

SENATE No. 160

The Commonwealth of Massachusetts

PRESENTED BY:

James E. Timilty

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act reforming the issuance and sale of sports and entertainment tickets.

PETITION OF:

NAME:

James E. Timilty

DISTRICT/ADDRESS:

Bristol and Norfolk

SENATE No. 160

By Mr. Timilty, a petition (accompanied by bill, Senate, No. 160) of James E. Timilty for legislation to reform the issuance and sale of sports and entertainment tickets. Consumer Protection and Professional Licensure.

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

An Act reforming the issuance and sale of sports and entertainment tickets.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. (a) Sections 185 A through Sections 185F of Chapter 140 of the General
2 Laws are hereby repealed.

3 SECTION 2. As used in this Act the following words shall have the following meanings:

4 (a) “Event” means any concert, theatrical performance, sporting event, exhibition, show,
5 or similar scheduled activity taking place in the Commonwealth —

6 (i) that is open to the general public;

7 (ii) for which an admission fee is charged; and

8 (iii) that is held in a venue accommodating more than 1000 persons for which public
9 funding has been provided for the construction, maintenance or operation of the venue or any
10 infrastructure related thereto, or which is located on property owned by a municipality or other
11 government entity.

12 (b) An "event ticket" means any physical, electronic, or other form of a certificate,
13 document, voucher, token or other evidence indicating that the bearer, possessor, or person
14 entitled to possession through purchase or otherwise has—

15 (i) a revocable or irrevocable right, privilege or license to enter an event venue or occupy
16 a particular seat or area in an event venue with respect to one or more events, or

(ii) an entitlement to purchase such a right, privilege or license with respect to one or more future events.

(c) "Person" means any natural person, partnership, corporation, association, or other legal entity.

(d) "Public funding" means the provision, by the Commonwealth, any county, municipality, or other subdivision of the Commonwealth, or by any local development corporation or similar instrumentality whose creation was authorized by the Commonwealth or by any county, municipality or other subdivision of the Commonwealth, of funding, grants, payments, or financial support, including the use of public funds through or from the use of the issuance of tax-exempt bonds, payments in lieu of taxes (PILOT), property tax abatements, lotteries, sales taxes, or levies on parking, hotels, alcohol, car rentals, cigarettes, or other goods or services.

(e) "Resale" includes any form of transfer or alienation, or offering for transfer or alienation, of possession or entitlement to possession of an event ticket from one person to another, with or without consideration, whether in person or by means of telephone, mail, delivery service, facsimile, internet, email or other electronic means. "Resale" does not include the initial sale of an event ticket by the ticket issuer.

(f) "Ticket issuer" means any person that makes event tickets available, directly or indirectly, to the general public, and may include the operator of a venue; the sponsor or promoter of an event; a sports team participating in an event or a league whose teams are participating in an event; a theater company, musical group or similar participant in an event; or an agent of any such person.

(g) "Venue" means the theater, stadium, field, hall or other facility where an event takes place.

Section 3. (a) A ticket issuer, or its authorized agent, shall provide advance public notice of its ticket policies for each event subject to this Act. Such notice shall include at least the following information:

(i) Identification of the specific event, including date, time, and location.

(ii) The total number of event tickets to be issued for the event, whether by public sale or otherwise, and the number of such tickets for every class, tier or level of admission offered.

(iii) The total number of event tickets to the event that will be made available for purchase by members of the general public as public sale tickets subject to this section, and the number of such tickets for every class, tier or level of admission offered.

(iv) The established price for each class, tier or level of admission offered which will be designated as public sale tickets, including the amount of any premium, service charge or other fee applicable to the sale of such ticket.

(v) The date and time when tickets are made available to any member of the general public including but not limited to fan clubs, businesses, and for promotional activities. (on-sale date and time)

(vi) A complete list of the outlets at which such public sale tickets will be made available for sale to the general public on the date and at the time specified, including a list of all Internet websites at which such tickets will be made available.

(b) Each public notice of ticket practices under this section shall be accompanied by a certification that the party submitting the notice is, or is authorized to act on behalf of, a ticket issuer within the meaning of this Act; that the ticket issuer is in compliance with the consumer protection minimum standards set out in section 6 of this Act; that all tickets designated as public sale tickets will in fact be made available for sale to the general public as stated in the notice; and that all the information contained in the notice is true and correct to the best of the knowledge and belief of the party submitting the notice.

(c). No public notice under this section shall be valid unless it is submitted to the Commissioner of Public Safety, and otherwise made public in accordance with subsection (d), at least 15 days prior to the on-sale date specified in the notice. A public notice shall be deemed to have been submitted on the date and at the time it is received by the Department of Public Safety.

