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I N   S E N A T E

April 23, 2010

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Introduced by Sen. C. JOHNSON -- 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 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 OF SUCH PLACE OF ENTERTAINMENT IF  
22    SEPARATE FROM THE PHYSICAL STRUCTURE.

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

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1 2. No person, firm, corporation or not-for-profit organization, wheth-  
2 er or not domiciled, licensed or registered within the state, shall  
3 resell, offer to resell or solicit the resale of any ticket to any place  
4 of entertainment having a permanent seating capacity of five thousand or  
5 fewer persons within five hundred feet from the physical structure OR  
6 TICKET OFFICE of such place of entertainment, provided however that  
7 current licensees and those seeking a license under this article are  
8 exempt from such buffer zone when operating out of a permanent physical  
9 structure.

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

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

18 S 25.15. Bond. The secretary of state shall require the applicant for  
19 a license to file with the application therefor [a bond in due form to  
20 the people of New York in the penal sum] PROOF OF HAVING ESTABLISHED AND  
21 MAINTAINED A SPECIAL INTEREST BEARING TRUST ACCOUNT IN THE MINIMUM  
22 AMOUNT of twenty-five thousand dollars, [with two or more sufficient  
23 sureties or a duly authorized surety company, which bond shall be  
24 approved by the secretary of state] IN A NATIONAL OR STATE CHARTERED  
25 BANKING INSTITUTION, OR A STATE OR FEDERALLY CHARTERED CREDIT UNION,  
26 HAVING A PLACE OF BUSINESS WITHIN THE STATE. NO LICENSE SHALL BE ISSUED  
27 UNLESS A COPY OF A CERTIFICATE OF DEPOSIT SHOWING THE MINIMUM BALANCE IN  
28 SAID SPECIAL INTEREST BEARING TRUST ACCOUNT HAS BEEN FILED WITH THE  
29 SECRETARY SIMULTANEOUSLY WITH THE FILING OF THE LICENSE APPLICATION.  
30 Each such [bond] TRUST ACCOUNT shall be conditioned that the obligor  
31 will not be guilty of any fraud or extortion, will not violate directly  
32 or indirectly any of the provisions of this article or any of the  
33 provisions of the license or certificate provided for in this article,  
34 will comply with the provisions of this article and will pay all damages  
35 occasioned to any person by reason of any misstatement, misrepresen-  
36 tation, fraud or deceit or any unlawful act or omission of such obligor,  
37 his or her agents or employees, while acting within the scope of their  
38 employment, made, committed or omitted in connection with the provisions  
39 of this article in the business conducted under such license or caused  
40 by any other violation of this article in carrying on the business for  
41 which such license is granted. [A suit to recover on the bond required  
42 to be filed by the provisions of this article may be brought in the name  
43 of the person damaged, upon the bond deposited with the department of  
44 state by such licensed person, in a court of competent jurisdiction. The  
45 amount of damages claimed by the plaintiff and not the penalty named in  
46 the bond shall determine the jurisdiction of the court in which the  
47 action is brought. One or more recoveries or payments upon such bond  
48 shall not vitiate the same but such bond shall remain in full force and  
49 effect, provided, however, that the aggregate amount of all such recov-  
50 eries or payments shall not exceed the penal sum thereof] THE SECRETARY  
51 SHALL PROMULGATE RULES AND REGULATIONS PERTAINING TO THE ISSUING OF  
52 DETERMINATIONS, VIOLATIONS AND APPEALS, AS WELL AS, ACCESS TO THE TRUST  
53 ACCOUNT. IF IT IS DETERMINED BY THE SECRETARY, BEFORE THE SECRETARY  
54 SHALL DRAW UPON SUCH TRUST ACCOUNT, THAT ANY PROVISION OF THIS ARTICLE  
55 OR RULE AND REGULATION PROMULGATED BY THE DEPARTMENT HAS BEEN VIOLATED,  
56 DIRECTLY OR INDIRECTLY, THEN THE SECRETARY SHALL ISSUE, IN WRITING, OF

