

5525

2009-2010 Regular Sessions

I N S E N A T E

May 14, 2009

Introduced by Sen. SQUADRON -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

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.

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

LBD11879-01-9

1 THE LEGISLATURE FURTHER FINDS THAT CIRCUMSTANCES OCCASIONALLY ARISE
2 THAT PRECLUDE THE USE OF TICKETS PURCHASED IN ADVANCE AND THAT PEOPLE
3 NEED TO RECOVER THEIR EXPENSES. IT IS THE INTENT OF THE LEGISLATURE THAT
4 ENFORCEMENT OF THIS ARTICLE SHALL ALSO DIFFERENTIATE BETWEEN THOSE WHO
5 WOULD LAWFULLY RECOVER THEIR EXPENSES AND THOSE WHO WOULD GAIN SUBSTAN-
6 TIAL PROFITS FROM UNLAWFUL RESELLING OF TICKETS.

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8 law is REPEALED and a new subdivision 3 is added to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 3. Any person, firm or corporation which is convicted of knowingly
2 violating subdivision one of section 25.07 or section 25.13 or section
3 25.15 of this article shall be guilty of a misdemeanor punishable by a
4 term of imprisonment not to exceed one hundred eighty days or by a fine
5 not to exceed [five hundred] ONE THOUSAND dollars on the first
6 conviction; [one] TWO thousand dollars on the second conviction; and
7 [two] FOUR thousand dollars on each subsequent conviction or by both
8 such fine and imprisonment.

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

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

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

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