(d). The Department of Public Safety shall post on its website, within 24 hours after receipt, any public notice which substantially complies with this section. The ticket issuer or its authorized agent shall cause the public notice to be publicly displayed at each place where public sale tickets are to be sold, and on each website where such tickets are to be sold. Nothing in this section shall be construed to prevent a ticket issuer or its authorized agent from using other methods of public notification in addition to those methods which are required by this Act.

(e) In addition to the failure to comply with any other provision of this section, the following acts shall be unlawful and shall be punishable as violations of this Act:

Material false or misleading statements made knowingly, or in reckless disregard of their falsity, by or on behalf of a ticket issuer, in connection with a public notice under this section.

(f) Nothing in this section shall be construed to impose any restrictions on the sale or resale, or the offer to sell or to resell, any ticket of admission to any event that has not been identified in a public notice as a public sale ticket, in compliance with this section;

84 SECTION 4. (a) Except as otherwise provided in this Act, it shall be unlawful for any
85 ticket issuer to prohibit or restrict the resale or offering for resale of an event ticket by a lawful
86 possessor thereof.

87 b) Activities prohibited to ticket issuers by this Act include, but are not limited to –

88 i) purporting to impose license or contractual terms on the initial sale of event tickets
89 (including but not limited to terms printed on the back of a physical ticket) that prohibit resale of
90 the ticket, or that restrict the price or other terms and conditions under which a ticket may be
91 resold;

92 ii) requiring the purchaser of a ticket, whether for a single event or for a series or season
93 of events, to agree not to resell the ticket, or to resell the ticket only through a specific channel
94 approved by the ticket issuer;

95 (iii) bringing legal action, based on an unlawful prohibition or restriction on resale of an
96 event ticket, against –

97 (A) a purchaser who resells or offers to resell an event ticket without permission of the
98 ticket issuer, or in violation of a restriction purportedly imposed by the ticket issuer;

99 (B) persons who facilitate or provide services for the resale of event tickets without such
100 permission or in alleged violation of such a restriction; or

101 (C) the operator of a physical or electronic marketplace in which a ticket is offered for
102 resale without such permission or in alleged violation of such a restriction;

103 (iv) imposing any penalty on a ticket purchaser who resells or offers to resell an event
104 ticket without permission or in violation of a restriction purportedly imposed by the ticket issuer,
105 or treating such a purchaser in any material way less favorably than a similarly situated
106 purchaser who does not resell or offer to resell an event ticket, or who complies with resale
107 restrictions purportedly imposed by the ticket issuer;

108 (v) employing technological means for the purpose or with the foreseeable effect of
109 prohibiting or restricting the resale of event tickets, including but not limited to issuing event
110 tickets in an electronic form that is not readily transferrable to a subsequent purchaser, or
111 conditioning entry into the venue on presentation of a token (such as the original purchaser's
112 credit card or state-issued identification card) that cannot be readily transferred to a subsequent
113 purchaser; or

114 (vi) seeking to limit or restrict the price, or to impose a minimum or maximum price, at
115 which an event ticket may be resold.

116 SECTION 5. (a) It shall be unlawful for any person to engage in the primary or
117 secondary market for event ticket sales as a trade or business in any manner specified in

118 subsection (b) without complying with the consumer protection minimum standards specified in
119 this section.

120 (b) This section applies to all persons engaged in the trade or business of –

121 (i) acting as a ticket issuer;

122 (ii) engaging in the resale of event tickets; or

123 (iii) providing a physical or electronic marketplace for the sale or resale of event tickets
124 by other persons.

125 (c) An individual who resells no more than [80] event tickets in any 12-month period
126 shall not be considered to be engaged in the trade or business of reselling event tickets for
127 purposes of this section.

128 (d) All persons subject to this section shall –

129 (i) maintain a toll-free telephone number for complaints and inquiries regarding its
130 activities in the sale or resale of event tickets;

131 (ii) implement and reasonably publicize a standard refund policy that meets the minimum
132 standards stated in subsection (e)

133 A person subject to this section by engaging in the resale of event tickets may satisfy the
134 requirements of this section by engaging in such resale in a physical or electronic marketplace
135 that fully complies with this section.

