

LEGISLATURE OF NEBRASKA
ONE HUNDREDTH LEGISLATURE
SECOND SESSION
LEGISLATIVE BILL 1042

Introduced by Howard, 9.

Read first time January 17, 2008

Committee: Judiciary

A BILL

1 FOR AN ACT relating to consumer protection; to adopt the Resale
2 of Tickets to Entertainment Events Act; to provide
3 penalties; and to provide severability.
4 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 9 of this act shall be known and
2 may be cited as the Resale of Tickets to Entertainment Events Act.

3 Sec. 2. For purposes of the Resale of Tickets to
4 Entertainment Events Act:

5 (1) Person means any individual or any corporation,
6 partnership, limited liability company, association, or any other
7 type of business entity;

8 (2) Entertainment event includes, but is not limited to,
9 any theatrical performance; operatic performance; concert; circus;
10 carnival or side show; form of entertainment at a fair ground or
11 amusement park; athletic contest, including a wrestling, boxing, or
12 sparring exhibition; football game; baseball game; golf tournament;
13 hockey game; swimming competition; horseback riding competition;
14 automobile racing competition; or sport show, exhibition, contest,
15 display, or game;

16 (3) Sponsor means any artist, promoter, or producer
17 directly involved with the production, performance, or promotion of
18 an entertainment event; and

19 (4) Venue means any place of public amusement, an arena,
20 a pavilion, a racetrack, a stadium, or a theater.

21 Sec. 3. It is unlawful for any person to sell, offer
22 for sale, or attempt to sell any ticket, privilege, or license of
23 admission to an entertainment event at any venue in this state at
24 a price greater than the admission price, including lawful taxes,
25 surcharges, and general fees, plus twenty-five percent of the

1 admission price, including lawful taxes, surcharges, and general
2 fees.

3 Sec. 4. (1) Any person violating section 3 of this act
4 is guilty of a Class II misdemeanor. Upon a second or subsequent
5 conviction of a violation of section 3 of this act the person
6 is guilty of a Class I misdemeanor. If the violation is by a
7 corporation, partnership, limited liability company, association,
8 or any other type of business entity, any officer or director
9 of such corporation, or member of such limited liability company,
10 partnership, association, or other type of business entity, its
11 agents and employees, who has knowledge of and involvement in the
12 violation, is guilty of a violation of section 3 of this act and,
13 upon conviction, shall be punished as provided in this section.

14 (2) Upon conviction of a violation of section 3 of this
15 act, the sentencing court shall impose upon and collect from the
16 convicted person a fine of one hundred dollars in addition to and
17 independent of any other fine and cost imposed upon the convicted
18 person. The fines shall be remitted to the State Treasurer for
19 distribution in accordance with Article VII, section 5, of the
20 Constitution of Nebraska.

21 (3) The act does not apply to fundraising activities
22 performed by or on the behalf of a charitable organization that
23 qualifies as an exempt organization under 26 U.S.C. 501(c) or 527,
24 as such sections existed on the effective date of this act.

25 Sec. 5. The Resale of Tickets to Entertainment Events Act

1 supersedes any ordinance or resolution of a political subdivision
2 embracing the same subject matter.

3 Sec. 6. (1) In addition to the penalties provided in
4 section 4 of this act, a person who violates section 3 of this act
5 is liable to a sponsor or sponsor's assignee, who may sue either
6 at law or in equity to recover appropriate relief from the person
7 engaged in such violation.

8 (2) In an action under this section, appropriate relief
9 includes:

10 (a) Such preliminary and other equitable or declaratory
11 relief as may be appropriate;

12 (b) Damages under subsection (3) of this section; and

13 (c) Reasonable attorney's fees and costs.

14 (3) In an action under this section, if a person is
15 found to have violated section 3 of this act, then the sponsor or
16 sponsor's assignee shall recover actual or liquidated damages of
17 not less than seven hundred fifty dollars and not more than ten
18 thousand dollars for each violation of such section. Each ticket
19 transaction constitutes a separate violation.

20 (4) No person shall sue under this section more than
21 three years after the date of a violation of section 3 of this
22 act. If the cause of action is not discovered and could not be
23 reasonably discovered within the three-year period, then the action
24 may be commenced within two years after the date of the discovery
25 of the violation or from the date of the discovery of facts which

1 would reasonably lead to the discovery of the violation, whichever
2 is earlier. In no event shall a person sue under this section more
3 than five years after the date of a violation of section 3 of this
4 act.

