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I N S E N A T E

June 11, 2010

Introduced by Sens. SQUADRON, PERALTA -- read twice and ordered printed,
and when printed to be committed to the Committee on Cultural Affairs,
Tourism, Parks and Recreation

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; and to repeal certain provisions of the
arts and cultural affairs law relating to the definition of final
auction price

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. Subdivision 3 of section 25.03 of the arts and cultural
2 affairs law is REPEALED and a new subdivision 3 is added to read as
3 follows:
4 3. "MAXIMUM PREMIUM PRICE" MEANS ANY PREMIUM OR PRICE IN EXCESS OF THE
5 ESTABLISHED PRICE PRINTED OR ENDORSED ON THE TICKET PURSUANT TO SECTION
6 25.07 OF THIS ARTICLE, PLUS LAWFUL TAXES, SO THAT THE ULTIMATE PRICE OF
7 THE PURCHASE OF ANY SUCH TICKET TO A PLACE OF ENTERTAINMENT SHALL NOT
8 EXCEED THE SUM OF THE ESTABLISHED PRICE PLUS TWENTY PERCENT OF THE
9 ESTABLISHED PRICE.
10 S 2. Section 25.03 of the arts and cultural affairs law is amended by
11 adding a new subdivision 10 to read as follows:
12 10. "TICKET OFFICE" MEANS A BUILDING OR OTHER STRUCTURE LOCATED OTHER
13 THAN AT THE PLACE OF ENTERTAINMENT, AT WHICH THE OPERATOR OR THE OPERA-
14 TOR'S AGENT OFFERS TICKETS FOR FIRST SALE TO THE PUBLIC.
15 S 3. Subdivision 1 of section 25.07 of the arts and cultural affairs
16 law, as amended by chapter 61 of the laws of 2007, is amended to read as
17 follows:
18 1. Every operator of a place of entertainment shall, if a price be
19 charged for admission thereto, print or endorse on the face of each such
20 ticket the established price[, or the final auction price if such ticket
21 was sold or resold by auction through the operator or its agent]. SUCH

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

LBD17743-02-0

1 OPERATOR SHALL LIKEWISE BE REQUIRED TO PRINT OR ENDORSE ON EACH TICKET
2 THE MAXIMUM PREMIUM PRICE AT WHICH SUCH TICKET OR OTHER EVIDENCE OF THE
3 RIGHT OF ENTRY MAY BE RESOLD OR OFFERED FOR RESALE. IT SHALL BE UNLAW-
4 FUL FOR ANY PERSON, FIRM OR CORPORATION TO RESELL OR OFFER TO RESELL ANY
5 TICKET TO ANY PLACE OF ENTERTAINMENT FOR MORE THAN THE MAXIMUM PREMIUM
6 PRICE.

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

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

13 S 5. Section 25.11 of the arts and cultural affairs law, as amended by
14 chapter 61 of the laws of 2007, subdivision 3 as amended by chapter 374
15 of the laws of 2007, is amended to read as follows:

16 S 25.11. Resales of tickets within buffer zone. 1. No person, firm,
17 corporation or not-for-profit organization, whether or not domiciled,
18 licensed or registered within the state, shall resell, offer to resell
19 or solicit the resale of any ticket to any place of entertainment having
20 a permanent seating capacity in excess of five thousand persons within
21 one thousand five hundred feet from the physical structure of such place
22 of entertainment, OR A TICKET OFFICE.

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

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

38 S 6. Section 25.13 of the arts and cultural affairs law is amended by
39 adding a new subdivision 2-a to read as follows:

40 2-A. NO TICKET SELLER SHALL RESELL ANY TICKET DURING THE FIRST FORTY-
41 EIGHT HOURS AFTER SUCH TICKET IS FIRST AVAILABLE FOR PRIMARY SALE;
42 PROVIDED THAT SUCH RESTRICTION SHALL NOT APPLY WITH RESPECT TO SEASON
43 TICKETS OR BUNDLED SERIES TICKETS. NO TICKET SELLER SHALL SELL OR RESELL
44 ANY TICKET THAT SUCH SELLER DOES NOT OWN AT THE TIME OF THE OFFER OR
45 SALE. THE PROVISIONS OF THIS SUBDIVISION SHALL NOT APPLY TO VENUES
46 CONTAINING LESS THAN SIX THOUSAND SEATS.

