

HB0128S01 compared with HB0128

~~text~~ shows text that was in HB0128 but was deleted in HB0128S01.

Inserted text shows text that was not in HB0128 but was inserted into HB0128S01.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

Representative Stephen G. Handy proposes the following substitute bill:

CONSUMER TICKET PROTECTION MODIFICATIONS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephen G. Handy

Senate Sponsor: _____

LONG TITLE

General Description:

This bill enacts provisions related to the Division of Consumer Protection and the sale of event tickets.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ addresses the process related to a request to review a citation issued by the Division of Consumer Protection;
- ▶ requires a person who resells event tickets to provide certain disclosures on the person's website, including a statement that the ticket website is a secondary market and an itemized breakdown of the price of each ticket;
- ▶ prohibits a person who resells event tickets from representing that the person is the

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primary, rather than a secondary, ticket seller;

- ▶ provides that the provisions of this bill do not apply to a religious organization or an individual consumer; and
- ▶ addresses enforcement of the provisions of this bill.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

13-2-1, as last amended by Laws of Utah 2018, Chapters 252 and 290

13-2-6, as last amended by Laws of Utah 2018, Chapter 276

ENACTS:

13-54-101, Utah Code Annotated 1953

13-54-102, Utah Code Annotated 1953

13-54-103, Utah Code Annotated 1953

13-54-201, Utah Code Annotated 1953

13-54-202, Utah Code Annotated 1953

13-54-301, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **13-2-1** is amended to read:

13-2-1. Consumer protection division established -- Functions.

(1) There is established within the Department of Commerce the Division of Consumer Protection.

(2) The division shall administer and enforce the following:

- (a) Chapter 5, Unfair Practices Act;
- (b) Chapter 10a, Music Licensing Practices Act;
- (c) Chapter 11, Utah Consumer Sales Practices Act;
- (d) Chapter 15, Business Opportunity Disclosure Act;
- (e) Chapter 20, New Motor Vehicle Warranties Act;

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- (f) Chapter 21, Credit Services Organizations Act;
- (g) Chapter 22, Charitable Solicitations Act;
- (h) Chapter 23, Health Spa Services Protection Act;
- (i) Chapter 25a, Telephone and Facsimile Solicitation Act;
- (j) Chapter 26, Telephone Fraud Prevention Act;
- (k) Chapter 28, Prize Notices Regulation Act;
- (l) Chapter 32a, Pawnshop and Secondhand Merchandise Transaction Information Act;
- (m) Chapter 34, Utah Postsecondary Proprietary School Act;
- (n) Chapter 34a, Utah Postsecondary School State Authorization Act;
- (o) Chapter 39, Child Protection Registry;
- (p) Chapter 41, Price Controls During Emergencies Act;
- (q) Chapter 42, Uniform Debt-Management Services Act;
- (r) Chapter 49, Immigration Consultants Registration Act;
- (s) Chapter 51, Transportation Network Company Registration Act;
- (t) Chapter 52, Residential Solar Energy Disclosure Act; [~~and~~]
- (u) Chapter 53, Residential, Vocational and Life Skills Program Act[-]; and
- (v) Chapter 54, Ticket Sales Act.

Section 2. Section 13-2-6 is amended to read:

13-2-6. Enforcement powers.

(1) In accordance with Title 63G, Chapter 4, Administrative Procedures Act, the division shall have authority to convene administrative hearings, issue cease and desist orders, and impose fines under all the chapters identified in Section 13-2-1.

(2) Any person who intentionally violates a final cease and desist order entered by the division of which the person has notice is guilty of a third degree felony.

(3) If the division has reasonable cause to believe that any person has violated or is violating any chapter listed in Section 13-2-1, the division may promptly issue the alleged violator a citation signed by the division's director or the director's designee.

(a) Each citation shall be in writing and shall:

(i) set forth with particularity the nature of the violation, including a reference to the statutory or administrative rule provision violated;

(ii) state that any request for review of the citation shall be made in writing and be

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received by the division no more than 20 calendar days following issuance;

- (iii) state the consequences of failing to make a timely request for review; and
- (iv) state all other information required by Subsection 63G-4-201(2).

(b) In computing any time period prescribed by this section, the following days may not be included:

- (i) the day on which the division issues a citation; and
- (ii) the day on which the division receives a request for review of a citation.

~~[(c)]~~ If the recipient of a citation makes a timely request for review, within 20 calendar days after receiving the request, the division shall initiate an adjudicative proceeding in accordance with Title 63G, Chapter 4, Administrative Procedures Act.]

