

Legislative Analysis



REPEAL BAN ON TICKET SCALPING

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House Bill 4015 (Reported from committee w/o amendment)

Sponsor: Rep. Tim Kelly

Committee: Criminal Justice

Complete to 3-24-15

Analysis available at
<http://www.legislature.mi.gov>

BRIEF SUMMARY: 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.

FISCAL IMPACT: The bill's provisions are unlikely to have fiscal implications for law enforcement and may have an impact on local corrections, as discussed in more detail below (see *Fiscal Information*).

THE APPARENT PROBLEM:

Michigan law makes it a crime to sell a ticket to a concert, play, or sporting event for more than its face value. Some feel this eight-decade old law is outdated and needs to be eliminated. For example, under the wording of the law, a ticket holder who—due to a conflict or illness—cannot attend the event and finds a buyer for the ticket may only resell it for the price printed on the ticket's face or for a lower amount; the seller may not charge the buyer for any additional surcharges or fees tacked on by the vendor that the ticket holder originally paid. Yet, a ticket holder who resells a ticket online through a ticket reseller appears to be able to ask a price above the printed value with impunity.

Besides creating unfairness, it is also felt that the current law flies in the face of property ownership—that a purchased ticket is the property of the owner and therefore the decision regarding the price point to resell the ticket belongs with the ticketholder and whatever the market will bear.

Legislation has been offered to eliminate the state requirement that reselling a ticket to an entertainment event be limited to the face value of the ticket.

THE CONTENT OF THE BILL:

House Bill 4015 would amend the Michigan Penal Code to eliminate the prohibition on the practice known as scalping (MCL 750.465). 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.)

Currently, a violation of any of the anti-scalping provisions is a misdemeanor, but a specific penalty is not listed. In such a case, the default penalty is a maximum term of imprisonment of 90 days and/or a fine of not more than \$500. Under the bill, the penalty would only apply to noncompliance with certain event ticket printing requirements as described above. The bill would retain the maximum fine amount of \$500 but the maximum term of imprisonment would be increased from 90 days 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.)

BACKGROUND INFORMATION:

The bill is a reintroduction of House Bill 5108 of the 2013-2014 Legislative Session. The bill passed the House but failed to see action in the Senate.

FISCAL INFORMATION:

Retaining the requirement that certain information 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. 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) might have been 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 obtained 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 the Michigan State Police. 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.

ARGUMENTS:

For:

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. The bottom line is that a person should not end up in jail for selling an extra ticket for a price that someone else is willing to pay.

Against:

The current version of the bill would do more than just allow a person to sell an 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. 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.

(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 and from blocks of tickets offered to

organizations such as senior citizen or youth clubs as part of the venue's group sales program.)

Against:

Anecdotal stories of residents arrested and fined for selling sports or other entertainment tickets at below face value price would not be addressed by House Bill 4015. A handful of 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 the average person to resell an extra ticket to a concert without fear of criminal prosecution, whether person to person or via an online marketplace, the bill could be amended to do simply 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 in or indicated **support** for the bill on 3-10-15 and/or 3-17-15:

Michigan Ticket Fairness
National Association of Ticket Brokers
Big Time Worldwide
Michigan Citizen Action
Americans for Prosperity-MI
American Conservative Union
Ele's Place
MSU College Republicans
Stub Hub
Sports Fan Coalition
The Institute for Liberty
American Consumer Institute Center for Citizen Research

The following entities testified in or indicated **opposition** for the bill on 3-10-15 and/or 3-17-15:

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|-----------------------------------------------------|------------------------------|
| *Wharton Center for Performing Arts | *Freedom Hill Amphitheatre |
| *Michigan State University | *Kellogg Arena |
| *Western Michigan University | *Luna Entertainment |
| *Miller Auditorium | *Fisher Theatre |
| *Ford Field | *Broadway in Detroit |
| *Detroit Lions | *Van Andel Arena |
| *Detroit Pistons | *De Vos Performance Hall |
| *International Association of Venue Managers (IAVM) | *Red Light Management |
| *Palace Sports & Entertainment | *Dow Event Center |
| | *First Merit Bank Event Park |

- *The Broadway League, Inc.
- *Feld Entertainment, Inc.
- *The City Opera House
- *Kid Rock
- *Soaring Eagle
- *Olympia Entertainment
- *Fox Theatre
- *Dare Mighty Entertainment
- *DTE Energy Music Theatre
- *Fans First Coalition
- *Meadow Brook Music Festival
- *Michigan International Speedway
- *Ringling Brothers and Barnum & Bailey®

- *Saint Andrews Hall
- *Fillmore Detroit
- *Palace of Auburn Hills
- *The Recording Academy
- *Live Nation Entertainment, Inc.
(Artist Nation, Live Nation,
Ticketmaster, Ticketshow)
- *Feld Motor Sports (including Jam®,
Monster Sports® Supercross,
Nuclear Cowboyz, AMSOIL,
Arenacross)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.