47 S 7. Section 25.15 of the arts and cultural affairs law, as amended by
48 chapter 374 of the laws of 2007, is amended to read as follows:

49 S 25.15. Bond. The secretary of state shall require the applicant for
50 a license to file with the application therefor a bond in due form to
51 the people of New York in the penal sum of twenty-five thousand dollars,
52 with two or more sufficient sureties or a duly authorized surety compa-
53 ny, which bond shall be approved by the secretary of state. Each such
54 bond shall be conditioned that the obligor will not be guilty of any
55 fraud or extortion, will not violate directly or indirectly any of the
56 provisions of this article or any of the provisions of the license or

1 certificate provided for in this article, will comply with the
2 provisions of this article and will pay all damages occasioned to any
3 person by reason of any misstatement, misrepresentation, fraud or deceit
4 or any unlawful act or omission of such obligor, his or her agents or
5 employees, while acting within the scope of their employment, made,
6 committed or omitted in connection with the provisions of this article
7 in the business conducted under such license or caused by any other
8 violation of this article in carrying on the business for which such
9 license is granted. [A suit to recover on the bond required to be filed
10 by the provisions of this article may be brought in the name of the
11 person damaged, upon the bond deposited with the department of state by
12 such licensed person, in a court of competent jurisdiction. The amount
13 of damages claimed by the plaintiff and not the penalty named in the
14 bond shall determine the jurisdiction of the court in which the action
15 is brought.] One or more recoveries or payments upon such bond shall not
16 vitiate the same but such bond shall remain in full force and effect,
17 provided, however, that the aggregate amount of all such recoveries or
18 payments shall not exceed the penal sum thereof. BEFORE THE SECRETARY
19 SHALL DRAW UPON SUCH BOND, THE SECRETARY SHALL ISSUE A DETERMINATION IN
20 WRITING WHICH SHALL INCLUDE THE BASIS OF SUCH ACTION. THE SECRETARY
21 SHALL NOTIFY IN WRITING THE LICENSEE OF ANY SUCH DETERMINATION AND SHALL
22 AFFORD THE LICENSEE AN OPPORTUNITY TO RESPOND WITHIN TWENTY DAYS OF THE
23 RECEIPT OF SUCH DETERMINATION. IN NO EVENT MAY THE BOND BE DRAWN UPON IN
24 LESS THAN TWENTY-FIVE DAYS AFTER THE SERVICE OF A DETERMINATION TO THE
25 LICENSEE. SUCH WRITTEN NOTICE MAY BE SERVED BY DELIVERY THEREOF
26 PERSONALLY TO THE LICENSEE, OR BY CERTIFIED MAIL TO THE LAST KNOWN BUSI-
27 NESS ADDRESS OF SUCH LICENSEE. ONLY UPON SUCH DETERMINATION OF THE
28 SECRETARY SHALL MONEYS BE WITHDRAWN FROM THE BOND. Upon the commencement
29 of any action or actions against the surety upon any such bond for a sum
30 or sums aggregating or exceeding the amount of such bond the secretary
31 of state shall require a new and additional bond in like amount as the
32 original one, which shall be filed with the department of state within
33 thirty days after the demand therefor. Failure to file such bond within
34 such period shall constitute cause for the revocation of the license
35 pursuant to section 25.31 of this article theretofore issued to the
36 licensee upon whom such demand shall have been made. Any suit or action
37 against the surety on any bond required by the provisions of this
38 section shall be commenced within one year after the cause of action
39 shall have accrued.

40 S 8. Section 4 of chapter 704 of the laws of 1991, amending the arts
41 and cultural affairs law and chapter 912 of the laws of 1920 relating to
42 the regulation of boxing and wrestling relating to tickets to places of
43 entertainment, as amended by chapter 68 of the laws of 2009, is amended
44 to read as follows:

45 S 4. This act shall take effect on the sixtieth day after it shall
46 have become a law, provided, chapter 61 of the laws of 2007 shall not
47 take effect with respect to the issuance of licenses or certificates
48 under this article by the secretary of state or department of state
49 until January 1, 2008 and regulation under this article by the commis-
50 sioners of licenses of the political subdivisions of the state shall
51 continue through December 31, 2007, and shall remain in full force and
52 effect only until and including May 15, [2010] 2011 when such act shall
53 be repealed and when, notwithstanding any other provision of law, the
54 provisions of article 25 of title G of the arts and cultural affairs
55 law, repealed by such act, shall be reinstituted; PROVIDED FURTHER THAT
56 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 9. Section 25.23 of the arts and cultural affairs law, as amended by chapter 106 of the laws of 2005, is amended to read as follows:

