

AMENDED IN SENATE MAY 26, 2006  
AMENDED IN SENATE APRIL 27, 2006  
AMENDED IN SENATE APRIL 17, 2006

**SENATE BILL**

**No. 1602**

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**Introduced by Senator Battin**  
*(Coauthor: Senator Cedillo)*

February 24, 2006

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An act to amend ~~Section 346~~ *Sections 346 and 502* of the Penal Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

SB 1602, as amended, Battin. Scalping of tickets.

Existing law provides that any person who, without the written permission of the owner or operator of the property on which an entertainment event is to be held or is being held, sells a ticket of admission to the entertainment event, which was obtained for the purpose of resale, at any price which is in excess of the price that is printed or endorsed upon the ticket, while on the grounds of or in the stadium, arena, theater, or other place where an event for which admission tickets are sold is to be held or is being held, is guilty of a misdemeanor.

This bill would provide, in addition, that ~~a person, as specified~~ *any person*, who buys more tickets than allowed under the maximum ticket purchase limit with the intent to resell the tickets for ~~a commercial purposes~~ *an amount higher than the face value of the tickets* is guilty of a misdemeanor. This bill would also provide for civil remedies for the original ticket seller when a person buys more tickets than allowed by the original ticket seller.

*Existing law makes it a public offense to commit an act, as specified, that tampers, interferes, or damages computer data, systems, or networks.*

*This bill would, in addition, make it a public offense to knowingly and without permission use automated computer software to circumvent, defeat, defraud, or deceive a computer program that is designed to validate proper transaction flow and access to goods or services by computer users who are natural persons.*

By creating new crimes, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 346 of the Penal Code is amended to  
2 read:

3 346. (a) Any person who, without the written permission of  
4 the owner or operator of the property on which an entertainment  
5 event is to be held or is being held, sells a ticket of admission to  
6 the entertainment event, which was obtained for the purpose of  
7 resale, at any price which is in excess of the price that is printed  
8 or endorsed upon the ticket, while on the grounds of or in the  
9 stadium, arena, theater, or other place where an event for which  
10 admission tickets are sold is to be held or is being held, is guilty  
11 of a misdemeanor.

12 (b) ~~Except for a licensed ticket broker, any~~ Any person who  
13 knowingly purchases tickets to an event ~~from the original ticket~~  
14 ~~seller from any combination of sources~~ with the intent to resell  
15 the tickets for an amount higher than the face value of the ticket  
16 and in a quantity that exceeds the maximum ticket purchase limit  
17 as stated at the original ticket seller's point of sale, without  
18 permission from the original ticket seller is guilty of a  
19 misdemeanor.

1 (c) In addition to any other civil remedy available, the original  
2 ticket seller may bring a civil action against any person who  
3 violates subdivision (b) of this section for injunctive relief or  
4 other equitable relief and for compensatory damages.  
5 Compensatory damages shall include the greater of five thousand  
6 dollars (\$5,000) per violation or actual losses incurred by the  
7 original ticket seller by reason of the violation.

8 (d) No person or firm shall be subject to the provisions of this  
9 section if the person or firm is the original ticket seller, if the  
10 person or firm provides services under contract with the original  
11 ~~ticket seller, or if the person is a licensed ticket broker.~~ *ticket*  
12 *seller.*

13 (e) For purposes of this section an “original ticket seller” is the  
14 party who controls the right to issue and sell tickets to the public  
15 for a live entertainment *event, and may include, but is not limited*  
16 *to, the operator of the venue where the event occurs, a sports*  
17 *team or a league playing in the event, the producer or promoter*  
18 *of the event, or the performer of the event or any agent who sells*  
19 *the tickets on behalf of and under contract with the original ticket*  
20 *seller. A “licensed ticket broker” is a ticket seller with a*  
21 *permanent address from which tickets may only be sold, the*  
22 *address is included in any advertisement or solicitation, and who*  
23 *is duly licensed as required by any local jurisdiction. An “agent”*  
24 *is a representative who has entered into a written contract with*  
25 *the original seller to sell to the general public tickets to the event*  
26 *on behalf of the original seller.*

27 *SEC. 2. Section 502 of the Penal Code is amended to read:*

28 502. (a) It is the intent of the Legislature in enacting this  
29 section to expand the degree of protection afforded to  
30 individuals, businesses, and governmental agencies from  
31 tampering, interference, damage, and unauthorized access to  
32 lawfully created computer data and computer systems. The  
33 Legislature finds and declares that the proliferation of computer  
34 technology has resulted in a concomitant proliferation of  
35 computer crime and other forms of unauthorized access to  
36 computers, computer systems, and computer data.