1 ANY SUCH DETERMINATION AND SHALL AFFORD THE LICENSEE AN OPPORTUNITY TO  
2 RESPOND WITHIN TWENTY DAYS OF THE RECEIPT OF SUCH DETERMINATION. IN NO  
3 EVENT MAY THE ACCOUNT BE DRAWN UPON IN LESS THAN TWENTY-FIVE DAYS AFTER  
4 THE SERVICE OF A DETERMINATION TO THE LICENSEE. SUCH WRITTEN NOTICE MAY  
5 BE SERVED BY DELIVERY THEREOF PERSONALLY TO THE LICENSEE, OR BY CERTI-  
6 FIED MAIL TO THE LAST KNOWN BUSINESS ADDRESS OF SUCH LICENSEE. A DETER-  
7 MINATION OF A VIOLATION OF ANY PROVISION OF THIS ARTICLE OR OF ANY RULE  
8 AND REGULATION PROMULGATED BY THE DEPARTMENT SHALL NOT DIMINISH A RIGHT  
9 TO APPEAL. MONEYS MAY BE WITHDRAWN FROM SUCH ACCOUNT ONLY UPON THE  
10 CERTIFICATION OF THE SECRETARY. Upon the [commencement of any action or  
11 actions against the surety upon any such bond for] WITHDRAWAL OF a sum  
12 or sums aggregating or exceeding the amount of such [bond] TRUST ACCOUNT  
13 the secretary of state shall require a new and additional [bond] TRUST  
14 ACCOUNT in like amount as the original one, which shall be filed with  
15 the department of state within thirty days after the demand therefor.  
16 Failure to file such [bond] PROOF OF MAINTAINING A TRUST ACCOUNT within  
17 such period shall constitute cause for the revocation of the license  
18 pursuant to section 25.31 of this article theretofore issued to the  
19 licensee upon whom such demand shall have been made. [Any suit or action  
20 against the surety on any bond required by the provisions of this  
21 section shall be commenced within one year after the cause of action  
22 shall have accrued.]

23 S 5. Section 4 of chapter 704 of the laws of 1991, amending the arts  
24 and cultural affairs law and chapter 912 of the laws of 1920 relating to  
25 the regulation of boxing and wrestling relating to tickets to places of  
26 entertainment, as amended by chapter 68 of the laws of 2009, is amended  
27 to read as follows:

28 S 4. This act shall take effect on the sixtieth day after it shall  
29 have become a law, provided, chapter 61 of the laws of 2007 shall not  
30 take effect with respect to the issuance of licenses or certificates  
31 under this article by the secretary of state or department of state  
32 until January 1, 2008 and regulation under this article by the commis-  
33 sioners of licenses of the political subdivisions of the state shall  
34 continue through December 31, 2007, and shall remain in full force and  
35 effect only until and including May 15, [2010] 2012 when such act shall  
36 be repealed and when, notwithstanding any other provision of law, the  
37 provisions of article 25 of title G of the arts and cultural affairs  
38 law, repealed by such act, shall be reinstituted; PROVIDED FURTHER THAT  
39 SECTION 25.11 OF THE ARTS AND CULTURAL AFFAIRS LAW, AS ADDED BY SECTION  
40 ONE OF THIS ACT, SHALL SURVIVE SUCH REPEAL DATE. Provided, however, the  
41 printing on tickets required pursuant to sections 25.07 and 25.08 of  
42 article 25 of the arts and cultural affairs law, as added by this act,  
43 shall not apply to tickets printed prior to enactment of such article so  
44 long as notice of the higher maximum premium price and prohibition of  
45 sales within one thousand five hundred feet from the physical structure  
46 of the place of entertainment, where applicable, is prominently  
47 displayed at the point of sale and at such place of entertainment.

48 S 6. Section 25.30 of the arts and cultural affairs law, as added by  
49 chapter 61 of the laws of 2007, is amended to read as follows:

50 S 25.30. Operator prohibitions. 1. A ticket is a license, issued by  
51 the operator of a place of entertainment, for admission to the place of  
52 entertainment at the date and time specified on the ticket, subject to  
53 the terms and conditions as specified by the operator. Notwithstanding  
54 any other provision of law to the contrary, it shall be prohibited for  
55 any operator of a place of entertainment OR ANY OPERATOR'S AGENT, who

1 offers for sale subscription or season ticket packages OR TICKETS TO A  
2 SINGLE EVENT, to:

3 (A) restrict by any means the resale of any tickets included in the  
4 subscription or season ticket package as a condition of purchase, as a  
5 condition to retain such tickets for the duration of the subscription or  
6 season ticket package agreement, or as a condition to retain any  
7 contractually agreed upon rights to purchase future subscription or  
8 season ticket packages that are otherwise conferred in the subscription  
9 or season ticket agreement[. Furthermore, it shall be prohibited for  
10 any operator of a place of entertainment to];

11 (B) deny access to a ticket holder who possesses a resold subscription  
12 or season ticket OR A TICKET TO A SINGLE EVENT to a performance based  
13 solely on the grounds that such ticket has been resold; OR

14 (C) PROHIBIT OR RESTRICT THE SALE OF ANY TICKET IN AN ELECTRONIC FORM  
15 THAT IS NOT READILY TRANSFERABLE WHETHER BY GIFT, SALE, OR BY ANY OTHER  
16 MEANS OF TRANSFER.

