

11108

I N A S S E M B L Y

May 17, 2010

Introduced by M. of A. ENGLEBRIGHT -- (at request of the Governor) --  
read once and referred to the Committee on Tourism, Parks, Arts and  
Sports Development

AN ACT to amend the arts and cultural affairs law, in relation to resale  
of tickets to places of entertainment; to amend chapter 704 of the  
laws of 1991, amending the arts and cultural affairs law and chapter  
912 of the laws of 1920 relating to the regulation of boxing and wres-  
tling relating to tickets to places of entertainment, in relation to  
the effectiveness thereof

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-  
BLY, DO ENACT AS FOLLOWS:

1 Section 1. Section 25.03 of the arts and cultural affairs law is  
2 amended by adding a new subdivision 10 to read as follows:  
3 10. "TICKET OFFICE" MEANS A BUILDING OR OTHER STRUCTURE LOCATED OTHER  
4 THAN AT THE PLACE OF ENTERTAINMENT, AT WHICH THE OPERATOR OR THE OPERA-  
5 TOR'S AGENT OFFERS TICKETS FOR FIRST SALE TO THE PUBLIC.  
6 S 2. Section 25.11 of the arts and cultural affairs law is amended by  
7 adding a new subdivision 4 to read as follows:  
8 4. FOR PURPOSES OF THIS SECTION, "TICKET OFFICE" MEANS A BUILDING OR  
9 OTHER STRUCTURE LOCATED OTHER THAN AT THE PLACE OF ENTERTAINMENT, AT  
10 WHICH THE OPERATOR OR THE OPERATOR'S AGENT OFFERS TICKETS FOR FIRST SALE  
11 TO THE PUBLIC.  
12 S 3. Section 25.11 of the arts and cultural affairs law, as amended by  
13 chapter 61 of the laws of 2007, subdivision 3 as amended by chapter 374  
14 of the laws of 2007, is amended to read as follows:  
15 S 25.11. Resales of tickets within buffer zone. 1. No person, firm,  
16 corporation or not-for-profit organization, whether or not domiciled,  
17 licensed or registered within the state, shall resell, offer to resell  
18 or solicit the resale of any ticket to any place of entertainment having  
19 a permanent seating capacity in excess of five thousand persons within  
20 one thousand five hundred feet from the physical structure of such place  
21 of entertainment, OR A TICKET OFFICE.  
22 2. No person, firm, corporation or not-for-profit organization, wheth-  
23 er or not domiciled, licensed or registered within the state, shall

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

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1 resell, offer to resell or solicit the resale of any ticket to any place  
2 of entertainment having a permanent seating capacity of five thousand or  
3 fewer persons within five hundred feet from the physical structure OR  
4 TICKET OFFICE of such place of entertainment, provided however that  
5 current licensees and those seeking a license under this article are  
6 exempt from such buffer zone when operating out of a permanent physical  
7 structure.

8 3. Notwithstanding subdivisions one and two of this section, an opera-  
9 tor may designate an area within the property line of such place of  
10 entertainment for the lawful resale of tickets only to events at such  
11 place of entertainment by any person, firm, corporation or not-for-pro-  
12 fit organization, whether or not domiciled, licensed or registered with-  
13 in the state.

14 S 4. Section 25.15 of the arts and cultural affairs law, as amended by  
15 chapter 374 of the laws of 2007, is amended to read as follows:

16 S 25.15. Bond. The secretary of state shall require the applicant for  
17 a license to file with the application therefor a bond in due form to  
18 the people of New York in the penal sum of twenty-five thousand dollars,  
19 with two or more sufficient sureties or a duly authorized surety compa-  
20 ny, which bond shall be approved by the secretary of state. Each such  
21 bond shall be conditioned that the obligor will not be guilty of any  
22 fraud or extortion, will not violate directly or indirectly any of the  
23 provisions of this article or any of the provisions of the license or  
24 certificate provided for in this article, will comply with the  
25 provisions of this article and will pay all damages occasioned to any  
26 person by reason of any misstatement, misrepresentation, fraud or deceit  
27 or any unlawful act or omission of such obligor, his or her agents or  
28 employees, while acting within the scope of their employment, made,  
29 committed or omitted in connection with the provisions of this article  
30 in the business conducted under such license or caused by any other  
31 violation of this article in carrying on the business for which such  
32 license is granted. [A suit to recover on the bond required to be filed  
33 by the provisions of this article may be brought in the name of the  
34 person damaged, upon the bond deposited with the department of state by  
35 such licensed person, in a court of competent jurisdiction. The amount  
36 of damages claimed by the plaintiff and not the penalty named in the  
37 bond shall determine the jurisdiction of the court in which the action  
38 is brought.] One or more recoveries or payments upon such bond shall not  
39 vitiate the same but such bond shall remain in full force and effect,  
40 provided, however, that the aggregate amount of all such recoveries or  
41 payments shall not exceed the penal sum thereof. BEFORE THE SECRETARY  
42 SHALL DRAW UPON SUCH BOND, THE SECRETARY SHALL ISSUE A DETERMINATION IN  
43 WRITING WHICH SHALL INCLUDE THE BASIS OF SUCH ACTION. THE SECRETARY  
44 SHALL NOTIFY IN WRITING THE LICENSEE OF ANY SUCH DETERMINATION AND SHALL  
45 AFFORD THE LICENSEE AN OPPORTUNITY TO RESPOND WITHIN TWENTY DAYS OF THE  
46 RECEIPT OF SUCH DETERMINATION. IN NO EVENT MAY THE BOND BE DRAWN UPON IN  
47 LESS THAN TWENTY-FIVE DAYS AFTER THE SERVICE OF A DETERMINATION TO THE  
48 LICENSEE. SUCH WRITTEN NOTICE MAY BE SERVED BY DELIVERY THEREOF  
49 PERSONALLY TO THE LICENSEE, OR BY CERTIFIED MAIL TO THE LAST KNOWN BUSI-  
50 NESS ADDRESS OF SUCH LICENSEE. ONLY UPON SUCH DETERMINATION OF THE  
51 SECRETARY SHALL MONEYS BE WITHDRAWN FROM THE BOND. Upon the commencement  
52 of any action or actions against the surety upon any such bond for a sum  
53 or sums aggregating or exceeding the amount of such bond the secretary  
54 of state shall require a new and additional bond in like amount as the  
55 original one, which shall be filed with the department of state within  
56 thirty days after the demand therefor. Failure to file such bond within

1 such period shall constitute cause for the revocation of the license  
2 pursuant to section 25.31 of this article theretofore issued to the  
3 licensee upon whom such demand shall have been made. Any suit or action  
4 against the surety on any bond required by the provisions of this  
5 section shall be commenced within one year after the cause of action  
6 shall have accrued.

7 S 5. Section 4 of chapter 704 of the laws of 1991, amending the arts  
8 and cultural affairs law and chapter 912 of the laws of 1920 relating to  
9 the regulation of boxing and wrestling relating to tickets to places of  
10 entertainment, as amended by chapter 68 of the laws of 2009, is amended  
11 to read as follows:

12 S 4. This act shall take effect on the sixtieth day after it shall  
13 have become a law, provided, chapter 61 of the laws of 2007 shall not  
14 take effect with respect to the issuance of licenses or certificates  
15 under this article by the secretary of state or department of state  
16 until January 1, 2008 and regulation under this article by the commis-  
17 sioners of licenses of the political subdivisions of the state shall  
18 continue through December 31, 2007, and shall remain in full force and  
19 effect only until and including May 15, [2010] 2011 when such act shall  
20 be repealed and when, notwithstanding any other provision of law, the  
21 provisions of article 25 of title G of the arts and cultural affairs  
22 law, repealed by such act, shall be reinstated; PROVIDED FURTHER THAT  
23 SECTION 25.11 OF THE ARTS AND CULTURAL AFFAIRS LAW, AS ADDED BY SECTION  
24 ONE OF THIS ACT, SHALL SURVIVE SUCH REPEAL DATE. Provided, however, the  
25 printing on tickets required pursuant to sections 25.07 and 25.08 of  
26 article 25 of the arts and cultural affairs law, as added by this act,  
27 shall not apply to tickets printed prior to enactment of such article so  
28 long as notice of the higher maximum premium price and prohibition of  
29 sales within one thousand five hundred feet from the physical structure  
30 of the place of entertainment, where applicable, is prominently  
31 displayed at the point of sale and at such place of entertainment.

