with the
20 foreseeable effect of prohibiting or restricting the resale of
21 event tickets, including, but not limited to, issuing event tickets
22 in an electronic form that is not readily transferable to a
23 subsequent purchaser, or conditioning entry into the venue on
24 presentation of a token, such as the original purchaser's credit
25 card or state-issued identification card, that cannot be readily
26 transferred to a subsequent purchaser.

27 (f) Requiring that the purchaser of an event ticket pick up

1 the event ticket from a box office or "will call" window in advance
2 the event.

3 (g) Seeking to limit or restrict the price, or to impose a
4 minimum or maximum price, at which an event ticket may be resold.

5 Sec. 7. (1) A person engaged in any trade or business
6 described in subsection (2) shall not engage in the primary or
7 secondary market for event ticket sales if that person does not do
8 all of the following:

9 (a) Maintain a toll-free telephone number for complaints and
10 inquiries regarding its activities in the sale or resale of event
11 tickets.

12 (b) Subject to subsection (4), implement and reasonably
13 publicize a standard refund policy that meets the following minimum
14 standards:

15 (i) It provides a consumer who purchases an event ticket a full
16 refund if any of the following occur:

17 (A) The event is canceled before the scheduled occurrence of
18 the event and is not rescheduled.

19 (B) The event ticket received by the purchaser is counterfeit.

20 (C) The event ticket is canceled by the ticket issuer for
21 nonpayment by the original purchaser or for any reason other than
22 an act or omission of the consumer.

23 (D) The event ticket materially and to the detriment of the
24 consumer fails to conform to the description provided by the seller
25 or reseller.

26 (E) The event ticket is not delivered to the consumer before
27 the occurrence of the event, unless the failure of delivery is due

1 to an act or omission of the consumer.

2 (ii) It provides that a consumer entitled to a full refund
3 shall receive the full price paid by the consumer for the event
4 ticket and any fees charged in connection with that purchase,
5 including, but not limited to, convenience fees, processing fees,
6 at-home printing charges, shipping and handling charges, or
7 delivery fees.

8 (2) Subsection (1) applies to a person engaged in any of the
9 following as a trade or business:

10 (a) Acting as a ticket issuer.

11 (b) Subject to subsection (3), engaging in the resale of event
12 tickets. However, if a person described in this subdivision only
13 resells event tickets in a physical or electronic marketplace that
14 fully complies with this section, the person is not required to
15 comply with subsection (1).

16 (c) Providing a physical or electronic marketplace for the
17 sale or resale of event tickets by other persons.

18 (3) An individual that does not resell more than 80 event
19 tickets in any 12-month period is not considered to be engaged in
20 the trade or business of reselling event tickets for purposes of
21 this section.

22 (4) A person subject to this section may include any of the
23 following in the standard refund policy required under subsection
24 (1) (b) :

25 (a) That entitlement to a refund is conditioned on the timely
26 return of the event ticket purchased.

27 (b) Reasonable safeguards against abuse of the policy.

1 (5) This section does not prohibit any person subject to this
2 section from implementing any consumer protection practices in
3 addition to those described in subsection (1) if those practices
4 otherwise comply with this act.

5 Sec. 9. (1) The attorney general may bring a civil action for
6 any violation of this act. In an action described in this section
7 to enforce this act, the attorney general may pursue that action in
8 the same manner, by the same means, and with the same jurisdiction,
9 powers, and duties, as apply to the attorney general in his or her
10 enforcement of the Michigan consumer protection act, 1976 PA 331,
11 MCL 445.901 to 445.922, including, but not limited to, any of the
12 following powers:

13 (a) To bring an action for a temporary or permanent injunction
14 in the manner provided in section 5 of the Michigan consumer
15 protection act, 1976 PA 331, MCL 445.905, together with costs and
16 reasonable attorney fees.

17 (b) To apply for the issuance of subpoenas in the manner
18 provided in sections 7 and 8 of the Michigan consumer protection
19 act, 1976 PA 331, MCL 445.907 and 445.908.

20 (c) To bring a class action in the manner provided in section
21 10 of the Michigan consumer protection act, 1976 PA 331, MCL
22 445.910.

23 (2) All of the following apply to a class action described in
24 subsection (1)(c):

25 (a) Subject to subdivision (b), the attorney general may
26 recover either of the following, whichever is greater, together
27 with costs and reasonable attorney fees:

1 (i) The actual damages suffered by the residents of this state.