136 (e) The standard refund policy referenced in subsection (d) ---

137 (i) shall provide a consumer who purchases an event ticket a full refund if --

138 (A) the event is cancelled before the scheduled occurrence of the event, and is not re-
139 scheduled;

140 (B) the event ticket received by the purchaser is counterfeit;

141 (C) the event ticket has been cancelled by the ticket issuer for non-payment by the
142 original purchaser, or for any reason other than an act or omission of the consumer;

143 (D) the event ticket materially and to the detriment of the consumer fails to conform to
144 the description provided by the seller or reseller; or

145 (E) the event ticket was not delivered to the consumer prior to the occurrence of the
146 event, unless such failure of delivery was due to any act or omission of the consumer;

(ii) shall include in a full refund the full price paid by the consumer for the event ticket, together with any fees charged in connection with that purchase, including but not limited to convenience fees, processing fees, at-home printing charges, shipping and handling charges, or delivery fees; and

(iii) may condition entitlement to a refund upon timely return of the ticket purchased, and may include reasonable safeguards against abuse of the policy.

(f) Nothing in this section shall be construed to prohibit any person subject to this section from implementing consumer protection policies that exceed the minimum standard set forth in this section, and that are otherwise compliant with this Act.

SECTION 6. (a) The Commissioner of Public Safety may bring a civil action for enforcement of any violation of this section, in the same manner, by the same means, and with the same jurisdiction, powers and duties, as apply to that office in its enforcement of other laws of the Commonwealth for the protection of consumers or for the prevention of unfair or deceptive acts or practices.

(b) (i) Notwithstanding any other provision of law, in order to remedy any violation of this Act, the Commissioner of may bring a civil action in a court of the Commonwealth of appropriate jurisdiction—

(A) to enjoin further violation of this Act by the defendant; or

(B) to obtain damages on behalf of residents of the State, in a total amount equal to the greater of—

(1) the actual monetary loss suffered by such residents; or

(2) the amount determined under paragraph (ii).

(ii) Statutory damages.

(A) In general. For purposes of paragraph (b)(1)(B)(ii), the amount determined under this paragraph is the amount calculated by multiplying the number of violations by up to \$100, with each ticket sold, resold or offered for sale or resale in violation of this Act counted as a separate violation.

(B) Limitation. For any violation of this Act with respect to any one event, the amount determined under subparagraph (A) may not exceed \$100,000.

(C) Aggravated damages. Notwithstanding subparagraph (A) or (B), the court may increase a damage award to an amount equal to not more than three times the amount otherwise available under this paragraph if the defendant was previously found to have violated this Act in a civil action.

(iii) Attorney fees. In the case of any successful action under paragraph (i), the court, in its discretion, may award the costs of the action and reasonable attorney fees to the State.

(iv) Construction. For purposes of bringing any civil action under paragraph (i), nothing in this Act shall be construed to prevent the Department of Public Safety from exercising the powers conferred upon it by the laws of the Commonwealth to—

(A) conduct investigations;

(B) administer oaths or affirmations; or

(C) compel the attendance of witnesses or the production of documentary and other evidence.

(v) Statute of limitations. No action may be brought under this subsection unless such action is begun within 2 years of the date of the act complained of.

SECTION 7. Nothing in this Act shall be interpreted to invalidate restrictions on the resale of tickets imposed by –

(a) sponsors or promoters of events intended solely to benefit charitable endeavors, for which all tickets are distributed free of charge;

(b) not-for-profit educational institutions, with respect to athletic events involving athletes or teams of such institutions, to the extent that such restrictions apply to tickets initially distributed by the institution to –

(i) students, faculty, staff members or alumni without charge; or

(ii) members of bona fide booster organizations consisting of those making substantial financial contributions to the institution.]

SECTION 8. The Commissioner of Public Safety is authorized, pursuant to Chapter 30A to issue regulations to implement the provisions of this Act. Such regulations may include, but shall not necessarily be limited to:

(a) Modifying the 15-day advance notice period and other provisions of Section 4, for certain defined categories of sporting events for which the date, time, venue or participants are not likely to be ascertainable far enough in advance to permit full compliance with that section;

(b) Specifying further categories of information to be included in a public notice under section 4;

(c) Prescribing supplementary required methods of public notification in addition to those specified in section 4(d);

211 (d) Prescribing allowable methods for marking of public sale tickets, as required by
212 section 4(e), including in cases in which the ticket does not take tangible form;

213 (e) Defining categories of persons otherwise subject to this section who are temporarily
214 or indefinitely excluded from its provisions, or against whom the Commissioner of Public Safety
215 determines to forebear from enforcement of this Act in whole or in part, if the Commissioner
216 determines that the activities of such persons otherwise subject to this section have a relatively
217 insignificant impact on commerce in event tickets.