32 S 6. Section 25.25 of the arts and cultural affairs law, as amended by  
33 chapter 374 of the laws of 2007, is amended to read as follows:

34 S 25.25. Records of purchases and sales. 1. Every licensee shall at  
35 all times keep full and accurate sets of records showing: [(1)] (A) the  
36 prices at which all tickets have been bought and sold by such licensee;  
37 and [(2)] (B) the names and addresses of the person, firm or corporation  
38 from whom they were bought. Operators offering for initial sale tickets  
39 by means of an auction shall maintain a record of the price when known  
40 and the number of tickets and types of seats offered through auction.  
41 These records shall be made available upon request to the state attorney  
42 general, the secretary of state, or other governmental body with the  
43 express authority to enforce any section of this article; provided,  
44 however, that the records required to be maintained by this section  
45 shall be considered proprietary in nature and shall be governed by the  
46 protections set forth in subdivision five of section eighty-nine of the  
47 public officers law. These records shall be retained for a period of not  
48 less than ten years.

49 2. TWICE ANNUALLY, ON JUNE THIRTIETH AND DECEMBER THIRTY-FIRST, EVERY  
50 LICENSEE THAT RESELLS TICKETS OR FACILITATES THE RESALE OR RESALE  
51 AUCTION OF TICKETS BETWEEN INDEPENDENT PARTIES BY ANY AND ALL MEANS  
52 SHALL REPORT TO THE CONSUMER PROTECTION BOARD THE TOTAL NUMBER OF, AND  
53 AVERAGE RESALE OR AVERAGE FINAL RESALE AUCTION PRICE OF, ALL TICKETS TO  
54 EACH TICKETED EVENT, PROVIDED, HOWEVER, THAT REPEAT PERFORMANCES OF A  
55 SINGLE EVENT, AND MULTIPLE EVENTS THAT ARE PART OF A SEASON-LONG  
56 PERFORMANCE SHALL BE TREATED AS A SINGLE EVENT FOR THE PURPOSES OF THE

1 REPORTING REQUIREMENT OF THIS SUBDIVISION. THE INFORMATION REQUIRED TO  
2 BE REPORTED BY THIS SECTION SHALL BE CONSIDERED PROPRIETARY IN NATURE  
3 AND SHALL BE GOVERNED BY THE PROTECTIONS SET FORTH IN SUBDIVISION FIVE  
4 OF SECTION EIGHTY-NINE OF THE PUBLIC OFFICERS LAW, AND SHALL BE USED  
5 EXCLUSIVELY FOR ANALYTICAL PURPOSES BY THE CONSUMER PROTECTION BOARD.

6 S 7. Subdivision 1 of section 25.29 of the arts and cultural affairs  
7 law, as amended by chapter 61 of the laws of 2007, is amended to read as  
8 follows:

9 1. No operator of any place of entertainment, or his or her agent,  
10 representative, employee or licensee shall, if a price be charged for  
11 admission thereto, exact, demand, accept or receive, directly or indi-  
12 rectly, any premium or price in excess of the established price plus  
13 lawful taxes whether designated as price, gratuity or otherwise;  
14 provided, however: (a) nothing in this article shall be construed to  
15 prohibit a REASONABLE service charge by the operator or agents of the  
16 operator for special services, including but not limited to, sales away  
17 from the box office, credit card sales or delivery; and (b) nothing in  
18 this article shall be construed to prohibit an operator or its agent  
19 from offering for initial sale tickets by means of an auction.

