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

8413

I N S E N A T E

June 29, 2010

Introduced by COMMITTEE ON RULES -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

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.

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

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

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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 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. Each such bond 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. BEFORE THE SECRETARY SHALL DRAW UPON SUCH BOND, THE SECRETARY SHALL ISSUE A DETERMINATION IN WRITING WHICH SHALL INCLUDE THE BASIS OF SUCH ACTION. THE SECRETARY SHALL NOTIFY IN WRITING THE LICENSEE 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 BOND 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. ONLY UPON SUCH DETERMINATION OF THE SECRETARY SHALL MONEYS BE WITHDRAWN FROM THE BOND. Upon the commencement of any action or actions against the surety upon any such bond for a sum or sums aggregating or exceeding the amount of such bond the secretary of state shall require a new and additional bond 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 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] 2011 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 25.25 of the arts and cultural affairs law, as amended by chapter 374 of the laws of 2007, is amended to read as follows:

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

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

BE REPORTED BY THIS SECTION SHALL BE CONSIDERED PROPRIETARY IN NATURE AND SHALL BE GOVERNED BY THE PROTECTIONS SET FORTH IN SUBDIVISION FIVE OF SECTION EIGHTY-NINE OF THE PUBLIC OFFICERS LAW, AND SHALL BE USED EXCLUSIVELY FOR ANALYTICAL PURPOSES BY THE CONSUMER PROTECTION BOARD.

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

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

S 8. 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, [who offers for sale subscription or season ticket packages] OR OPERATOR'S AGENT, to:

(A) restrict by any means the resale of any tickets included in [the] A 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 to a performance based solely on the grounds that such ticket has been resold[.]; OR

(C) EMPLOY A PAPERLESS TICKETING SYSTEM UNLESS THE CONSUMER IS GIVEN AN OPTION TO PURCHASE PAPERLESS TICKETS THAT THE CONSUMER CAN TRANSFER AT ANY PRICE, AND AT ANY TIME, AND WITHOUT ADDITIONAL FEES, INDEPENDENT OF THE OPERATOR OR OPERATOR'S AGENT. NOTWITHSTANDING THE FOREGOING, AN OPERATOR OR OPERATOR'S AGENT MAY EMPLOY A PAPERLESS TICKETING SYSTEM THAT DOES NOT ALLOW FOR INDEPENDENT TRANSFERABILITY OF PAPERLESS TICKETS ONLY IF THE CONSUMER IS OFFERED AN OPTION AT THE TIME OF INITIAL SALE TO PURCHASE THE SAME TICKETS IN SOME OTHER FORM THAT IS TRANSFERRABLE INDEPENDENT OF THE OPERATOR OR OPERATOR'S AGENT INCLUDING, BUT NOT LIMITED TO, PAPER TICKETS OR E-TICKETS. THE ESTABLISHED PRICE FOR ANY GIVEN TICKET SHALL BE THE SAME REGARDLESS OF THE FORM OR TRANSFERABILITY OF SUCH TICKET. THE ABILITY FOR A TICKET TO BE TRANSFERRED INDEPENDENT OF THE OPERATOR OR OPERATOR'S AGENT SHALL NOT CONSTITUTE A SPECIAL SERVICE FOR THE PURPOSE OF IMPOSING A SERVICE CHARGE PURSUANT TO SECTION 25.29 OF THIS ARTICLE.

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 SUCH OPERATOR'S AGENT, FROM RESTRICTING THE RESALE OF TICKETS THAT ARE OFFERED AS PART OF A TARGETED PROMOTION, AT A DISCOUNTED PRICE, OR FOR FREE, TO SPECIFIC INDIVIDUALS OR GROUPS OF INDIVIDUALS BECAUSE OF THEIR STATUS AS, OR MEMBERSHIP IN, A SPECIFIC COMMUNITY OR GROUP, INCLUDING, BUT NOT LIMITED TO, PERSONS WITH DISABILITIES, STUDENTS, RELIGIOUS OR CIVIC ORGANIZATIONS, OR PERSONS DEMONSTRATING ECONOMIC HARDSHIP; PROVIDED, HOWEVER THAT TICKETS OFFERED PROMOTIONALLY TO THE GENERAL PUBLIC SHALL NOT BE CONSIDERED AS TICKETS OFFERED TO SPECIFIC INDIVIDUALS OR GROUPS OF INDIVIDUALS. ANY PROMOTIONAL DISCOUNTED OR FREE TICKETS FOR WHICH THE OPERATOR OR OPERATOR'S AGENT RESTRICTS RESALE MUST BE CLEARLY MARKED AS SUCH. 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 OR OPERATOR'S AGENT SHALL SELL OR CONVEY TICKETS TO ANY SECONDARY TICKET RESELLER OWNED OR CONTROLLED BY THE OPERATOR OR 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 9. Section 25.35 of the arts and cultural affairs law is amended by adding a new subdivision 7 to read as follows:

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

S 10. 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 TO PURCHASE TICKETS.

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

3. ANY PERSON WHO KNOWINGLY UTILIZES AUTOMATED TICKET PURCHASING SOFTWARE IN ORDER TO BYPASS SECURITY MEASURES TO PURCHASE TICKETS 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.

4. ANY PERSON WHO INTENTIONALLY MAINTAINS ANY INTEREST IN OR MAINTAINS ANY CONTROL OF THE OPERATION OF AUTOMATED TICKET PURCHASING SOFTWARE TO BYPASS SECURITY MEASURES TO PURCHASE TICKETS 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.

5. 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.

6. 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.

7. 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, OR ANY AGGRIEVED PARTY THAT HAS BEEN INJURED BY WRONGFUL CONDUCT PRESCRIBED BY THIS SECTION MAY BRING AN ACTION TO RECOVER ALL ACTUAL DAMAGES SUFFERED AS A RESULT OF ANY OF SUCH WRONGFUL CONDUCT. 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.

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

S 12. 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 article 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 article and shall expire and be deemed repealed therewith; provided, further, that the amendments to section 25.25 of the arts and cultural affairs law, made by section six of this act shall not affect the repeal of such article and shall be deemed repealed therewith; provided, further, that the amendments to section 25.29 of the arts and cultural affairs law, made by section seven of this act shall not affect the repeal of such article and shall be deemed repealed therewith; provided, further, that the amendments to section 25.30 of the arts and cultural affairs law, made by section eight of this act, shall not affect the repeal of such article and shall be deemed repealed therewith; provided, further, that the provisions of paragraph (c) of subdivision 1 of section 25.30 of the arts and cultural affairs law as added by section eight of this act shall not apply to tickets sold at initial sale prior to the effective date of this act; provided, further, that the amendments to section 25.35 of the arts and cultural affairs law, made by

section nine of this act, shall not affect the repeal of such article and shall be deemed repealed therewith; and provided further that section 25.24 of the arts and cultural affairs law, as added by section ten 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.