

Legislative Analysis

REPEAL BAN ON TICKET SCALPING

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House Bill 5108 without amendment

Sponsor: Rep. Tim Kelly

Committee: Criminal Justice

Complete to 2-19-14

A SUMMARY OF HOUSE BILL 5108 AS REPORTED BY COMMITTEE 1-29-14

The bill would repeal the current ban on reselling a ticket for an event at a price higher than face value (scalping) without the express permission of the event's venue. The bill would also increase the maximum term of imprisonment for an event venue that fails to comply with certain event ticket printing requirements.

House Bill 5108 would amend the Michigan Penal Code to eliminate the prohibition on the practice known as scalping. Specifically, the bill would delete a provision that prohibits a venue or a ticketholder from selling a ticket to an event at a theatre, circus, athletic game, or place of public entertainment or amusement at a price in excess of the advertised general admission price unless the venue's owner or manager permitted the excess charge in writing.

Also eliminated would be:

- A provision prohibiting a person from establishing an agency or suboffice for the sale of a seat ticket to a theatre, circus, athletic grounds, or place of public entertainment or amusement at a price greater than at the box office of the venue for that ticket.
- A provision making the owner or manager of a venue who allowed a person to sell tickets on the grounds of that venue for an inflated price other than lawfully allowed as liable and guilty as the person scalping the tickets.
- A provision prohibiting a person from selling a nontransferable ticket that contains the name of the person who originally bought the ticket.

The bill would retain a provision that requires certain information to be printed on each ticket (e.g., the price of the ticket; the number of the seat, if seats are numbered; and any ticket surcharge if bought other than at the venue's box office, along with a statement that the surcharge could be avoided by purchasing the ticket at the box office of the venue where the event will be held.)

Further, the bill would increase the maximum term of imprisonment for a violation of the above provision. Currently, when a crime is designated as a misdemeanor but no maximum penalty is specified, a violation is punishable by imprisonment for not more than 90 days and/or a fine of not more than \$500. The bill would retain the maximum fine amount but increase the maximum term of imprisonment to 93 days. (By increasing

the penalty to 93 days, the bill will trigger certain fingerprint and record retention requirements by the Department of State Police.)

MCL 750.465

FISCAL IMPACT:

Depending on the number of people that were actually charged under the provisions that are being eliminated, the bill could result in a decrease in costs for local units of government related to county jails and/or local misdemeanor probation supervision. The costs of local incarceration in county jails and local misdemeanor probation supervision vary by jurisdiction. There could also be a decrease in penal fine revenues, which would decrease funding for local libraries, which are the constitutionally-designated recipients of those revenues.

Retaining the requirement that certain information to be printed on tickets, and increasing the maximum jail time for noncompliance, could result in future misdemeanor convictions. Future convictions could increase costs related to county jails and/or local misdemeanor probation supervision. Again, the costs of local incarceration in a county jail and local misdemeanor probation supervision vary by jurisdiction. Any increase in penal fine revenues would increase funding for local libraries.

In addition, the bill would likely have no significant fiscal impact on state and local law enforcement agencies. The Michigan State Police doesn't have data on the number of arrests for violating any facets of MCL 750.465, suggesting that any such violations (where the law is enforced) could be written under local ordinance rather than state law or under other related laws, such as those for disorderly conduct. Anecdotally, it doesn't appear that the prohibition against ticket scalping (especially in cases where the tickets are initially obtain through legitimate means) is enforced to any great degree. The scalping of tickets obtained through illegitimate means (i.e. stolen) would still involve an illegal act and could still be prosecuted under separate statutory provisions.

The bill also increases the penalties for failing to adhere to the ticket printing requirements to a 93-day misdemeanor. This change would trigger certain fingerprinting requirements under 1925 PA 289 (MCL 28.243), requiring fingerprints and other biometric data to be taken by local law enforcement and forwarded to MSP. That data is then forwarded by MSP to the FBI. This provision would likely have no material fiscal impact on MSP. As noted above, MSP doesn't have any records of violations of MCL 750.465, including the ticket printing provision.