S 25.23. Posting of price lists; information to purchaser. 1. In every principal office or branch office, bureau, agency or sub-agency of any licensee under this article, there shall be conspicuously posted and at all times displayed a price list showing the established price charged by the operator of the place of entertainment for which a ticket is being sold by such licensee, together with the price being charged by such licensee for the resale of such ticket, so that all persons visiting such place may readily see the same. The licensee shall also on request furnish each purchaser of a ticket with a receipt showing the same information. Further, if the licensee conducts business through the use of the internet, the same price list, or hyperlink to the same, shall be conspicuously displayed on the internet page on which tickets are accessed. In addition the licensee shall publish in a conspicuous place, or hyperlink to on the internet a statement clearly detailing the required guarantees required by section 25.07 of this article.

2. A. AN ONLINE RESALE MARKETPLACE SHALL POST A CLEAR AND CONSPICUOUS NOTICE ON THE WEBSITE OF SUCH ONLINE RESALE MARKETPLACE THAT THE WEBSITE IS FOR THE SECONDARY SALE OF TICKETS AND SHALL REQUIRE THAT THE USER CONFIRM HAVING READ SUCH NOTICE BEFORE STARTING ANY TRANSACTION. NO OPERATOR OR ITS AGENT SHALL TRANSFER A PROSPECTIVE TICKET PURCHASER THROUGH ANY MEANS TO A SECONDARY SELLER WITHOUT PROVIDING A CLEAR AND CONSPICUOUS DISCLOSURE APPROPRIATE FOR THE SELLING PLATFORM THAT INFORMS THE PROSPECTIVE PURCHASER THAT THE TICKET OFFERED IS IN THE SECONDARY MARKET.

B. NO OPERATOR OR OPERATOR'S AGENT OR ANY PERSON WHO IS EMPLOYED BY SUCH OPERATOR OR OPERATOR'S AGENT SHALL RESELL OR ENGAGE IN THE BUSINESS OF RESELLING ANY TICKETS OF ADMISSION OR ANY OTHER EVIDENCE OF THE RIGHT OF ENTRY TO A THEATRE, PLACE OF AMUSEMENT OR ENTERTAINMENT, OR OTHER PLACES WHERE PUBLIC EXHIBITIONS, GAMES, CONTESTS OR PERFORMANCES ARE HELD. THE PROVISIONS OF THIS PARAGRAPH SHALL NOT APPLY TO DONATIONS MADE BY THE OPERATOR OR OPERATOR'S AGENT, WHEN THERE IS NO COMPENSATION PROVIDED, TO INDIVIDUALS OR CHARITABLE ORGANIZATIONS WHERE THE TICKETS ARE FOR PERSONAL USE OR CHARITABLE PURPOSES.

S 10. 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

1 shall be considered proprietary in nature and shall be governed by the
2 protections set forth in subdivision five of section eighty-nine of the
3 public officers law. These records shall be retained for a period of not
4 less than ten years.

5 2. TWICE ANNUALLY, ON JUNE THIRTIETH AND DECEMBER THIRTY-FIRST, EVERY
6 LICENSEE THAT RESELLS TICKETS OR FACILITATES THE RESALE OR RESALE
7 AUCTION OF TICKETS BETWEEN INDEPENDENT PARTIES BY ANY AND ALL MEANS
8 SHALL REPORT TO THE CONSUMER PROTECTION BOARD THE TOTAL NUMBER OF, AND
9 AVERAGE RESALE OR AVERAGE FINAL RESALE AUCTION PRICE OF, ALL TICKETS TO
10 EACH TICKETED EVENT, PROVIDED, HOWEVER, THAT REPEAT PERFORMANCES OF A
11 SINGLE EVENT, AND MULTIPLE EVENTS THAT ARE PART OF A SEASON-LONG
12 PERFORMANCE SHALL BE TREATED AS A SINGLE EVENT FOR THE PURPOSES OF THE
13 REPORTING REQUIREMENT OF THIS SUBDIVISION. THE INFORMATION REQUIRED TO
14 BE REPORTED BY THIS SECTION SHALL BE CONSIDERED PROPRIETARY IN NATURE
15 AND SHALL BE GOVERNED BY THE PROTECTIONS SET FORTH IN SUBDIVISION FIVE
16 OF SECTION EIGHTY-NINE OF THE PUBLIC OFFICERS LAW, AND SHALL BE USED
17 EXCLUSIVELY FOR ANALYTICAL PURPOSES BY THE CONSUMER PROTECTION BOARD.

