

BAN ON TICKET RESALE: REPEAL

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House Bill 4224 (H-2) as reported from committee

Sponsor: Rep. Tim Kelly

Committee: Commerce and Trade

Complete to 9-26-18

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

BRIEF SUMMARY: House Bill 4224 would amend the Michigan Penal Code to eliminate the current ban on reselling a ticket for an event at a price higher than face value without the express permission of the event's venue. The bill would also prohibit certain software designed to interfere with the ticket sale operations of an event venue and the use of certain website domain or subdomain names for a ticket website.

FISCAL IMPACT: The bill would likely have no significant fiscal impact on state and local law enforcement agencies, but could result in future misdemeanor convictions. (See *Fiscal Information*, below, for further discussion.)

THE APPARENT PROBLEM:

Reportedly, Michigan is one of only a few remaining states with a ticket resale law that prohibits an individual from selling a ticket for more than face value without the consent of the venue or event. Many see this as simply unfair and contrary to the market principles of competition and private property rights. If a person purchases a ticket to a sporting event, the person should be able to sell it at whatever price it commands in the free market; a person should not be committing a crime in performing a basic transaction.

Relatedly, many event venues and ticketing platforms are facing challenges from websites and "bots" that interfere with their ticket sales. These fake websites might purport to sell real tickets, and the "bots" might be programmed to buy up groups of tickets when they go on sale, then dump them on secondary markets at higher prices at a later time. Legislation has been introduced to remove the prohibition on ticket resales above face value and to institute penalties for possessing "bot" software.

THE CONTENT OF THE BILL:

House Bill 4224 would eliminate the prohibition on the resale of tickets at above face value. 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 selling 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 add a provision to prohibit a person from knowingly selling, distributing, using, or possessing with intent to distribute software intended to interfere with the ticket sale operations of a theatre, circus, athletic grounds, or place of public entertainment or amusement over the internet by circumventing any measures on the seller's website that are instituted to ensure an equitable sales process.

The bill would also prohibit the owner or operator of a ***ticket website*** for an event scheduled at a ***venue*** in Michigan from using a domain or subdomain name in the ticket website's URL that contains, or is substantially similar to, either of the following:

- The name of the venue.
- The name of the event, including the name of a person or entity scheduled to perform or appear at the event.

However, the above prohibition would not apply to an owner or operator of a ticket website who is acting on behalf of the venue.

Ticket website would mean a website advertising or offering the sale of tickets or facilitating a secondary ticket exchange.

Venue would include a sports venue, concert venue, theatrical venue, convention center, fairgrounds, public assembly facility, or mass gathering location.

Under current law, a violation of this section of the Penal Code is a misdemeanor, but no specific penalty is listed. In such a case, the default penalty is a maximum term of imprisonment of 90 days and/or a fine of up to \$500.

The bill would retain the misdemeanor classification and the maximum fine amount of \$500, but would increase the maximum term of imprisonment to 93 days.

This increased penalty would also apply to a provision of current law, which the bill would retain, that requires each ticket to be printed with certain specified information such as ticket price, seat number, and ticket surcharge, if any.

MCL 750.465

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, as could the new prohibitions regarding sale-interference software and acceptable domain and subdomain names. 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. The fiscal impact on local court systems would depend on how provisions of the bill affected caseloads and related administrative costs. 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 does not 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 does not appear that the prohibition against selling tickets for higher than face value (especially in cases where the tickets are initially obtained through legitimate means) is enforced to any great degree. Such sale 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 violating the section 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. Those data are then forwarded by MSP to the FBI. This provision would likely have no material fiscal impact on MSP. As noted above, MSP does not have any records of violations of MCL 750.465.

ARGUMENTS:

For:

The bill simply allows a ticket holder and a willing purchaser to enter into a mutually beneficial transaction. If a person purchases a ticket but can't attend the event or no longer wants to, the person should be able to sell it any whatever price he or she demands. There is no concern over scamming or consumer protections; it is simply basic economics that follows from a situation with large demand and limited supply.

For:

The ticket sales industry has rapidly changed in recent years, with many online platforms now widely accepted and integrated parts of the industry. The ticket resale industry is no longer one with serious consumer protection concerns, but an industry with numerous partnerships with sports teams and leagues and fan protections in place. Michigan's law is simply outdated and doesn't reflect the 21st-century marketplace. Allowing the resale at higher-than-face-value prices will allow more individuals to participate in these selling marketplaces, and more competition in these markets will increase the quality of services provided.

Against:

The "secondary" ticket market—the market for ticket resales—already has enough problems, and this will only make it worse. The real issue is with fake websites that purport to sell tickets and with computer programs that buy up batches of tickets and later resell them at higher prices. The bill will only exacerbate these issues, as it legally will allow people to sell tickets at any price. Any policy should ensure that ticket sales go to people and not brokers or software bots.

Against:

The disruption to ticket sale markets is not worth impacting the economic benefits that events and venues provide. Arts and cultural venues are critical to local economies and in promoting affordable entertainment, and entertainment venues are key in attracting national performers and artists. Many times artists or performances intentionally create affordable ticket prices; allowing sales at higher prices erodes this policy and lets profits go to ticket brokers and bots, not artists or performance venues. Additionally, there is no need for the bill because event venues can already authorize ticket resales at higher than face value prices.

POSITIONS:

Representatives of the following entities testified in support of the bill:

Net Choice (5-29-18)
eBay/Stub-Hub (5-29-18)
Sports Fan Coalition (5-29-18)

Ticket Network indicated a neutral position regarding the H-3 version of the bill. (9-25-18)

Representatives of the following entities testified in opposition to the bill:

Wharton Center (5-29-18)
Live Nation (5-29-18)

The following entities indicated opposition to the bill:

Michigan International Speedway (5-29-18)
Michigan State University (9-25-18)
Saginaw Chippewa Tribe (9-25-18)
Experience Grand Rapids (9-25-18)
Live Nation (9-25-18)
DeVos Performance Hall (9-25-18)
DeVos Convention Center (9-25-18)
Grand Rapids-Kent County Convention/Arena Authority (9-25-18)
Van Andel Arena (9-25-18)
Little Caesars Arena (9-25-18)

Legislative Analysts: Rick Yuille
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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.