5 Sec. 7. In a civil action when it is alleged that an
6 anonymous individual has engaged in communications or actions
7 on the Internet that are tortious or in violation of section
8 3 of this act, any subpoena seeking information held by a
9 nongovernmental person or entity that would identify the wrongdoer
10 shall be governed by the following procedure, unless more
11 expedited scheduling directions have been ordered by the court upon
12 consideration of the interests of each person affected thereby:

13 (1) At least thirty days prior to the date on which
14 disclosure of the anonymous communicator or wrongdoer is sought, a
15 party seeking information identifying an anonymous communicator or
16 wrongdoer shall file with the court a copy of the subpoena and all
17 items annexed or incorporated therein, along with:

18 (a) Supporting material showing that one or more
19 communications or actions that are or may be tortious are in
20 violation of section 3 of this act or are otherwise illegal have
21 been made by the anonymous communicator or wrongdoer or that the
22 party requesting the subpoena has a legitimate, good faith basis to
23 contend that such party is the victim of actionable conduct;

24 (b) Supporting material showing that other reasonable
25 efforts to identify the anonymous communicator or wrongdoer have

1 proven fruitless;

2 (c) Supporting material showing that the identity of
3 the anonymous communicator or wrongdoer is important, is centrally
4 needed to advance the claim, relates to a core claim or defense, or
5 is directly and materially relevant to the claim or defense;

6 (d) Supporting material showing that no motion to
7 dismiss, motion for judgment on the pleadings, or judgment as a
8 matter of law, demurrer, or summary judgment motion challenging the
9 viability of the lawsuit of the plaintiff is pending. The pendency
10 of such a motion may be considered by the court in determining
11 whether to enforce, suspend, or strike the proposed disclosure
12 obligation under the subpoena;

13 (e) Supporting material showing that the individuals or
14 entities to whom the subpoena is addressed are likely to have
15 responsive information; and

16 (f) A copy of the pleadings in an action pending in
17 another jurisdiction, along with the mandate, writ, or commission
18 of the court where the action is pending, that authorizes the
19 discovery of the information sought, if the subpoena sought relates
20 to such action.

21 (2) Two copies of the subpoena and supporting materials
22 set forth in subdivisions (1)(a) through (f) of this section shall
23 be served upon the person to whom it is addressed along with
24 payment sufficient to cover postage for mailing one copy of the
25 application within the United States by registered mail, return

1 receipt requested;

2 (3) Except when the anonymous communicator or wrongdoer
3 has consented to disclosure in advance, within five business
4 days after receipt of a subpoena and supporting materials calling
5 for disclosure of identifying information concerning an anonymous
6 communicator or wrongdoer, the individual or entity to whom the
7 subpoena is addressed shall:

8 (a) Send an electronic mail notification to the anonymous
9 communicator or wrongdoer reporting that the subpoena has been
10 received if an email address is available; and

11 (b) Dispatch one copy of the subpoena, by certified or
12 registered mail or commercial delivery service, return receipt
13 requested, to the anonymous communicator or wrongdoer at his or her
14 last-known address, if an address is on file for the person to whom
15 the subpoena is addressed;

16 (4) At least seven business days prior to the date on
17 which disclosure is sought under the subpoena, any interested
18 person may file a detailed written objection, motion to quash, or
19 motion for a protective order. Any such objection or motion by the
20 anonymous communicator or wrongdoer shall be served on or before
21 the date of filing upon the party seeking the subpoena and the
22 party to whom the subpoena is addressed. Any objection or motion
23 filed by the party to whom the subpoena is addressed shall be
24 served on or before the date of filing upon the party seeking
25 the subpoena and the anonymous communicator or wrongdoer whose

1 identifying information is sought. Service is effective when it has
2 been mailed, dispatched by commercial delivery service, transmitted
3 by facsimile, or delivered to counsel of record or to the parties,
4 if there is no counsel of record;

5 (5) Any written objection, motion to quash, or motion
6 for protective order shall set forth all grounds relied upon
7 for denying the disclosure sought in the subpoena and shall also
8 address to the extent feasible:

9 (a) Whether the identity of the anonymous communicator or
10 wrongdoer has been disclosed in any way beyond its recordation in
11 the account records of the party to whom the subpoena is addressed;

12 (b) Whether the subpoena fails to allow a reasonable time
13 for compliance;

14 (c) Whether it requires disclosure of privileged or other
15 protected matter and no exception or waiver applies; and

16 (d) Whether it subjects a person to undue burden.