17 2. Additionally, nothing in this article shall be construed to prohib-  
18 it an operator of a place of entertainment from maintaining and enforc-  
19 ing any policies regarding conduct or behavior at or in connection with  
20 their venue. FURTHER, NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO  
21 PROHIBIT AN OPERATOR OF A PLACE OF ENTERTAINMENT OR AN OPERATOR'S AGENT  
22 FROM RESTRICTING THE RESALE OF TICKETS WHICH ARE OFFERED AT A PROMO-  
23 TIONAL OR DISCOUNTED PRICE, OR FOR FREE. An operator shall be permitted  
24 to revoke or restrict season tickets for reasons relating to violations  
25 of venue policies, including but not limited to, attempts by two or more  
26 persons to gain admission to a single event with both the cancelled  
27 tickets originally issued to a season ticket holder and those tickets  
28 re-issued as part of a resale transaction, and to the extent the opera-  
29 tor may deem necessary for the protection of the safety of patrons or to  
30 address fraud or misconduct.

31 3. NO OPERATOR'S AGENT SHALL SELL OR CONVEY TICKETS TO ANY SECONDARY  
32 TICKET RESELLER OWNED OR CONTROLLED BY THE OPERATOR'S AGENT.

33 4. THE OPERATOR OR THE PROMOTER SHALL DETERMINE WHETHER A SEAT FOR  
34 WHICH A TICKET IS FOR SALE HAS AN OBSTRUCTED VIEW, AND SHALL DISCLOSE  
35 SUCH OBSTRUCTION. IF THE OPERATOR OR PROMOTER DISCLOSES THAT A SEAT FOR  
36 WHICH A TICKET IS FOR SALE HAS AN OBSTRUCTED VIEW, IT SHALL BE THE  
37 RESPONSIBILITY OF THE SECONDARY TICKET RESELLER TO DISCLOSE SUCH  
38 OBSTRUCTION UPON THE RESALE OF SUCH TICKET. SUCH OBSTRUCTION SHALL NOT  
39 INCLUDE AN OBSTRUCTION OF VIEW CAUSED BY A PERSON, OR PERSONS, SEATED IN  
40 AN ADJACENT SEAT, OR SEATS, OR OCCUPYING AN AISLE; OR AN OBSTRUCTION OF  
41 VIEW CAUSED BY AN OBJECT OR OBJECTS PLACED UPON AN ADJACENT SEAT OR  
42 SEATS, OR IN AN AISLE; OR AN OBSTRUCTION OF VIEW THAT IS DE MINIMUS OR  
43 TRANSITORY IN NATURE.

44 S 7. The arts and cultural affairs law is amended by adding a new  
45 section 25.24 to read as follows:

46 S 25.24. AUTOMATED TICKET PURCHASING SOFTWARE. 1. THE TERM "AUTOMATED  
47 TICKET PURCHASING SOFTWARE" SHALL MEAN, ANY MACHINE, DEVICE, COMPUTER  
48 PROGRAM OR COMPUTER SOFTWARE THAT NAVIGATES OR RUNS AUTOMATED TASKS ON  
49 RETAIL TICKET PURCHASING WEBSITES IN ORDER TO BYPASS SECURITY MEASURES  
50 AND PURCHASE LARGE AMOUNTS OF TICKETS, IN EXCESS OF THE AMOUNTS PERMIT-  
51 TED BY THE RETAILER, ARTIST OR VENUES PER TRANSACTION.

52 2. ANY PERSON WHO IS NOT LICENSED PURSUANT TO SECTION 25.13 OF THIS  
53 CHAPTER WHO KNOWINGLY UTILIZES AUTOMATED TICKET PURCHASING SOFTWARE IN  
54 ORDER TO BYPASS SECURITY MEASURES TO PURCHASE LARGE AMOUNTS OF TICKETS  
55 IN EXCESS OF THE AMOUNTS PERMITTED BY THE RETAILER SHALL BE SUBJECT TO A  
56 CIVIL PENALTY IN AN AMOUNT OF NO LESS THAN FIVE HUNDRED DOLLARS AND NO

1 MORE THAN ONE THOUSAND DOLLARS FOR EACH SUCH VIOLATION AND SHALL FORFEIT  
2 ALL PROFITS MADE FROM THE SALE OF ANY SUCH UNLAWFULLY OBTAINED TICKETS.