37 The Legislature further finds and declares that protection of the  
38 integrity of all types and forms of lawfully created computers,  
39 computer systems, and computer data is vital to the protection of  
40 the privacy of individuals as well as to the well-being of financial

1 institutions, business concerns, governmental agencies, and  
2 others within this state that lawfully utilize those computers,  
3 computer systems, and data.

4 (b) For the purposes of this section, the following terms have  
5 the following meanings:

6 (1) “Access” means to gain entry to, instruct, or communicate  
7 with the logical, arithmetical, or memory function resources of a  
8 computer, computer system, or computer network.

9 (2) “Computer network” means any system that provides  
10 communications between one or more computer systems and  
11 input/output devices including, but not limited to, display  
12 terminals and printers connected by telecommunication facilities.

13 (3) “Computer program or software” means a set of  
14 instructions or statements, and related data, that when executed in  
15 actual or modified form, cause a computer, computer system, or  
16 computer network to perform specified functions.

17 (4) “Computer services” includes, but is not limited to,  
18 computer time, data processing, or storage functions, or other  
19 uses of a computer, computer system, or computer network.

20 (5) “Computer system” means a device or collection of  
21 devices, including support devices and excluding calculators that  
22 are not programmable and capable of being used in conjunction  
23 with external files, one or more of which contain computer  
24 programs, electronic instructions, input data, and output data, that  
25 performs functions including, but not limited to, logic,  
26 arithmetic, data storage and retrieval, communication, and  
27 control.

28 (6) “Data” means a representation of information, knowledge,  
29 facts, concepts, computer software, computer programs or  
30 instructions. Data may be in any form, in storage media, or as  
31 stored in the memory of the computer or in transit or presented  
32 on a display device.

33 (7) “Supporting documentation” includes, but is not limited to,  
34 all information, in any form, pertaining to the design,  
35 construction, classification, implementation, use, or modification  
36 of a computer, computer system, computer network, computer  
37 program, or computer software, which information is not  
38 generally available to the public and is necessary for the  
39 operation of a computer, computer system, computer network,  
40 computer program, or computer software.

1 (8) “Injury” means any alteration, deletion, damage, or  
2 destruction of a computer system, computer network, computer  
3 program, or data caused by the access, or the denial of access to  
4 legitimate users of a computer system, network, or program.

5 (9) “Victim expenditure” means any expenditure reasonably  
6 and necessarily incurred by the owner or lessee to verify that a  
7 computer system, computer network, computer program, or data  
8 was or was not altered, deleted, damaged, or destroyed by the  
9 access.

10 (10) “Computer contaminant” means any set of computer  
11 instructions that are designed to modify, damage, destroy, record,  
12 or transmit information within a computer, computer system, or  
13 computer network without the intent or permission of the owner  
14 of the information. They include, but are not limited to, a group  
15 of computer instructions commonly called viruses or worms, that  
16 are self-replicating or self-propagating and are designed to  
17 contaminate other computer programs or computer data,  
18 consume computer resources, modify, destroy, record, or  
19 transmit data, or in some other fashion usurp the normal  
20 operation of the computer, computer system, or computer  
21 network.

22 (11) “Internet domain name” means a globally unique,  
23 hierarchical reference to an Internet host or service, assigned  
24 through centralized Internet naming authorities, comprising a  
25 series of character strings separated by periods, with the  
26 rightmost character string specifying the top of the hierarchy.

27 (c) Except as provided in subdivision (h), any person who  
28 commits any of the following acts is guilty of a public offense:

29 (1) Knowingly accesses and without permission alters,  
30 damages, deletes, destroys, or otherwise uses any data, computer,  
31 computer system, or computer network in order to either (A)  
32 devise or execute any scheme or artifice to defraud, deceive, or  
33 extort, or (B) wrongfully control or obtain money, property, or  
34 data.

35 (2) Knowingly accesses and without permission takes, copies,  
36 or makes use of any data from a computer, computer system, or  
37 computer network, or takes or copies any supporting  
38 documentation, whether existing or residing internal or external  
39 to a computer, computer system, or computer network.

1 (3) Knowingly and without permission uses or causes to be  
2 used computer services.

3 (4) Knowingly accesses and without permission adds, alters,  
4 damages, deletes, or destroys any data, computer software, or  
5 computer programs which reside or exist internal or external to a  
6 computer, computer system, or computer network.

7 (5) Knowingly and without permission disrupts or causes the  
8 disruption of computer services or denies or causes the denial of  
9 computer services to an authorized user of a computer, computer  
10 system, or computer network.

11 (6) Knowingly and without permission provides or assists in  
12 providing a means of accessing a computer, computer system, or  
13 computer network in violation of this section.

14 (7) Knowingly and without permission accesses or causes to  
15 be accessed any computer, computer system, or computer  
16 network.

17 (8) Knowingly introduces any computer contaminant into any  
18 computer, computer system, or computer network.

