

8283

2009-2010 Regular Sessions

I N A S S E M B L Y

May 12, 2009

Introduced by M. of A. BRODSKY -- read once and referred to the Committee on Tourism, Arts and Sports Development

AN ACT to amend the arts and cultural affairs law, in relation to the resale of tickets to places of entertainment; and to repeal certain provisions of such law relating thereto

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

1 Section 1. Section 25.01 of the arts and cultural affairs law, as  
2 amended by chapter 61 of the laws of 2007, is amended to read as  
3 follows:

4 S 25.01. Legislative findings. The legislature finds and declares that  
5 transactions involving tickets for admission to places of entertainment  
6 are a matter of public interest and subject to the supervision of New  
7 York and the appropriate political subdivisions of the state for the  
8 purpose of safeguarding the public against fraud, extortion, EXORBITANT  
9 RATES and similar abuses.

10 The legislature further finds that many ticket resellers advertise and  
11 sell tickets to places of entertainment within the boundaries of New  
12 York state often from locations outside the state, without adhering to  
13 the provisions of this article. The legislature objects to any claim  
14 that businesses domiciled outside New York state are exempted from this  
15 statute when selling tickets to events occurring in New York state,  
16 regardless of the territories of origin of both the buyer and seller. It  
17 is the legislature's intent that all governmental bodies charged with  
18 enforcement of this article, including the attorney general of New York  
19 state have the authority to regulate the activities of all persons  
20 reselling tickets to venues located within this state to the full extent  
21 of the state's powers under the federal and state constitutions and that  
22 this article be construed in light of this purpose.

23 THE LEGISLATURE FURTHER FINDS THAT CIRCUMSTANCES OCCASIONALLY ARISE  
24 THAT PRECLUDE THE USE OF TICKETS PURCHASED IN ADVANCE AND THAT PEOPLE

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

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1 NEED TO RECOVER THEIR EXPENSES. IT IS THE INTENT OF THE LEGISLATURE THAT  
2 ENFORCEMENT OF THIS ARTICLE SHALL ALSO DIFFERENTIATE BETWEEN THOSE WHO  
3 WOULD LAWFULLY RECOVER THEIR EXPENSES AND THOSE WHO WOULD GAIN SUBSTAN-  
4 TIAL PROFITS FROM UNLAWFUL RESELLING OF TICKETS.

5 S 2. Subdivision 3 of section 25.03 of the arts and cultural affairs  
6 law is REPEALED and a new subdivision 3 is added to read as follows:

7 3. "MAXIMUM PREMIUM PRICE" MEANS ANY PREMIUM OR PRICE IN EXCESS OF THE  
8 ESTABLISHED PRICE PRINTED OR ENDORSED ON THE TICKET PURSUANT TO SECTION  
9 25.07 OF THIS ARTICLE, PLUS LAWFUL TAXES, SO THAT THE ULTIMATE PRICE TO  
10 THE PURCHASE OF ANY SUCH TICKET TO A PLACE OF ENTERTAINMENT SHALL NOT  
11 EXCEED THE SUM OF THE ESTABLISHED PRICE PLUS TEN DOLLARS OR TWENTY-FIVE  
12 PERCENT OF THE ESTABLISHED PRICE, WHICHEVER IS GREATER PLUS LAWFUL  
13 TAXES.

14 S 3. The opening paragraph of subdivision 1 of section 25.03 of the  
15 arts and cultural affairs law is designated paragraph (a) and a new  
16 paragraph (b) is added to read as follows:

17 (B) NO PRODUCER OR PROMOTER OF A FORM OF ENTERTAINMENT OR ANYONE WHO  
18 IS EMPLOYED BY SUCH PRODUCER OR PROMOTER SHALL RESELL OR ENGAGE IN THE  
19 BUSINESS OF RESELLING ANY TICKETS OF ADMISSION OR ANY OTHER EVIDENCE OF  
20 THE RIGHT OF ENTRY TO A THEATRE, PLACE OF AMUSEMENT OR ENTERTAINMENT, OR  
21 OTHER PLACES WHERE PUBLIC EXHIBITIONS, GAMES, CONTESTS OR PERFORMANCES  
22 ARE HELD. NOTHING IN THIS ARTICLE SHALL BAN A PRODUCER OR PROMOTER FROM  
23 RESELLING TICKETS THAT HAVE BEEN PREVIOUSLY PURCHASED BY BONA FIDE NON-  
24 ASSOCIATED INDIVIDUALS.

