

SENATE BILL 1999

By Stewart

AN ACT to amend Tennessee Code Annotated, Title 62,  
relative to ticket brokers.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 62, is amended by adding the following language as a new, appropriately designated chapter:

62-45-101.

This chapter shall be known and may be cited as the "Ticket Broker Licensing Act".

62-45-102.

As used in this chapter, the term:

(1) "Amateur," when applied to a person engaged in boxing, wrestling, or a martial art, means a person who receives no compensation and engages in a match, contest, or exhibition of boxing, wrestling, or a martial art that is governed or authorized by:

- (A) U.S.A. Boxing;
- (B) The National Collegiate Athletic Association;
- (C) Amateur Athletic Union;
- (D) Golden Gloves;
- (E) USA Wrestling;
- (F) National High School Coaches Association;
- (G) North American Sport Karate Association;
- (H) International Sport Kick Boxing/Karate Association;
- (I) World Kick Boxing Association;

- (J) United States Kick Boxing Association;
- (K) International Sport Combat Federation;
- (L) Professional Karate Commission;
- (M) International Kick Boxing Federation; or
- (N) The local affiliate of any organization listed in this subdivision

(1);

(2) "Charitable organization" means an entity described by:

(A) Section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. § 501(c)(3); or

(B) Section 170(c) of the Internal Revenue Code of 1986 (26 U.S.C. § 170(c);

(3) "Commissioner" means the commissioner of commerce and insurance;

(4) "Department" means the department of commerce and insurance;

(5) "Exhibition" means a contest where the participants engage in the use of boxing, wrestling, or martial arts skills and techniques and where the objective is to display such skills and techniques without striving to win;

(6) "Face value" means the dollar value of a ticket or order, which value shall reflect the dollar amount that the customer is required to pay or, for complimentary tickets, would have been required to pay to purchase a ticket with equivalent seating priority in order to view the match, contest, exhibition, or entertainment event. No complimentary ticket shall have a face value of zero dollars (\$0.00). No complimentary ticket shall have a face value of less than that of the least expensive ticket available for sale to the general public. Face value

shall include any charges or fees, such as dinner, gratuity, parking, surcharges, or any other charges or fees that are charged to and must be paid by the customer in order to view the match, contest, exhibition, or entertainment event. It shall exclude any portion paid by the customer for federal, state, or local taxes;

(7) "Gross receipts" means:

(A) The gross price charged for the sale or lease of broadcasting, television, pay per view, closed circuit, or motion picture rights without any deductions for commissions, brokerage fees, distribution fees, production fees, advertising, or other expenses or charges;

(B) The face value of all tickets sold and complimentary tickets issued, provided, or given; and

(C) The face value of any seats issued, provided, or given in exchange for advertising, sponsorships, or anything of value to the promotion of an event;

(8) "Kickboxing" means unarmed combat involving the use of striking techniques delivered with the upper and lower body and in which the competitors remain standing while striking;

(9) "Local tax" means any occupation tax or other tax owed to a county or municipality in order to hold a match, contest, or exhibition or to carry on a business as a ticket broker within such county or municipality;

(10) "Manager"

(A) Means a person who under contract, agreement, or other arrangement with a boxer, undertakes to control or administer, directly or indirectly, a matter related to boxing on behalf of a boxer; and

(B) Includes, but is not limited to, a person who functions as a booking agent, adviser, or consultant;

(11) "Martial art" means any form of unarmed combative sport or unarmed combative entertainment that allows contact striking, except boxing or wrestling;

(12) "Mixed martial arts" means unarmed combat involving the use of a combination of techniques from different disciplines of the martial arts, including but not limited to grappling, submission holds, and strikes with the upper and lower body;

(13) "Original purchaser for personal use" means a person who buys one (1) or more tickets with the intention of using the ticket or tickets solely for the use of the purchaser or the purchaser's invitees, employees, and agents. An original purchaser who resells more than six (6) tickets to the same athletic contest or entertainment event and who resells tickets to an athletic contest or entertainment event for more than one hundred five percent (105%) of their face value shall be rebuttably presumed to be engaging in the business of a ticket broker in any criminal prosecution or civil action, order, or penalty by the commission;

(14) "Patron boxing," "patron wrestling," or "patron martial arts" means boxing, wrestling, or martial arts that is not governed or authorized by any organization listed in subdivision (1);