19 (9) Knowingly and without permission uses the Internet  
20 domain name of another individual, corporation, or entity in  
21 connection with the sending of one or more electronic mail  
22 messages, and thereby damages or causes damage to a computer,  
23 computer system, or computer network.

24 *(10) Knowingly and without permission uses automated*  
25 *computer software to circumvent, defeat, defraud or deceive a*  
26 *computer program that is designed to validate proper*  
27 *transaction flow and access to goods or services by computer*  
28 *users who are natural persons.*

29 (d) (1) Any person who violates any of the provisions of  
30 paragraph (1), (2), (4), or (5) of subdivision (c) is punishable by  
31 a fine not exceeding ten thousand dollars (\$10,000), or by  
32 imprisonment in the state prison for 16 months, or two or three  
33 years, or by both that fine and imprisonment, or by a fine not  
34 exceeding five thousand dollars (\$5,000), or by imprisonment in  
35 a county jail not exceeding one year, or by both that fine and  
36 imprisonment.

37 (2) Any person who violates paragraph (3) of subdivision (c)  
38 is punishable as follows:

39 (A) For the first violation that does not result in injury, and  
40 where the value of the computer services used does not exceed

1 four hundred dollars (\$400), by a fine not exceeding five  
2 thousand dollars (\$5,000), or by imprisonment in a county jail  
3 not exceeding one year, or by both that fine and imprisonment.

4 (B) For any violation that results in a victim expenditure in an  
5 amount greater than five thousand dollars (\$5,000) or in an  
6 injury, or if the value of the computer services used exceeds four  
7 hundred dollars (\$400), or for any second or subsequent  
8 violation, by a fine not exceeding ten thousand dollars (\$10,000),  
9 or by imprisonment in the state prison for 16 months, or two or  
10 three years, or by both that fine and imprisonment, or by a fine  
11 not exceeding five thousand dollars (\$5,000), or by imprisonment  
12 in a county jail not exceeding one year, or by both that fine and  
13 imprisonment.

14 (3) Any person who violates paragraph (6) or (7) of  
15 subdivision (c) is punishable as follows:

16 (A) For a first violation that does not result in injury, an  
17 infraction punishable by a fine not exceeding one thousand  
18 dollars (\$1,000).

19 (B) For any violation that results in a victim expenditure in an  
20 amount not greater than five thousand dollars (\$5,000), or for a  
21 second or subsequent violation, by a fine not exceeding five  
22 thousand dollars (\$5,000), or by imprisonment in a county jail  
23 not exceeding one year, or by both that fine and imprisonment.

24 (C) For any violation that results in a victim expenditure in an  
25 amount greater than five thousand dollars (\$5,000), by a fine not  
26 exceeding ten thousand dollars (\$10,000), or by imprisonment in  
27 the state prison for 16 months, or two or three years, or by both  
28 that fine and imprisonment, or by a fine not exceeding five  
29 thousand dollars (\$5,000), or by imprisonment in a county jail  
30 not exceeding one year, or by both that fine and imprisonment.

31 (4) Any person who violates paragraph (8) of subdivision (c)  
32 is punishable as follows:

33 (A) For a first violation that does not result in injury, a  
34 misdemeanor punishable by a fine not exceeding five thousand  
35 dollars (\$5,000), or by imprisonment in a county jail not  
36 exceeding one year, or by both that fine and imprisonment.

37 (B) For any violation that results in injury, or for a second or  
38 subsequent violation, by a fine not exceeding ten thousand  
39 dollars (\$10,000), or by imprisonment in a county jail not

1 exceeding one year, or in the state prison, or by both that fine and  
2 imprisonment.

3 (5) Any person who violates paragraph (9) of subdivision (c)  
4 is punishable as follows:

5 (A) For a first violation that does not result in injury, an  
6 infraction punishable by a fine not one thousand dollars.

7 (B) For any violation that results in injury, or for a second or  
8 subsequent violation, by a fine not exceeding five thousand  
9 dollars (\$5,000), or by imprisonment in a county jail not  
10 exceeding one year, or by both that fine and imprisonment.

11 (6) *Any person who violates paragraph (10) of subdivision (c)*  
12 *is punishable as follows:*

13 (A) *For a first violation, by a fine not exceeding five thousand*  
14 *dollars (\$5,000), or by imprisonment in a county jail not*  
15 *exceeding six months, or by both that fine and imprisonment.*

16 (B) *For a second or subsequent violation, by a fine not*  
17 *exceeding ten thousand dollars (\$10,000), or by imprisonment in*  
18 *a county jail not exceeding one year, or by both that fine and*  
19 *imprisonment.*