25 S 4. Section 25.07 of the arts and cultural affairs law, as amended by  
26 chapter 61 of the laws of 2007, is amended to read as follows:

27 S 25.07. Ticket prices. 1. Every operator of a place of entertainment  
28 shall, if a price be charged for admission thereto, print or endorse on  
29 the face of each such ticket the established price[, or the final  
30 auction price if such ticket was sold or resold by auction through the  
31 operator or its agent]. SUCH OPERATOR SHALL LIKEWISE BE REQUIRED TO  
32 PRINT OR ENDORSE ON EACH TICKET THE MAXIMUM PREMIUM PRICE AT WHICH SUCH  
33 TICKET OR OTHER EVIDENCE OF THE RIGHT OF ENTRY MAY BE RESOLD OR OFFERED  
34 FOR RESALE.

35 2. MAXIMUM PREMIUM PRICE. IT SHALL BE UNLAWFUL FOR ANY PERSON, FIRM OR  
36 CORPORATION TO RESELL OR OFFER TO RESELL ANY TICKET TO ANY PLACE OF  
37 ENTERTAINMENT FOR MORE THAN THE MAXIMUM PREMIUM PRICE.

38 3. TICKETS TO ANY PLACE OF ENTERTAINMENT MAY NOT BE RESOLD UNTIL ONE  
39 MONTH AFTER THE DATE OF THE INITIAL PURCHASE OF SUCH TICKET.

40 4. EVERY OPERATOR OF A PLACE OF ENTERTAINMENT SHALL PRINT ON THE TICK-  
41 ET ANY OBSTRUCTION OR LIMITATION THAT MAY EXIST.

42 5. EVERY OPERATOR OF A PLACE OF ENTERTAINMENT SHALL MAKE PUBLIC THE  
43 PERCENTAGE OF TICKETS TO A PLACE OF ENTERTAINMENT THAT WILL BE MADE  
44 AVAILABLE TO THE PUBLIC. AT THE TIME OF THE INITIAL SALE OF TICKETS, THE  
45 OPERATOR SHALL MAKE PUBLIC THE TOTAL NUMBER AND LOCATIONS OF TICKETS,  
46 AND THE PERCENTAGE OF TICKETS SOLD AT SUCH INITIAL PUBLIC SALE.

47 [2.] 6. Notwithstanding any other provision of law, any person, firm  
48 or corporation, regardless of whether or not licensed under this arti-  
49 cle, that resells tickets or facilitates the resale or resale auction of  
50 tickets between independent parties by any means, must guarantee to each  
51 purchaser of such resold tickets that the person, firm or corporation  
52 will provide a full refund of the amount paid by the purchaser (includ-  
53 ing, but not limited to, all fees, regardless of how characterized) if  
54 any of the following occurs: (a) the event for which such ticket has  
55 been resold is cancelled, provided that if the event is cancelled then  
56 actual handling and delivery fees need not be refunded as long as such

1 previously disclosed guarantee specifies that such fees will not be  
2 refunded; (b) the ticket received by the purchaser does not grant the  
3 purchaser admission to the event described on the ticket, for reasons  
4 that may include, without limitation, that the ticket is counterfeit or  
5 that the ticket has been cancelled by the issuer due to non-payment, or  
6 that the event described on the ticket was cancelled for any reason  
7 prior to purchase of the resold ticket, unless the ticket is cancelled  
8 due to an act or omission by such purchaser; or (c) the ticket fails to  
9 conform to its description as advertised unless the buyer has pre-ap-  
10 proved a substitution of tickets.

11 [3.] 7. Prior to the payment of a refund it shall be the obligation of  
12 the seller and purchaser to first make a good faith effort to remedy any  
13 disputes where the seller and purchaser have agreed to terms established  
14 by the licensee or website manager for the disposition of disputes as a  
15 condition to facilitate the transaction.