(15) "Pay per view" means a telecast for which a fee is required in addition to any other fee paid by the viewer for any other services of the telecaster;

(16) "Person" means any individual, partnership, firm, association, corporation, or combination of individuals of whatever form or character;

(17) "Professional" means a person who is participating or has participated in a match, contest, or exhibition that is not governed or authorized by one (1) or more of the organizations listed in subdivision (1) and:

(A) Has received or competed for or is receiving or competing for any cash as a salary, purse, or prize for participating in any match, contest, or exhibition;

(B) Is participating or has participated in any match, contest, or exhibition to which admission is granted upon payment of any ticket for admission or other evidence of the right of entry;

(C) Is participating or has participated in any match, contest, or exhibition which is or was filmed, broadcast, or transmitted for viewing; or

(D) Is participating or has participated in any match, contest, or exhibition that provides a commercial advantage by attracting persons to a particular place or promoting a commercial product or enterprise;

(18) "Professional match, contest, or exhibition" means a match, contest, or exhibition that is not governed or authorized by one (1) or more of the organizations listed in subdivision (1) and:

(A) Rewards a participant with cash as a salary, purse, or prize for such participation;

(B) Requires for admission payment of a ticket for admission or other evidence of the right of entry;

(C) Is filmed, broadcast, or transmitted for viewing; or

(D) Provides a commercial advantage by attracting persons to a particular place or promoting a commercial product or enterprise;

(19) "Promoter" means the person primarily responsible for organizing, promoting, and producing a professional match, contest, or exhibition and who is legally responsible for the lawful conduct of such professional match, contest, or exhibition;

(20) "Promotion of unarmed combat" means the organization, promotion, production, publicizing, or arranging of, or provision of a venue for, a competition of unarmed combat by a person who receives some compensation or commercial benefit from such competition;

(21) "Purse" or "ring earnings" means the financial guarantee or any other remuneration, or part thereof, for which professional boxers or wrestlers are participating in a match, contest, or exhibition and includes the boxer's or wrestler's share of any payment received for radio broadcasting, television, or motion picture rights;

(22) "Shidokan" means unarmed combat involving three (3) separate, segregated rounds in which karate rules and techniques are exclusively used in one (1) round, kickboxing rules and techniques are exclusively used in one (1) round, and grappling rules and techniques are exclusively used in one (1) round;

(23) "Ticket broker":

(A) Means:

(i) Any person who is involved in the business of reselling tickets of admission to athletic contests, concerts, theater performances, amusements, exhibitions, or other entertainment

events held in this state to which the general public is admitted and who charges a premium in excess of the price of the ticket; or

(ii) Any person who has a permanent office or place of business in this state who is involved in the business of reselling tickets of admission to athletic contests, concerts, theater performances, amusements, exhibitions, or other entertainment events held inside or outside this state to which the general public is admitted and who charges a premium in excess of the price of the ticket;

(B) Does not mean the owner, operator, lessee, or tenant of the property in which an athletic contest or entertainment event is being held or the sponsor of such a contest or event or the authorized ticket agent of such persons;

(24) “Unarmed combat”:

(A) Means any form of competition between human beings or one (1) or more human beings and one (1) or more animals in which:

(i) One (1) or more blows are struck which may reasonably be expected to inflict injury on a human being; and

(ii) There is some compensation or commercial benefit arising from such competition, whether in the form of cash or noncash payment to the competitors or the person arranging the competition; the sale of the right to film, broadcast, transmit, or view the competition; or the use of the competition to attract persons to a particular location for some commercial advantage or to promote a commercial product or commercial enterprise; and

(B) Includes, but is not limited to, tough man fights, bad man fights, nude boxing, nude wrestling, patron boxing, patron martial arts, patron wrestling, and any amateur kickboxing match in which the competitors are not wearing protective gear; and

(25) "Wrestling" means:

(A) A staged performance of fighting and gymnastic skills and techniques by two (2) or more human beings who are not required to use their best efforts in order to win and for which the winner may have been selected before the performance commences; or

(B) A performance of fighting and gymnastic skills and techniques by two (2) or more human beings.

62-45-103.

An application for licensure as a ticket broker shall indicate the applicant's qualifications for the license as described in § 62-45-113, and any other qualification as determined by the department, and accompanied by an application fee fixed by the department.

62-45-104.