3 3. ANY PERSON WHO IS NOT LICENSED PURSUANT TO SECTION 25.13 OF THIS  
4 CHAPTER AND WHO INTENTIONALLY MAINTAINS ANY INTEREST IN OR MAINTAINS ANY  
5 CONTROL OF THE OPERATION OF AUTOMATED TICKET PURCHASING SOFTWARE TO  
6 BYPASS SECURITY MEASURES TO PURCHASE LARGE AMOUNTS OF TICKETS IN EXCESS  
7 OF THE AMOUNTS PERMITTED BY THE RETAILER SHALL BE SUBJECT TO A CIVIL  
8 PENALTY IN AN AMOUNT OF NO LESS THAN SEVEN HUNDRED FIFTY DOLLARS AND NO  
9 MORE THAN ONE THOUSAND FIVE HUNDRED DOLLARS FOR EACH SUCH VIOLATION AND  
10 SHALL FORFEIT ALL PROFITS MADE FROM THE SALE OF ANY SUCH UNLAWFULLY  
11 OBTAINED TICKETS.

12 4. ANY PERSON WHO IS SUBJECT TO A CIVIL PENALTY UNDER THIS SECTION AND  
13 HAS BEEN ASSESSED A PENALTY UNDER THIS SECTION IN THE PREVIOUS FIVE  
14 YEARS SHALL BE GUILTY OF A VIOLATION AND MAY BE FINED NO LESS THAN ONE  
15 THOUSAND DOLLARS AND NO MORE THAN FIVE THOUSAND DOLLARS FOR EACH SUCH  
16 VIOLATION AND SHALL FORFEIT ALL PROFITS FROM THE SALE OF ANY SUCH UNLAW-  
17 FULLY OBTAINED TICKETS. IN ADDITION, A PERSON CONVICTED OF A VIOLATION  
18 UNDER THIS SECTION MAY BE REQUIRED TO FORFEIT ANY AND ALL EQUIPMENT USED  
19 IN THE UNLAWFUL PURCHASING OF TICKETS.

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

23 6. IN ADDITION TO THE POWER GIVEN TO THE ATTORNEY GENERAL TO ENFORCE  
24 THE PROVISIONS OF THIS SECTION, ANY PLACE OF ENTERTAINMENT, AS DEFINED  
25 BY SECTION 23.03 OF THIS CHAPTER, THAT HAS BEEN INJURED BY A VIOLATION  
26 OF THIS SECTION MAY BRING AN ACTION IN THE NAME OF THE PLACE OF ENTER-  
27 TAINMENT TO RECOVER ALL ACTUAL DAMAGES SUFFERED AS A RESULT OF ANY OF  
28 THE ABOVE PROSCRIBED ACTIONS. THE COURT IN ITS DISCRETION MAY AWARD  
29 DAMAGES UP TO THREE TIMES THE AMOUNT OF ACTUAL DAMAGES. THE COURT MAY  
30 ENJOIN THE RESPONDENT FROM ANY AND ALL ACTIVITY PROHIBITED UNDER THIS  
31 SECTION. THE COURT MAY ALSO AWARD REASONABLE ATTORNEY'S FEES AND COSTS.  
32 ANY PENALTY OR RECOVERY AUTHORIZED BY THIS SECTION MAY BE RECOVERED IN A  
33 CLASS ACTION.

34 S 8. This act shall take effect immediately; provided that the amend-  
35 ments to section 25.03 of the arts and cultural affairs law, made by  
36 section one of this act, shall be subject to the expiration and rever-  
37 sion of such section pursuant to section 4 of chapter 704 of the laws of  
38 1991, as amended, when upon such date the provisions of section two of  
39 this act shall take effect; provided further that the amendments to  
40 section 25.15 of the arts and cultural affairs law made by section four  
41 of this act shall not affect the expiration and reversion of such  
42 section and shall expire and be deemed repealed therewith; provided  
43 further, that the amendments to section 25.30 of the arts and cultural  
44 affairs law, made by section six of this act, shall not affect the  
45 repeal of such section and shall be deemed repealed therewith; and  
46 provided further that section 25.24 of the arts and cultural affairs  
47 law, as added by section seven of this act, shall survive the expiration  
48 and reversion of article 25 of such law as provided in section 4 of  
49 chapter 704 of the laws of 1991, as amended.