BRIEF DISCUSSION OF THE ISSUES:

Some believe that once a ticket to an event is sold, it becomes the property of the holder. Like any other personal property, the holder should be able to use it or sell it. If selling, the holder should be able to sell at whatever the market will bear – namely, the price the highest bidder is willing to spend. Most importantly, a ticket holder should be able to sell

a ticket without fear of being arrested or put in jail and/or fined. By repealing the ban on resale of tickets, a person who bought tickets to an event and then cannot use them will be able to sell them at face value, below face value, or at a much higher price if someone is willing to pay that price. It also would allow ticket brokers, who often buy unsold tickets from venues and then resell them, to help fill seats at events – a win-win for the venue and for the municipality where it is located as event-goers are likely to spend additional money for food or lodging. If fraud is a concern, then supporters of the bill suggest that the fraud statutes be updated to stem electronic-age thievery.

Opponents say the bill is not that simple. The current version of the bill would do more than just allow Uncle Ned to sell that extra football or concert ticket. While the bill would repeal the current prohibition on individuals selling their own unused tickets, it would also repeal the only legal prohibition that keeps scalpers from commandeering the bulk of tickets to every event offered in the state, and then running up the prices on the resale market so that only the most affluent, not necessarily the most devoted, fans can attend. Without the possibility of prosecution, there would be no deterrent for organized scalpers to use computer programs known as "bots" to scoop up tickets before members of the general public can purchase them; scalpers then sell them on the open market for escalated prices.

(According to representatives of event venues, using bots for the purpose of one individual or "business enterprise" to get around the venue's limit on tickets per person is different from a venue's offer of discounted tickets or blocks of tickets offered to organizations such as senior citizen or youth clubs as part of the venue's group sales program.)

In addition, reportedly, some entertainers have already gone on record as saying they will not perform in states without laws in place to protect consumers' access to affordable tickets, such as the face value price. Moreover, some of the anecdotal stories offered in committee of residents arrested and fined for selling Lions' football tickets at below face value price would not be addressed by House Bill 5108. Detroit, as well as a handful of other Michigan cities, have local ordinances against scalping that would not be affected by passage of the bill. In fact, repeal of the state law could act as an encouragement for more cities to enact local ordinances to protect both residents and venues located in their jurisdiction.

If the intent of the bill is to allow Grandma to resell an extra ticket to that Justin Bieber concert without fear of criminal prosecution, whether by her own means or via an online marketplace, the bill could be amended to do just that. Otherwise, as currently written, say opponents, it is overreaching and will negatively impact residents and tourists as well as event producers and event venues.

POSITIONS:

The following entities testified, indicated, or submitted written testimony in support of the bill:

Americans for Prosperity/Michigan
Police Officers Association of Michigan
eBay
StubHub
Ticket Network
Dean Trailways of Michigan
R Street Institute
Big Time Worldwide
Michigan Citizen Action

The following entities testified, indicated, or submitted written testimony in opposition to the bill:

The Michigan Sports and Entertainment Coalition, which includes the Detroit Lions, Ford Field, Fisher Theater, Olympia Entertainment, Joe Louis Arena, Comerica Park, the Dow Event Center, Michigan International Speedway, PALACE Sports and Entertainment, the Fillmore Detroit, Feld Entertainment, Inc., Van Andel Arena, Kellogg Arena, Miller Auditorium, University of Michigan, Michigan State University, Wharton Center, Western Michigan University, and the Convocation Center of Eastern Michigan University

Soaring Eagle Resort
Kid Rock
Dare Mighty Entertainment
Fans First Coalition
Ringling Brothers and Barnum & Bailey
Red Light Management
Broadway League
Live Nation Entertainment
IAVM (International Association of Venue Managers)
The Broadway League

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Robin Risko
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