In addition to other powers and duties specified in this chapter, the department shall:

(1) Promulgate rules and regulations necessary to carry out this chapter in compliance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5;

(2) Design and adopt an official seal for licensed ticket brokers;

(3) Set the amount of all fees required by this chapter;

(4) Identify and approve continuing education programs for persons regulated by the department under this chapter. The department may prescribe regulations requiring continuing education as a prerequisite for renewal of certificates of licensure;

(5) Receive, administer and account for all moneys derived under this chapter and transfer these funds to the state treasurer, who shall keep the moneys in a fund to be known as the ticket brokers fund. The fund shall be used to defray expenses incurred in the administration of this chapter; provided, however, that any unencumbered or unexpended balance of this fund remaining at the end of any fiscal year shall revert to the general fund; and

(6) Have other powers and duties that are necessary to effectuate this chapter.

62-45-105.

(a) The department shall keep a public record of its proceedings and a register of all applicants for licensure.

(b) All official records of the department, or affidavits by the commissioner as to the contents of the records, shall be prima facie evidence of all matters required to be kept in the records.

(c) Except as otherwise provided by this section, the following shall be treated as confidential and may not be disclosed except by order of a court of competent jurisdiction or by permission of the applicant:

(1) Applications and other personal information submitted by applicants, except to the applicant, the department or its staff; and

(2) Information submitted by a reference concerning an applicant, except to the department or its staff.

62-45-106.

The department shall publish a roster semiannually showing the names and places of business of all ticket brokers licensed in this state. Copies of this roster shall be placed on file with the secretary of state and furnished to any licensee upon request free of charge or to the public upon request and payment of a fee, not to exceed cost, to be established by the department.

62-45-107.

The department shall promulgate a code of professional conduct that shall be made known in writing to every licensee and applicant for licensure under this chapter. The department may revise and amend this code of ethics from time to time and shall immediately notify each licensee in writing of any revision or amendments.

62-45-108.

Any person may file a complaint with the commissioner against a licensee alleging fraud, deceit, gross neglect, incompetence or misconduct. Complaints shall be made in writing.

62-45-109.

(a) The department shall have the power to suspend, revoke or refuse to renew the certificate of licensure of any licensee who:

(1) Is found to have been convicted of:

(A) Any fraud or deceit in obtaining a certificate of licensure;

(B) Any felony; or

(C) Any unlawful act as set forth in this chapter; or

(2) Is found guilty of fraud, deceit, gross neglect, incompetence or misconduct in the practice or business of a ticket broker.

(b) Any action by the department to suspend, revoke or refuse to renew a certificate of licensure shall be taken after a hearing held in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(c) Any administrative or judicial review of such action shall likewise be in accordance with the procedures set forth in the Uniform Administrative Procedures Act.

(d) The department may seek relief at law or equity to restrain or enjoin any act or practice in violation of this chapter or of any rule promulgated to effectuate the purposes of this chapter. Jurisdiction is conferred upon the chancery and circuit courts of this state to hear and determine such a suit. No bond shall be required for the prosecution of the suit or for the issuance of an injunction.

(e) Members of the department are officers of the state in carrying out the duties imposed by this chapter and as such have the full measure of governmental immunity provided by law.

62-45-110.

The department may reissue a certificate of licensure to any person whose certificate of licensure has been revoked upon written application to the department by the applicant, showing good cause to justify reissuance.

62-45-111.

Legal counsel shall be provided by the division of regulatory boards.

62-45-112.

(a) Except as otherwise provided in § 62-45-116, it shall be unlawful for any person other than a ticket broker to resell or offer for resale any ticket of admission or other evidence of the right of entry to any athletic contest, concert, theater performance, amusement, exhibition, or other entertainment event to which the general public is admitted for a price in excess of the face value of the ticket. Notwithstanding any other

provision of this chapter to the contrary, a service charge not to exceed three dollars (\$3.00) may be charged when tickets or other evidence of the right of entry are sold by an authorized ticket agent through places of established business licensed to do business by the municipality or county, where applicable, in which such places of business are located. Notwithstanding any law to the contrary, the owner, operator, lessee, or tenant of the property on which an athletic contest or entertainment event is to be held or is being held or the sponsor of such contest or event may charge or may authorize, in writing, any person to charge a service charge for the sale of such ticket, privilege, or license of admission in addition to the face value of the ticket. Such writing granting authority to another shall specify the amount of the service charge to be charged for the sale of each ticket, privilege, or license of admission.