16 8. TWICE A YEAR ANY PERSON, FIRM OR CORPORATION LICENSED UNDER THIS  
17 ARTICLE, THAT RESELLS TICKETS OR FACILITATES THE RESALE OR RESALE  
18 AUCTION OF TICKETS BETWEEN INDEPENDENT PARTIES BY ANY MEANS SHALL  
19 PUBLISH AND REPORT THE AVERAGE TICKET PRICE FOR EACH EVENT TO THE  
20 CONSUMER PROTECTION BOARD.

21 S 5. Section 25.35 of the arts and cultural affairs law, as added by  
22 chapter 704 of the laws of 1991, subdivision 1 as amended by chapter 56  
23 of the laws of 2001 and subdivisions 2, 3, 4, 5 and 6 as amended by  
24 chapter 374 of the laws of 2007, is amended to read as follows:

25 S 25.35. Criminal penalties. 1. (a) Any person, firm, corporation or  
26 other entity, whether or not domiciled, licensed or registered within  
27 the state, which is convicted of violating section 25.27 or 25.29 of  
28 this article shall be guilty of a class A misdemeanor punishable by a  
29 fine not to exceed [one] TWO thousand dollars or [two] FOUR times the  
30 amount of the defendant's gain, to be determined pursuant to the proce-  
31 dures set forth in section 400.30 of the criminal procedure law, which-  
32 ever is greater, or by a term of imprisonment not to exceed one year, or  
33 by both such fine and imprisonment.

34 (b) Any person, firm, corporation or other entity, whether or not  
35 domiciled, licensed, or registered within the state, which is convicted  
36 of violating section 25.27 or 25.29 of this article, when the value of  
37 the commission, gratuity, bonus, premium or price unlawfully paid or  
38 accepted exceeds one thousand dollars for an event as defined in section  
39 23.03 of this chapter, whether or not such payment is for tickets to a  
40 single performance of that event, shall be guilty of a class E felony,  
41 punishable by a term of imprisonment in accordance with the penal law,  
42 or by a fine of [five] TEN thousand dollars or [two] FOUR times the  
43 amount of the defendant's gain, to be determined pursuant to the proce-  
44 dures set forth in section 400.30 of the criminal procedure law, which-  
45 ever is greater, or by both such fine and imprisonment.

46 2. Any person, firm or corporation which is convicted of violating  
47 subdivision two of section 25.09 of this article shall be guilty of a  
48 misdemeanor punishable by a term of imprisonment not to exceed one year  
49 or by a fine not to exceed [seven hundred fifty] ONE THOUSAND FIVE  
50 HUNDRED dollars on the first conviction; [one] THREE thousand [five  
51 hundred] dollars on the second conviction; and [two] FOUR thousand  
52 dollars, on each subsequent conviction or by both such fine and impri-  
53 sonment.

54 3. Any person, firm or corporation which is convicted of knowingly  
55 violating subdivision one of section 25.07 or section 25.13 or section  
56 25.15 of this article shall be guilty of a misdemeanor punishable by a

1 term of imprisonment not to exceed one hundred eighty days or by a fine  
2 not to exceed [five hundred] ONE THOUSAND dollars on the first  
3 conviction; [one] TWO thousand dollars on the second conviction; and  
4 [two] FOUR thousand dollars on each subsequent conviction or by both  
5 such fine and imprisonment.

6 4. Notwithstanding any other penalty which may be imposed for any  
7 other violation of this article, any person, firm or corporation which  
8 is convicted of violating section 25.11 of this article shall be guilty  
9 of a violation punishable by a fine not to exceed [two] FOUR hundred  
10 dollars on the first conviction; [five hundred] ONE THOUSAND dollars on  
11 the second conviction; and [one] TWO thousand dollars on each subsequent  
12 conviction.

13 5. Any person, firm or corporation which is convicted of violating  
14 subdivision one of section 25.09 of this article shall be guilty of a  
15 violation punishable by a fine not to exceed [five hundred] ONE THOUSAND  
16 dollars.

17 6. Any person, firm or corporation which is convicted of violating any  
18 other section of this article shall be guilty of a violation punishable  
19 by a fine not to exceed [two] FIVE hundred [fifty] dollars.

20 S 6. This act shall take effect immediately; provided, however, that  
21 the amendments to article 25 of title G of the arts and cultural affairs  
22 law made by sections one, two, three, four and five of this act shall  
23 not affect the repeal and reversion of such article and shall expire and  
24 be deemed repealed therewith.