~~[(d)]~~ [(c)] (i) If the presiding officer finds that there is not substantial evidence that the recipient violated a chapter listed in Section 13-2-1, the citation may not become final, and the division shall immediately vacate the citation and promptly notify the recipient in writing.

(ii) If the presiding officer finds that there is substantial evidence that the recipient violated a chapter listed in Section 13-2-1, the citation shall become final and the division may enter a cease and desist order against the recipient.

~~[(e)]~~ [(d)] A citation issued under this chapter may be personally served upon any person upon whom a summons may be served in accordance with the Utah Rules of Civil Procedure. A citation also may be served by first-class mail, postage prepaid.

~~[(f)]~~ [(e)] If the recipient fails to make a [timely] request for review within 20 calendar days after the day on which the division issues the citation, the citation shall become the final order of the division. The period to contest the citation may be extended by the director for good cause shown.

~~[(g)]~~ [(f)] If the chapter violated allows for an administrative fine, after a citation becomes final, the director may impose the administrative fine.

(4) (a) A person who has violated, is violating, or has attempted to violate a chapter identified in Section 13-2-1 is subject to the division's jurisdiction if:

- (i) the violation or attempted violation is committed wholly or partly within the state;
- (ii) conduct committed outside the state constitutes an attempt to commit a violation within the state; or
- (iii) transactional resources located within the state are used by the offender to directly

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or indirectly facilitate a violation or attempted violation.

(b) As used in this section, "transactional resources" means:

- (i) any mail drop or mail box, regardless of whether the mail drop or mail box is located on the premises of a United States Post Office;
- (ii) any telephone or facsimile transmission device;
- (iii) any Internet connection by a resident or inhabitant of this state with a resident- or nonresident-maintained internet site;
- (iv) any business office or private residence used for a business-related purpose;
- (v) any account with or services of a financial institution;
- (vi) the services of a common or private carrier; or
- (vii) the use of any city, county, or state asset or facility, including any road or highway.

(5) The director or the director's designee, for the purposes outlined in any chapter administered by the division, may administer oaths, issue subpoenas, compel the attendance of witnesses, or compel the production of papers, books, accounts, documents, or evidence.

(6) (a) An administrative action filed under this chapter or a chapter listed in Section 13-2-1 shall be commenced no later than 10 years after the day on which the alleged violation occurs.

(b) A civil action filed under this chapter or a chapter listed in Section 13-2-1 shall be commenced no later than five years after the day on which the alleged violation occurs.

(c) The provisions of this Subsection (6) control over the provisions of Title 78B, Chapter 2, Statutes of Limitations.

Section ~~{2}~~3. Section **13-54-101** is enacted to read:

CHAPTER 54. TICKET SALES ACT

Part 1. General Provisions

13-54-101. Title.

This chapter is known as the "Ticket Sales Act."

Section ~~{3}~~4. Section **13-54-102** is enacted to read:

13-54-102. Definitions.

(1) "Consumer" means a person who purchases a ticket for use by the person or the person's invitee.

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(2) "Division" means the Division of Consumer Protection in the Department of Commerce.

(3) "Domain" means the portion of text in a URL that is to the left of the top-level domain.

(4) "Event" means a single, specific occurrence of one of the following, that takes place at a venue:

(a) a concert;

(b) a game;

(c) a performance;

(d) a show; or

(e) an occasion similar to the occasions described in Subsections (4)(a) through (d).

(5) "Event participant" means any of the following persons who is associated with an event or on behalf of whom a person sells a ticket to an event:

(a) an artist;

(b) a league;

(c) a team;

(d) a tour group;

(e) a venue; or

(f) any person similar to the persons described in Subsections (5)(a) through (e).

~~{ (6) (a) "Face value" means:~~

~~— (i) the dollar amount for which the primary ticket seller sells a ticket; or~~

~~— (ii) for a complimentary ticket, the dollar amount the primary ticket seller would have charged for a ticket to the event with equivalent seating priority.~~

~~— (b) "Face value" does not include any specified amounts added by the primary ticket seller, including fees or taxes.~~

~~‡ (7) "Person" does not include a government entity.~~

~~(8) "Primary ticket seller" means the person who first sells a particular ticket.~~

~~(9) (a) "Reseller" means a person who sells or offers for sale a ticket after it is sold by a primary ticket seller.~~

~~(b) "Reseller" includes a person who engages in conduct described in Subsection (8)(a), regardless of whether the person is also the primary ticket seller ~~after~~ of the ticket or~~

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the primary ticket seller ~~initially sells the~~ of another ticket to the same event.