17 (6) The party to whom the subpoena is addressed shall not
18 comply with the subpoena earlier than three business days before
19 the date on which disclosure of the anonymous communicator or
20 wrongdoer is due, to allow the anonymous communicator or wrongdoer
21 the opportunity to object. If any person files a written objection,
22 motion to quash, or motion for protective order, compliance with
23 the subpoena shall be deferred until the court rules on the
24 obligation to comply. If an objection or motion is made, the party
25 serving the subpoena shall not be entitled to inspect or copy the

1 materials except pursuant to an order of the court which issued the
2 subpoena. If an objection or motion has been filed, any interested
3 person may notice the matter for a hearing. Two copies of any such
4 notice shall be served upon the subpoenaed party, who shall mail
5 one copy of such notice, by registered mail or commercial delivery
6 service, return receipt requested, to the anonymous communicator
7 or wrongdoer whose identifying information is the subject of the
8 subpoena at that person's last-known address.

9 Sec. 8. A party receiving a subpoena for disclosure of
10 an anonymous communicator or wrongdoer pursuant to section 7 of
11 this act shall serve, along with each copy of such subpoena, the
12 notice as provided in this section. The notice shall be printed
13 in at least ten-point type, in boldface capital letters, and in
14 substantially the following form:

15 NOTICE TO INTERNET SERVICE PROVIDER/INTERNET WEB SITE:
16 WITHIN FIVE BUSINESS DAYS AFTER RECEIPT OF THIS SUBPOENA
17 CALLING FOR IDENTIFYING INFORMATION CONCERNING YOUR CLIENT,
18 SUBSCRIBER, OR CUSTOMER, EXCEPT WHERE CONSENT TO DISCLOSURE HAS
19 BEEN GIVEN IN ADVANCE, YOU ARE REQUIRED UNDER THE RESALE OF TICKETS
20 TO ENTERTAINMENT EVENTS ACT TO MAIL ONE COPY OF THE SUBPOENA,
21 BY REGISTERED MAIL OR COMMERCIAL DELIVERY SERVICE, RETURN RECEIPT
22 REQUESTED, TO THE CLIENT, SUBSCRIBER, OR CUSTOMER WHOSE IDENTIFYING
23 INFORMATION IS THE SUBJECT OF THE SUBPOENA. AT LEAST SEVEN BUSINESS
24 DAYS PRIOR TO THE DATE ON WHICH DISCLOSURE IS SOUGHT YOU MAY, BUT
25 ARE NOT REQUIRED TO, FILE A DETAILED WRITTEN OBJECTION, MOTION TO

1 QUASH, OR MOTION FOR PROTECTIVE ORDER. ANY SUCH OBJECTION OR MOTION
 2 SHALL BE SERVED UPON THE PARTY INITIATING THE SUBPOENA AND UPON
 3 THE CLIENT, SUBSCRIBER, OR CUSTOMER WHOSE IDENTIFYING INFORMATION
 4 IS SOUGHT.

5 IF YOU CHOOSE NOT TO OBJECT TO THE SUBPOENA, YOU MUST
 6 ALLOW TIME FOR YOUR CLIENT, SUBSCRIBER, OR CUSTOMER TO FILE HIS OR
 7 HER OWN OBJECTION. THEREFOR, YOU MUST NOT RESPOND TO THE SUBPOENA
 8 ANY EARLIER THAN THREE BUSINESS DAYS BEFORE THE DISCLOSURE IS DUE.

9 IF YOU RECEIVE NOTICE THAT YOUR CLIENT, SUBSCRIBER,
 10 OR CUSTOMER HAS FILED A WRITTEN OBJECTION, MOTION TO QUASH, OR
 11 MOTION FOR PROTECTIVE ORDER REGARDING THIS SUBPOENA, OR IF YOU
 12 FILE A DETAILED WRITTEN OBJECTION, MOTION TO QUASH, OR MOTION FOR
 13 PROTECTIVE ORDER REGARDING THIS SUBPOENA, NO DISCLOSURE PURSUANT TO
 14 THE SUBPOENA SHALL BE MADE EXCEPT PURSUANT TO AN ORDER OF THE COURT
 15 ISSUING THE SUBPOENA.

16 NOTICE TO INTERNET/INTERNET WEB SITE USER:

17 THE ATTACHED PAPERS MEAN THAT AT THE REQUEST OF
 18 (INSERT NAME OF PARTY CAUSING ISSUANCE
 19 OF THE SUBPOENA) THE COURT HAS ISSUED A SUBPOENA TO
 20 (INSERT NAME OF INTERNET SERVICE
 21 PROVIDER/INTERNET WEB SITE) REQUIRING PRODUCTION OF INFORMATION
 22 REGARDING YOUR IDENTITY. UNLESS A DETAILED WRITTEN OBJECTION,
 23 MOTION TO QUASH, OR MOTION FOR PROTECTIVE ORDER REGARDING THIS
 24 SUBPOENA IS FILED WITH THE COURT, THE INTERNET SERVICE PROVIDER
 25 OR INTERNET WEB SITE WILL BE REQUIRED BY LAW TO RESPOND BY

