S T A T E O F N E W Y O R K

7597

I N S E N A T E

April 23, 2010

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 wrestling 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 ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 25.03 of the arts and cultural affairs law is amended by adding a new subdivision 10 to read as follows:

10. "TICKET OFFICE" MEANS A BUILDING OR OTHER STRUCTURE LOCATED OTHER THAN AT THE PLACE OF ENTERTAINMENT, AT WHICH THE OPERATOR OR THE OPERATOR'S AGENT OFFERS TICKETS FOR FIRST SALE TO THE PUBLIC.

S 2. Section 25.11 of the arts and cultural affairs law is amended by adding a new subdivision 4 to read as follows:

4. FOR PURPOSES OF THIS SECTION, "TICKET OFFICE" MEANS A BUILDING OR OTHER STRUCTURE LOCATED OTHER THAN AT THE PLACE OF ENTERTAINMENT, AT WHICH THE OPERATOR OR THE OPERATOR'S AGENT OFFERS TICKETS FOR FIRST SALE TO THE PUBLIC.

S 3. Section 25.11 of the arts and cultural affairs law, as amended by chapter 61 of the laws of 2007, subdivision 3 as amended by chapter 374 of the laws of 2007, is amended to read as follows:

S 25.11. Resales of tickets within buffer zone. 1. No person, firm, corporation or not-for-profit organization, whether or not domiciled, licensed or registered within the state, shall resell, offer to resell or solicit the resale of any ticket to any place of entertainment having a permanent seating capacity in excess of five thousand persons within one thousand five hundred feet from the physical structure of such place of entertainment, OR A TICKET OFFICE OF SUCH PLACE OF ENTERTAINMENT IF 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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2. No person, firm, corporation or not-for-profit organization, whether or not domiciled, licensed or registered within the state, shall resell, offer to resell or solicit the resale of any ticket to any place of entertainment having a permanent seating capacity of five thousand or fewer persons within five hundred feet from the physical structure OR TICKET OFFICE of such place of entertainment, provided however that current licensees and those seeking a license under this article are exempt from such buffer zone when operating out of a permanent physical structure.

3. Notwithstanding subdivisions one and two of this section, an operator may designate an area within the property line of such place of entertainment for the lawful resale of tickets only to events at such place of entertainment by any person, firm, corporation or not-for-profit organization, whether or not domiciled, licensed or registered within the state.

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

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

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

S 5. Section 4 of 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 wrestling relating to tickets to places of entertainment, as amended by chapter 68 of the laws of 2009, is amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

S 8. This act shall take effect immediately; provided that the amendments to section 25.03 of the arts and cultural affairs law, made by section one of this act, shall be subject to the expiration and reversion of such section pursuant to section 4 of chapter 704 of the laws of 1991, as amended, when upon such date the provisions of section two of this act shall take effect; provided further that the amendments to section 25.15 of the arts and cultural affairs law made by section four of this act shall not affect the expiration and reversion of such section and shall expire and be deemed repealed therewith; provided further, that the amendments to section 25.30 of the arts and cultural affairs law, made by section six of this act, shall not affect the repeal of such section and shall be deemed repealed therewith; and provided further that section 25.24 of the arts and cultural affairs law, as added by section seven of this act, shall survive the expiration and reversion of article 25 of such law as provided in section 4 of chapter 704 of the laws of 1991, as amended.