(b) Notwithstanding any law to the contrary, in the case of any athletic contest or entertainment event that is described in § 62-45-118, a sponsor of such a contest or event may contractually restrict the resale of a ticket to such contest or event by giving notice of such restriction on the back of the ticket. Notwithstanding any other provision of this chapter to the contrary, in the case of any athletic contest or entertainment event, an owner, operator, lessee, or tenant of the property on which such contest or event is to be held or is being held may contractually restrict the resale of the right of occupancy of any specific suite, seat, or seating area by giving notice in writing of such restriction.

62-45-113.

In order to engage in the practice or business of a ticket broker, a person shall be required to:

- (1) Maintain a permanent office or place of business in this state, excluding a post office box, for the purpose of engaging in the practice or business of a ticket broker;

(2) Apply to the department for a ticket broker's license on a form designated by the department, pay an annual license fee as fixed by the department, and renew the license annually;

(3) Pay any local tax required by a local government; and

(4) Register for sales and use tax purposes pursuant to title 67, chapter 6, part 6.

62-45-114.

No person shall engage in the practice or business of a ticket broker, or be employed as general manager for a person engaged in the practice or business of a ticket broker, who has been convicted of a felony and who has not been pardoned or had restoration of citizenship pursuant to title 40, chapter 29.

62-45-115.

(a) The ticket broker shall be required to:

(1) Post at its established place of business the terms of the purchaser's right to cancel the purchase of a ticket from a ticket broker;

(2) Disclose to the purchaser the refund policy of the ticket broker should an athletic contest or entertainment event be canceled;

(3) Disclose to the purchaser in writing the difference between the face value of the ticket and the amount which the ticket broker is charging for such ticket; and

(4) Sell tickets only at its permanent office, place of business, or through the Internet; provided, however, that delivery of one (1) or more tickets after the transaction is completed to a place other than the ticket broker's office or place of business shall not violate this subdivision (a)(4).

(b)

(1) A ticket broker shall be prohibited from employing any agent or employee for the purpose of making future purchases of tickets from the owner, operator, lessee, or tenant of the property on which an athletic contest or entertainment event is to be held.

(2) Each ticket broker, including any affiliated group of ticket brokers, shall be prohibited from acquiring and reselling in excess of one percent (1%) of the total tickets allocated for any contest or event.

(3) Unless otherwise provided in a written agreement between a ticket broker and the purchaser, a ticket broker shall be required to refund any payment received for the purchase of a ticket under this chapter if the purchaser returns the ticket and requests a cancellation of the sale thereof within thirty-six (36) hours from the time of purchase of the ticket and if such return is made more than seventy-two (72) hours preceding the athletic contest or entertainment event.

(4) A ticket broker shall be required to refund any payment received for the purchase of a ticket under this chapter if the athletic contest or entertainment event is canceled and not rescheduled.

(5) If a ticket broker guarantees in writing delivery of a ticket or tickets to an athletic contest or entertainment event as provided under this chapter to a purchaser and fails to complete such delivery, the ticket broker shall be required to provide within fifteen (15) days a full refund of any amount paid by the purchaser and, in addition, shall pay the purchaser a refund fee of three (3) times the amount paid by the purchaser for each such ticket.

(c)

(1) For all venues that seat or admit less than fifteen thousand (15,000) persons, a ticket broker and its employees, agents, and assigns are criminally prohibited from reselling or offering for resale any ticket within one thousand five hundred feet (1,500') from the venue where an event or contest is to be held or is being held.

(2) For all venues which seat or admit fifteen thousand (15,000) or more persons, a ticket broker and its employees, agents, and assigns are criminally prohibited from reselling or offering for resale any ticket within two thousand seven hundred feet (2,700') from the venue where an event or contest is to be held or is being held.

(d) Any ticket broker offering to resell tickets to an athletic contest or entertainment event through any printed, broadcast, or Internet advertising shall include in such advertising the license number of such ticket broker offering such tickets for resale.

62-45-116.

(a) No provision of this chapter or any other law, shall criminally prohibit any person who is the original purchaser for personal use of one (1) or more tickets to an athletic contest or entertainment event covered under this chapter from reselling or offering for resale any of such tickets for any price; provided, that such person does not sell or offer to sell such tickets within two thousand seven hundred feet (2,700') of a venue that seats or admits fifteen thousand (15,000) or more persons for such a contest or event or a public entrance to such a contest or event.