20 S 8. Section 25.30 of the arts and cultural affairs law, as added by  
21 chapter 61 of the laws of 2007, is amended to read as follows:

22 S 25.30. Operator prohibitions. 1. A ticket is a license, issued by  
23 the operator of a place of entertainment, for admission to the place of  
24 entertainment at the date and time specified on the ticket, subject to  
25 the terms and conditions as specified by the operator. Notwithstanding  
26 any other provision of law to the contrary, it shall be prohibited for  
27 any operator of a place of entertainment, [who offers for sale  
28 subscription or season ticket packages] OR OPERATOR'S AGENT, to:

29 (A) restrict by any means the resale of any tickets included in [the]  
30 A subscription or season ticket package as a condition of purchase, as a  
31 condition to retain such tickets for the duration of the subscription or  
32 season ticket package agreement, or as a condition to retain any  
33 contractually agreed upon rights to purchase future subscription or  
34 season ticket packages that are otherwise conferred in the subscription  
35 or season ticket agreement[. Furthermore, it shall be prohibited for any  
36 operator of a place of entertainment to];

37 (B) deny access to a ticket holder who possesses a resold subscription  
38 or season ticket to a performance based solely on the grounds that such  
39 ticket has been resold[.]; OR

40 (C) EMPLOY A FORM OF PAPERLESS TICKETING THAT IS NOT READILY TRANSFER-  
41 ABLE TO ANOTHER CUSTOMER THROUGH A TRANSACTION THAT IS INDEPENDENT OF  
42 THE OPERATOR OR OPERATOR'S AGENT, UNLESS A PURCHASER IS GIVEN THE OPTION  
43 AT THE TIME OF FIRST PUBLIC SALE TO PURCHASE THE SAME TICKETS AT THE  
44 SAME ESTABLISHED PRICE IN SOME OTHER FORM, INCLUDING, BUT NOT LIMITED  
45 TO, PAPER TICKETS, THAT IS READILY TRANSFERABLE THROUGH A TRANSACTION  
46 THAT IS INDEPENDENT OF THE OPERATOR OR OPERATOR'S AGENT, PROVIDED HOWEV-  
47 ER, THAT NOTHING IN THIS PARAGRAPH SHALL PROHIBIT THE OPERATOR OR OPERA-  
48 TOR'S AGENT FROM IMPOSING A NOMINAL SURCHARGE ON PAPERLESS TICKETS.

49 2. Additionally, nothing in this article shall be construed to prohib-  
50 it an operator of a place of entertainment from maintaining and enforc-  
51 ing any policies regarding conduct or behavior at or in connection with  
52 their venue. FURTHER, NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO  
53 PROHIBIT AN OPERATOR OF A PLACE OF ENTERTAINMENT OF SIX THOUSAND SEATS  
54 OR LESS, OR SUCH OPERATOR'S AGENT, FROM RESTRICTING THE RESALE OF TICK-  
55 ETS THAT ARE OFFERED AT A PROMOTIONAL OR DISCOUNTED PRICE, FOR FREE, OR  
56 FOR PERSONS WITH DISABILITIES. An operator shall be permitted to revoke

1 or restrict season tickets for reasons relating to violations of venue  
2 policies, including but not limited to, attempts by two or more persons  
3 to gain admission to a single event with both the cancelled tickets  
4 originally issued to a season ticket holder and those tickets re-issued  
5 as part of a resale transaction, and to the extent the operator may deem  
6 necessary for the protection of the safety of patrons or to address  
7 fraud or misconduct.

8 3. NO OPERATOR OR OPERATOR'S AGENT SHALL SELL OR CONVEY TICKETS TO ANY  
9 SECONDARY TICKET RESELLER OWNED OR CONTROLLED BY THE OPERATOR OR OPERA-  
10 TOR'S AGENT.

11 4. THE OPERATOR OR THE PROMOTER SHALL DETERMINE WHETHER A SEAT FOR  
12 WHICH A TICKET IS FOR SALE HAS AN OBSTRUCTED VIEW, AND SHALL DISCLOSE  
13 SUCH OBSTRUCTION. IF THE OPERATOR OR PROMOTER DISCLOSES THAT A SEAT FOR  
14 WHICH A TICKET IS FOR SALE HAS AN OBSTRUCTED VIEW, IT SHALL BE THE  
15 RESPONSIBILITY OF THE SECONDARY TICKET RESELLER TO DISCLOSE SUCH  
16 OBSTRUCTION UPON THE RESALE OF SUCH TICKET. SUCH OBSTRUCTION SHALL NOT  
17 INCLUDE AN OBSTRUCTION OF VIEW CAUSED BY A PERSON, OR PERSONS, SEATED IN  
18 AN ADJACENT SEAT, OR SEATS, OR OCCUPYING AN AISLE; OR AN OBSTRUCTION OF  
19 VIEW CAUSED BY AN OBJECT OR OBJECTS PLACED UPON AN ADJACENT SEAT OR  
20 SEATS, OR IN AN AISLE; OR AN OBSTRUCTION OF VIEW THAT IS DE MINIMUS OR  
21 TRANSITORY IN NATURE.