1 PROVIDING THE REQUIRED INFORMATION. IF YOU BELIEVE YOUR IDENTIFYING
2 INFORMATION SHOULD NOT BE DISCLOSED AND OBJECT TO SUCH DISCLOSURE,
3 YOU HAVE THE RIGHT TO FILE WITH THE COURT A DETAILED WRITTEN
4 OBJECTION, MOTION TO QUASH, OR MOTION TO OBTAIN A PROTECTIVE ORDER
5 REGARDING THE SUBPOENA. YOU MAY ELECT TO CONTACT AN ATTORNEY TO
6 REPRESENT YOUR INTERESTS. IF YOU ELECT TO FILE A DETAILED WRITTEN
7 OBJECTION, MOTION TO QUASH, OR MOTION FOR PROTECTIVE ORDER, IT
8 SHOULD BE FILED AS SOON AS POSSIBLE, AND SHALL, IN ALL INSTANCES,
9 BE FILED NO LESS THAN SEVEN BUSINESS DAYS BEFORE THE DATE ON
10 WHICH DISCLOSURE IS DUE (LISTED IN THE SUBPOENA). IF YOU ELECT TO
11 FILE A DETAILED WRITTEN OBJECTION, MOTION TO QUASH, OR MOTION FOR
12 PROTECTIVE ORDER REGARDING THE SUBPOENA, A COPY OF SUCH OBJECTION
13 OR MOTION SHALL BE SENT TO BOTH THE INTERNET SERVICE PROVIDER OR
14 INTERNET WEB SITE AND THE PARTY WHO REQUESTED THE SUBPOENA. IF YOU
15 WISH TO OPPOSE THE SUBPOENA, IN WHOLE OR IN PART, YOU OR YOUR
16 ATTORNEY MAY FILE A DETAILED WRITTEN OBJECTION, MOTION TO QUASH,
17 OR MOTION FOR PROTECTIVE ORDER REGARDING THE SUBPOENA OR YOU MAY
18 USE THE FORM BELOW FOR OBJECTION REGARDING THE SUBPOENA, WHICH MUST
19 BE FILED WITH THE COURT AND SERVED UPON THE PARTY REQUESTING THE
20 SUBPOENA AND THE INTERNET SERVICE PROVIDER OR INTERNET WEB SITE BY
21 MAILING AT LEAST SEVEN BUSINESS DAYS PRIOR TO THE DATE LISTED IN
22 THE SUBPOENA FOR DISCLOSURE:

23 (Name of Court Listed on
24 Subpoena)

25 (Name of Party Seeking

1 Information)

2 Case No.

3 OBJECTION TO SUBPOENA DUCES TECUM

4 I object to the Subpoena Duces Tecum addressed to

5 (Name of Internet Service Provider

6 or Internet Web Site to Whom the Subpoena is Addressed) for the

7 following reasons:

8 (Set forth, in detail, all reasons why the subpoena

9 should not be complied with, and, in addition, state (i) whether

10 the identity of the anonymous communicator or wrongdoer has been

11 disclosed in any fashion, (ii) whether the subpoena fails to

12 allow a reasonable time for compliance, (iii) whether it requires

13 disclosure of privileged or other protected matter and no exception

14 or waiver applies, or (iv) whether it subjects a person to any

15 undue burden. Please print or type.)

16

17

18 (Attach additional sheets if needed)

19 Respectfully Submitted,

20 John/Jane Doe

21 Enter email

22 nickname or other alias used in communicating via the Internet

23 service provider/Internet web site to whom the subpoena is

24 addressed

25 CERTIFICATE

1 I hereby certify that a true copy of the above Objection
 2 to Subpoena Duces Tecum was mailed this day of,
 3 (Month, year), to
 4 (Name and address of party seeking information) and
 5 (Name and address of Internet service
 6 provider/Internet web site)

7 John/Jane Doe
 8 Enter email nickname or other alias used in communicating
 9 via the Internet service provider to whom the subpoena is
 10 addressed.

11 Sec. 9. If an Internet service provider, Internet web
 12 site, or any other person subject to sections 7 and 8 of this act
 13 fails to comply with such section, the court shall award reasonable
 14 attorney's fees and costs in addition to the penalties provided
 15 under the Resale of Tickets to Entertainment Events Act.

16 Sec. 10. If any section in this act or any part of any
 17 section is declared invalid or unconstitutional, the declaration
 18 shall not affect the validity or constitutionality of the remaining
 19 portions.