2 (ii) An amount equal to \$100.00 for each event ticket sold,
3 resold, or offered for sale or resale in violation of this act,
4 subject to a maximum of \$100,000.00 with respect to all of the
5 violations related to any single event.

6 (b) The court may increase a damage award against a defendant
7 to an amount equal to not more than 3 times the amount otherwise
8 available under subdivision (a) if in a prior civil action the
9 defendant was found to have violated this act.

10 (3) For purposes of bringing a civil action under subsection
11 (1), this section does not prevent the attorney general from
12 exercising any powers given to the attorney general by any other
13 law of this state to conduct investigations, administer oaths or
14 affirmations, or compel the attendance of witnesses or the
15 production of documentary and other evidence.

16 (4) The attorney general may not bring a civil action under
17 this section more than 2 years after the date of the violation that
18 is the subject of the action.

19 Sec. 11. (1) A political subdivision of this state shall not
20 adopt or enforce any ordinance or other regulation that purports to
21 do any of the following:

22 (a) Limit the price at which an event ticket may be resold.

23 (b) Impose any other restriction on the resale of event
24 tickets inconsistent with this act.

25 (c) Permit any action prohibited by this act.

26 (2) This act supersedes and preempts any ordinance or other
27 regulation of any political subdivision of this state that purports

1 to do any of the following:

2 (a) Limit the price at which an event ticket may be resold.

3 (b) Impose any other restriction on the resale of event
4 tickets inconsistent with this act, or that purports to permit any
5 action prohibited by this act, but only to the extent of that
6 inconsistency.

7 (3) This act does not limit or otherwise impair the
8 jurisdiction or powers of any department, agency, officer, or
9 political subdivision of this state to enforce any law, rule,
10 regulation, code, or ordinance that does any of the following:

11 (a) Regulates or prohibits the sale or resale of event tickets
12 based on proximity of the location of the sale to the location of a
13 venue.

14 (b) Regulates or prohibits the sale or resale of event tickets
15 in a manner that constitutes disorderly conduct or breach of the
16 peace.

17 (c) Empowers the operator of a venue or its agent to deny
18 admission to any person, or to eject any person from an event, in
19 order to preserve public safety or order or to prevent or restrict
20 the admission of minors.

21 (d) Prohibits fraud, deception, or similar practices in
22 connection with the sale or resale of event tickets or prohibits
23 the sale or resale of counterfeit tickets.

24 (e) Treats an event ticket as a license for any purpose other
25 than the prohibition or restriction of resale.

26 (f) Regulates the initial sale of event tickets by limiting
27 the number of event tickets that a person may purchase from a

1 ticket issuer.

2 (g) Prohibits the intentional circumvention of technological
3 means employed by ticket issuers to enforce limitations on the
4 number of event tickets that a person may purchase from a ticket
5 issuer, or the sale or distribution of devices, computer programs,
6 or other tools for the purpose of an intention circumvention
7 described in this subdivision.

8 Sec. 13. This act does not apply to restrictions on the resale
9 of event tickets imposed by any of the following:

10 (a) A sponsor or promoter of an event intended solely to
11 benefit charitable endeavors, for which all tickets are distributed
12 free of charge.

13 (b) A not-for-profit educational institution, with respect to
14 athletic events involving athletes or teams of that institution, to
15 the extent that resale restrictions apply to tickets initially
16 distributed by the institution to any of the following:

17 (i) Students, faculty, staff members, or alumni without charge.

18 (ii) Members of a bona fide booster organization that consists
19 of those making substantial financial contributions to the
20 institution.

21 Sec. 15. The attorney general may promulgate rules under the
22 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
23 24.328, to implement and administer this act. Rules promulgated
24 under this section may include any of the following:

25 (a) Defining categories of persons otherwise subject to this
26 act that are temporarily or indefinitely excluded from its
27 provisions, or against which the department of attorney general

1 determines it will not enforce this act in whole or in part, if the
2 attorney general determines that the activities of those persons
3 otherwise subject to this act have a relatively insignificant
4 impact on commerce in event tickets.

5 (b) Any other reasonable rules the attorney general determines
6 are necessary to implement and administer this act.

7 Enacting section 1. This act takes effect 90 days after the
8 date it is enacted into law.

9 Enacting section 2. This act does not take effect unless
10 Senate Bill No. _____ or House Bill No. 5827(request no.
11 01478'11 a **) of the 96th Legislature is enacted into law.