(b) No charitable organization, or its employees and volunteers, shall be subject to this chapter when offering for sale any tickets of admission in a raffle, auction, or similar fundraising activity for the benefit of the organization's charitable purposes.

62-45-117.

(a) Notwithstanding § 62-45-115(c) and § 62-45-118(b), no provision of this chapter, or any other law, shall provide a criminal penalty for or prohibit the resale or offering for resale of a ticket or tickets to an athletic contest or entertainment event covered under this chapter by a ticket broker or a ticket broker's employees, agents, and assigns in a zone or zones within the area where such resale or offering for resale is prohibited, if such activity is authorized by the organizer of the contest or event and the owner or operator of the venue where such contest or event is being held or to be held.

(b) Notwithstanding § 62-45-116(a) and § 62-45-118(b), neither this section, or any other law, shall provide a criminal penalty for or prohibit the resale or offering for resale of a ticket or tickets purchased by any person who is the original purchaser for personal use of such ticket or tickets to an athletic contest or entertainment event covered under this chapter in a zone or zones within the area where such resale or offering for resale is prohibited, if such activity is authorized by the organizer of the contest or event and the owner or operator of the venue where such contest or event is being held or to be held.

62-45-118.

(a) With regard to any single athletic contest or entertainment event that occurs no more often than once annually and with regard to any series of athletic contests that occur no more often than once annually and that occur within a time period not exceeding ten (10) days, the municipal corporation in which such contest, event, or series of contests is to be held, or if the contest, event, or series of contests is to be held in an unincorporated area, the county of such unincorporated area, is authorized to enact by ordinance regulations governing ticket brokers for such contest, event, or series of contests that are more restrictive than this chapter.

(b) The municipal corporation in which an athletic contest or entertainment event is to be held, or if the contest or entertainment event is to be held in an unincorporated area, the county of such unincorporated area, is authorized to enact an ordinance prohibiting the resale or offering for resale of one (1) or more tickets by a ticket broker or by a person who is the original purchaser for personal use of one (1) or more tickets within two thousand seven hundred feet (2,700') of a venue that seats or admits fifteen thousand (15,000) persons or more.

62-45-119.

In addition to any other penalties under this chapter, any person who violates this chapter commits a Class A misdemeanor, punishable only by fine.

62-45-120.

(a)

(1) If the department believes that any person is violating or has violated this chapter, subject to notice and opportunity for hearing in accordance with the Uniform Administrative Procedures Act compiled in title 4, chapter 5, unless the right to notice is waived by the person against whom the sanction is imposed, the department may:

(A) Issue a cease and desist order prohibiting any violation of this chapter;

(B) Issue an order against a person who violates this chapter, imposing a civil penalty up to a maximum of one thousand dollars (\$1,000) per violation; or

(C) Issue an order suspending or revoking the ticket broker's license.

(2) Upon a showing by the department in any court of competent jurisdiction that a person has violated or is about to violate this chapter, a rule promulgated under this

chapter, or an order of the department, the court may enter or grant any or all of the following relief:

(A) A temporary restraining order or a temporary or permanent injunction;

(B) A civil penalty up to a maximum of two thousand dollars (\$2,000) per violation of this chapter;

(C) A declaratory judgment;

(D) Restitution to any person or persons adversely affected by a defendant's action in violation of this article; or

(E) Other relief as the court deems just or reasonable.

(b) Unless the department determines that a person subject to this chapter intends to depart quickly from this state or to remove such person's property from this state or to conceal his or her person or property in this state or that there is immediate danger of harm to citizens of this state or another state, the department shall give notice in writing that such proceedings are contemplated and allow such person a reasonable opportunity to appear before the department and execute an assurance of voluntary compliance. The determination of the department under this subsection (c) shall be final and not subject to review.

(c) Procedures relating to hearings, notice, counsel, subpoenas, records, enforcement powers, intervention, rules of evidence, decisions, exceptions, review of initial decisions, final decisions, and judicial review of decisions shall be governed by the Uniform Administrative Procedures Act, unless the Act is contrary to the express provisions of this chapter.

SECTION 2. The commissioner is authorized to promulgate rules and regulations to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with Tennessee Code Annotated, Title 4, Chapter 5.

SECTION 3. This act shall take effect July 1, 2011, the public welfare requiring it.