

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:

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.