22 S 9. Section 25.35 of the arts and cultural affairs law is amended by  
23 adding a new subdivision 7 to read as follows:

24 7. NOTWITHSTANDING ANY OTHER PROVISION TO THE CONTRARY, WHEN THE FINES  
25 INCLUDED IN THIS SECTION ARE IMPOSED ON A FIRM, CORPORATION OR OTHER  
26 ENTITY THAT IS NOT A SINGLE PERSON, SUCH FINES MAY BE IMPOSED AT UP TO  
27 TWO TIMES THE AMOUNT OTHERWISE ALLOWED, OR, WHERE APPLICABLE, THREE  
28 TIMES THE AMOUNT OF THE DEFENDANT'S GAIN.

29 S 10. The arts and cultural affairs law is amended by adding a new  
30 section 25.24 to read as follows:

31 S 25.24. AUTOMATED TICKET PURCHASING SOFTWARE. 1. THE TERM "AUTOMATED  
32 TICKET PURCHASING SOFTWARE" SHALL MEAN, ANY MACHINE, DEVICE, COMPUTER  
33 PROGRAM OR COMPUTER SOFTWARE THAT NAVIGATES OR RUNS AUTOMATED TASKS ON  
34 RETAIL TICKET PURCHASING WEBSITES IN ORDER TO BYPASS SECURITY MEASURES  
35 TO PURCHASE TICKETS.

36 2. IT SHALL BE UNLAWFUL FOR ANY PERSON TO UTILIZE AUTOMATED TICKET  
37 PURCHASING SOFTWARE TO PURCHASE TICKETS.

38 3. ANY PERSON WHO KNOWINGLY UTILIZES AUTOMATED TICKET PURCHASING SOFT-  
39 WARE IN ORDER TO BYPASS SECURITY MEASURES TO PURCHASE TICKETS SHALL BE  
40 SUBJECT TO A CIVIL PENALTY IN AN AMOUNT OF NO LESS THAN FIVE HUNDRED  
41 DOLLARS AND NO MORE THAN ONE THOUSAND DOLLARS FOR EACH SUCH VIOLATION  
42 AND SHALL FORFEIT ALL PROFITS MADE FROM THE SALE OF ANY SUCH UNLAWFULLY  
43 OBTAINED TICKETS.

44 4. ANY PERSON WHO INTENTIONALLY MAINTAINS ANY INTEREST IN OR MAINTAINS  
45 ANY CONTROL OF THE OPERATION OF AUTOMATED TICKET PURCHASING SOFTWARE TO  
46 BYPASS SECURITY MEASURES TO PURCHASE TICKETS SHALL BE SUBJECT TO A CIVIL  
47 PENALTY IN AN AMOUNT OF NO LESS THAN SEVEN HUNDRED FIFTY DOLLARS AND NO  
48 MORE THAN ONE THOUSAND FIVE HUNDRED DOLLARS FOR EACH SUCH VIOLATION AND  
49 SHALL FORFEIT ALL PROFITS MADE FROM THE SALE OF ANY SUCH UNLAWFULLY  
50 OBTAINED TICKETS.