20 (e) (1) In addition to any other civil remedy available, the  
21 owner or lessee of the computer, computer system, computer  
22 network, computer program, or data who suffers damage or loss  
23 by reason of a violation of any of the provisions of subdivision  
24 (c) may bring a civil action against the violator for compensatory  
25 damages and injunctive relief or other equitable relief.  
26 Compensatory damages shall include any expenditure reasonably  
27 and necessarily incurred by the owner or lessee to verify that a  
28 computer system, computer network, computer program, or data  
29 was or was not altered, damaged, or deleted by the access. *For*  
30 *each violation of paragraph (10) of subdivision (c),*  
31 *compensatory damages shall include the greater of five thousand*  
32 *dollars (\$5,000) or any expenditure reasonably and necessarily*  
33 *incurred by the owner or lessee to verify that a computer system,*  
34 *computer network, computer program, or data was or was not*  
35 *altered, damaged, or deleted by the access.* For the purposes of  
36 actions authorized by this subdivision, the conduct of an  
37 unemancipated minor shall be imputed to the parent or legal  
38 guardian having control or custody of the minor, pursuant to the  
39 provisions of Section 1714.1 of the Civil Code.

1 (2) In any action brought pursuant to this subdivision the court  
2 may award reasonable attorney's fees.

3 (3) A community college, state university, or academic  
4 institution accredited in this state is required to include  
5 computer-related crimes as a specific violation of college or  
6 university student conduct policies and regulations that may  
7 subject a student to disciplinary sanctions up to and including  
8 dismissal from the academic institution. This paragraph shall not  
9 apply to the University of California unless the Board of Regents  
10 adopts a resolution to that effect.

11 (4) In any action brought pursuant to this subdivision for a  
12 willful violation of the provisions of subdivision (c), where it is  
13 proved by clear and convincing evidence that a defendant has  
14 been guilty of oppression, fraud, or malice as defined in  
15 subdivision (c) of Section 3294 of the Civil Code, the court may  
16 additionally award punitive or exemplary damages.

17 (5) No action may be brought pursuant to this subdivision  
18 unless it is initiated within three years of the date of the act  
19 complained of, or the date of the discovery of the damage,  
20 whichever is later.

21 (f) This section shall not be construed to preclude the  
22 applicability of any other provision of the criminal law of this  
23 state which applies or may apply to any transaction, nor shall it  
24 make illegal any employee labor relations activities that are  
25 within the scope and protection of state or federal labor laws.

26 (g) Any computer, computer system, computer network, or  
27 any software or data, owned by the defendant, that is used during  
28 the commission of any public offense described in subdivision  
29 (c) or any computer, owned by the defendant, which is used as a  
30 repository for the storage of software or data illegally obtained in  
31 violation of subdivision (c) shall be subject to forfeiture, as  
32 specified in Section 502.01.

33 (h) (1) Subdivision (c) does not apply to punish any acts  
34 which are committed by a person within the scope of his or her  
35 lawful employment. For purposes of this section, a person acts  
36 within the scope of his or her employment when he or she  
37 performs acts which are reasonably necessary to the performance  
38 of his or her work assignment.

39 (2) Paragraph (3) of subdivision (c) does not apply to penalize  
40 any acts committed by a person acting outside of his or her

1 lawful employment, provided that the employee's activities do  
2 not cause an injury, as defined in paragraph (8) of subdivision  
3 (b), to the employer or another, or provided that the value of  
4 supplies or computer services, as defined in paragraph (4) of  
5 subdivision (b), which are used does not exceed an accumulated  
6 total of one hundred dollars (\$100).

7 (i) No activity exempted from prosecution under paragraph (2)  
8 of subdivision (h) which incidentally violates paragraph (2), (4),  
9 or (7) of subdivision (c) shall be prosecuted under those  
10 paragraphs.

11 (j) For purposes of bringing a civil or a criminal action under  
12 this section, a person who causes, by any means, the access of a  
13 computer, computer system, or computer network in one  
14 jurisdiction from another jurisdiction is deemed to have  
15 personally accessed the computer, computer system, or computer  
16 network in each jurisdiction.

17 (k) In determining the terms and conditions applicable to a  
18 person convicted of a violation of this section the court shall  
19 consider the following:

20 (1) The court shall consider prohibitions on access to and use  
21 of computers.

22 (2) Except as otherwise required by law, the court shall  
23 consider alternate sentencing, including community service, if  
24 the defendant shows remorse and recognition of the wrongdoing,  
25 and an inclination not to repeat the offense.

26 ~~SEC. 2.~~

27 *SEC. 3.* No reimbursement is required by this act pursuant to  
28 Section 6 of Article XIII B of the California Constitution because  
29 the only costs that may be incurred by a local agency or school  
30 district will be incurred because this act creates a new crime or  
31 infraction, eliminates a crime or infraction, or changes the  
32 penalty for a crime or infraction, within the meaning of Section  
33 17556 of the Government Code, or changes the definition of a  
34 crime within the meaning of Section 6 of Article XIII B of the  
35 California Constitution.