(c) "Reseller" does not include a person who transfers a ticket to another person without reimbursement or consideration.

~~(10)9~~ "Ticket" means evidence of an individual's right of entry to an event.

~~(11)10~~ "Ticket aggregator" means a person who aggregates the prices for which other persons offer tickets for sale or resale.

~~(12)11~~ "Ticket website" means:

(a) with respect to a reseller, a website on which the reseller sells or offers for sale or resale one or more tickets; or

(b) with respect to a ticket aggregator, a website on which the ticket aggregator aggregates the prices for which other persons offer tickets for sale or resale.

~~(13)12~~ "Top-level domain" includes .com, .net, and .org.

~~(14)13~~ "URL" means the uniform resource locator for a website on the Internet.

~~(15)14~~ (a) "Venue" means real property located in the state where one or more persons host a concert, game, performance, show, or similar occasion.

(b) "Venue" includes an arena, a stadium, a theater, a concert hall, an amphitheater, a fairground, a club, a convention center, a public assembly facility, or a mass gathering location.

Section ~~4)5~~. Section **13-54-103** is enacted to read:

13-54-103. Exemptions.

(1) This chapter does not apply to:

(a) an entity that is owned, controlled, operated, or maintained by a bona fide church or religious organization that is exempt from property taxation under the laws of the state; or

(b) a consumer reselling a ticket that the consumer purchased as a consumer.

(2) A person who claims an exemption under this section has the burden of proving that the person is entitled to the exemption.

Section ~~5)6~~. Section **13-54-201** is enacted to read:

Part 2. Requirements and Prohibited Practices

13-54-201. Disclosure requirements.

(1) A reseller or ticket aggregator shall clearly and conspicuously disclose on each of its ticket websites that:

(a) the website is a secondary market and is not the primary ticket seller; and

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(b) the price of a ticket on the website may be higher than face value.

~~(2) {During the checkout process and before the prospective consumer provides payment information on a ticket website, the}~~ A reseller shall clearly and conspicuously disclose during the checkout process an itemization of the total price for which the reseller is offering the ticket for sale or resale, including taxes and each fee.

~~—— (3) (a) A reseller or ticket aggregator shall provide each disclosure required under this section in a font that is equal to or larger than the size of the font of the majority of the text on the page where the disclosure appears.~~

~~—— (b) A reseller or ticket aggregator may not provide a disclosure required under this section in a closeable notification format.~~

Section ~~{6}~~7. Section **13-54-202** is enacted to read:

13-54-202. Prohibited practices.

(1) (a) It is unlawful for any person who is not a primary ticket seller to represent, directly or indirectly, that the person is a primary ticket seller.

(b) There is a rebuttable presumption that a person violates Subsection (1)(a) if the person includes either of the ~~{name of an event participant}~~following in the domain of the person's ticket website:

±:

(i) the name of an event, unless the person has written authorization from an agent of the event; or

(ii) the name of an event participant, unless the person has written authorization from the event participant or an agent of the event participant.

(2) It is unlawful for a person to fail to comply with a provision of Section 13-54-201.

(3) Nothing in this section prohibits a person from including the name of an event or an event participant in a URL after the top-level domain.

Section ~~{7}~~8. Section **13-54-301** is enacted to read:

Part 3. Enforcement

13-54-301. Enforcement powers.

(1) The division may enforce the provisions of this chapter in accordance with Chapter 2, Division of Consumer Protection.

(2) (a) In addition to the division's enforcement powers under Chapter 2, Division of

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Consumer Protection:

(i) the division director may impose an administrative fine of up to \$2,500 for each violation of this chapter; and

(ii) the division may bring an action in a court of competent jurisdiction to enforce the provisions of this chapter.

(b) In a court action by the division to enforce a provision of this chapter, the court may:

(i) find that an act or practice violates a provision of this chapter; and

(ii) award, for each violation of this chapter:

(A) actual damages on behalf of each consumer who complained to the division within a reasonable time after the division initiated the court action; and

(B) a fine of up to \$2,500.

(c) For any judgment in favor of the division under this section, the court may award:

(i) costs, including the costs of investigation; and

(ii) reasonable attorney fees.

(3) Each ticket sold or offered for sale while a person is in violation of a provision of this chapter constitutes a separate violation of this chapter.

(4) Nothing in this chapter affects:

(a) a remedy available to a person independent of this chapter; or

(b) the division's ability or authority to enforce any other law.