51 5. ANY PERSON WHO IS SUBJECT TO A CIVIL PENALTY UNDER THIS SECTION AND  
52 HAS BEEN ASSESSED A PENALTY UNDER THIS SECTION IN THE PREVIOUS FIVE  
53 YEARS SHALL BE GUILTY OF A VIOLATION AND MAY BE FINED NO LESS THAN ONE  
54 THOUSAND DOLLARS AND NO MORE THAN FIVE THOUSAND DOLLARS FOR EACH SUCH  
55 VIOLATION AND SHALL FORFEIT ALL PROFITS FROM THE SALE OF ANY SUCH UNLAW-  
56 FULLY OBTAINED TICKETS. IN ADDITION, A PERSON CONVICTED OF A VIOLATION

1 UNDER THIS SECTION MAY BE REQUIRED TO FORFEIT ANY AND ALL EQUIPMENT USED  
2 IN THE UNLAWFUL PURCHASING OF TICKETS.

3 6. THE ATTORNEY GENERAL SHALL HAVE JURISDICTION TO ENFORCE THE  
4 PROVISIONS OF THIS SECTION IN ACCORDANCE WITH THE POWERS GRANTED TO HIM  
5 OR HER BY SECTION SIXTY-THREE OF THE EXECUTIVE LAW.

6 7. IN ADDITION TO THE POWER GIVEN TO THE ATTORNEY GENERAL TO ENFORCE  
7 THE PROVISIONS OF THIS SECTION, ANY PLACE OF ENTERTAINMENT, AS DEFINED  
8 BY SECTION 23.03 OF THIS CHAPTER, OR ANY AGGRIEVED PARTY THAT HAS BEEN  
9 INJURED BY WRONGFUL CONDUCT PRESCRIBED BY THIS SECTION MAY BRING AN  
10 ACTION TO RECOVER ALL ACTUAL DAMAGES SUFFERED AS A RESULT OF ANY OF SUCH  
11 WRONGFUL CONDUCT. THE COURT IN ITS DISCRETION MAY AWARD DAMAGES UP TO  
12 THREE TIMES THE AMOUNT OF ACTUAL DAMAGES. THE COURT MAY ENJOIN THE  
13 RESPONDENT FROM ANY AND ALL ACTIVITY PROHIBITED UNDER THIS SECTION. THE  
14 COURT MAY ALSO AWARD REASONABLE ATTORNEY'S FEES AND COSTS. ANY PENALTY  
15 OR RECOVERY AUTHORIZED BY THIS SECTION MAY BE RECOVERED IN A CLASS  
16 ACTION.

17 S 11. Notwithstanding the provisions of article 5 of the general  
18 construction law, if this act shall take effect after May 15, 2010, the  
19 provisions of article 25 of the arts and cultural affairs law, except  
20 section 25.11 are hereby revived and shall continue in full force and  
21 effect as they existed on May 15, 2010 through May 15, 2011, when upon  
22 such date such provisions shall expire and be deemed repealed.

23 S 12. This act shall take effect immediately; provided that the  
24 amendments to section 25.03 of the arts and cultural affairs law, made  
25 by section one of this act, shall be subject to the expiration and  
26 reversion of such section pursuant to section 4 of chapter 704 of the  
27 laws of 1991, as amended, when upon such date the provisions of section  
28 two of this act shall take effect; provided further that the amendments  
29 to section 25.15 of the arts and cultural affairs law made by section  
30 four of this act shall not affect the expiration and reversion of such  
31 section and shall expire and be deemed repealed therewith; provided,  
32 further, that the amendments to section 25.25 of the arts and cultural  
33 affairs law, made by section six of this act shall not affect the repeal  
34 of such section and shall be deemed repealed therewith; provided,  
35 further, that the amendments to section 25.29 of the arts and cultural  
36 affairs law, made by section seven of this act shall not affect the  
37 repeal of such section and shall be deemed repealed therewith; provided,  
38 further, that the amendments to section 25.30 of the arts and cultural  
39 affairs law, made by section eight of this act, shall not affect the  
40 repeal of such section and shall be deemed repealed therewith; provided,  
41 further, that the amendments to section 25.35 of the arts and cultural  
42 affairs law, made by section nine of this act, shall not affect the  
43 repeal of such section and shall be deemed repealed therewith; and  
44 provided further that section 25.24 of the arts and cultural affairs  
45 law, as added by section ten of this act, shall survive the expiration  
46 and reversion of article 25 of such law as provided in section 4 of  
47 chapter 704 of the laws of 1991, as amended.