18 3. EVERY OPERATOR OF A PLACE OF ENTERTAINMENT SHALL MAKE PUBLIC THE
19 PERCENTAGE OF TICKETS TO A PLACE OF ENTERTAINMENT THAT WILL BE MADE
20 AVAILABLE TO THE PUBLIC. AT THE TIME OF THE INITIAL SALE OF TICKETS, THE
21 OPERATOR SHALL MAKE PUBLIC THE TOTAL NUMBER AND LOCATIONS OF TICKETS,
22 AND THE PERCENTAGE OF TICKETS SOLD AT SUCH INITIAL PUBLIC SALE.

23 S 11. Subdivision 1 of section 25.29 of the arts and cultural affairs
24 law, as amended by chapter 61 of the laws of 2007, is amended to read as
25 follows:

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

37 S 12. Section 25.30 of the arts and cultural affairs law, as added by
38 chapter 61 of the laws of 2007, is amended to read as follows:

39 S 25.30. Operator prohibitions. 1. A ticket is a license, issued by
40 the operator of a place of entertainment, for admission to the place of
41 entertainment at the date and time specified on the ticket, subject to
42 the terms and conditions as specified by the operator. Notwithstanding
43 any other provision of law to the contrary, it shall be prohibited for
44 any operator of a place of entertainment, [who offers for sale
45 subscription or season ticket packages] OR OPERATOR'S AGENT, to:

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

54 (B) deny access to a ticket holder who possesses a resold subscription
55 or season ticket to a performance based solely on the grounds that such
56 ticket has been resold[.]; OR

(C) EMPLOY A FORM OF PAPERLESS TICKETING THAT IS NOT READILY TRANSFER-
ABLE TO ANOTHER CUSTOMER THROUGH A TRANSACTION THAT IS INDEPENDENT OF
THE OPERATOR OR OPERATOR'S AGENT, UNLESS A PURCHASER IS GIVEN THE OPTION
AT THE TIME OF FIRST PUBLIC SALE TO PURCHASE THE SAME TICKETS AT THE
SAME ESTABLISHED PRICE IN SOME OTHER FORM, INCLUDING, BUT NOT LIMITED
TO, PAPER TICKETS, THAT IS READILY TRANSFERABLE THROUGH A TRANSACTION
THAT IS INDEPENDENT OF THE OPERATOR OR OPERATOR'S AGENT, PROVIDED HOWEV-
ER, THAT NOTHING IN THIS PARAGRAPH SHALL PROHIBIT THE OPERATOR OR OPERA-
TOR'S AGENT FROM IMPOSING A NOMINAL SURCHARGE ON PAPERLESS TICKETS.

2. Additionally, nothing in this article shall be construed to prohib-
it an operator of a place of entertainment from maintaining and enforc-
ing 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 OF SIX THOUSAND SEATS
OR LESS, OR SUCH OPERATOR'S AGENT, FROM RESTRICTING THE RESALE OF TICK-
ETS THAT ARE OFFERED AT A PROMOTIONAL OR DISCOUNTED PRICE, FOR FREE, OR
FOR PERSONS WITH DISABILITIES. 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 OR ANY PERSON WHO IS EMPLOYED BY
SUCH OPERATOR OR OPERATOR'S AGENT SHALL RESELL OR ENGAGE IN THE BUSINESS
OF RESELLING ANY TICKETS OF ADMISSION OR ANY OTHER EVIDENCE OF THE RIGHT
OF ENTRY TO A THEATRE, PLACE OF AMUSEMENT OR ENTERTAINMENT, OR OTHER
PLACES WHERE PUBLIC EXHIBITIONS, GAMES, CONTESTS OR PERFORMANCES ARE
HELD. THIS PROVISION SHALL NOT APPLY TO DONATIONS MADE BY THE OPERATOR
OR OPERATOR'S AGENT, WHEN THERE IS NO COMPENSATION PROVIDED, TO INDIVID-
UALS OR CHARITABLE ORGANIZATIONS WHERE THE TICKETS ARE FOR PERSONAL USE
OR CHARITABLE PURPOSES.

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 13. Section 25.33 of the arts and cultural affairs law, as added by
chapter 704 of the laws of 1991, is amended to read as follows:

S 25.33. ENFORCEMENT. 1. A. THE ATTORNEY GENERAL SHALL ESTABLISH A
TOLL-FREE TELEPHONE NUMBER AND ACCEPT THROUGH ITS WEBSITE ALLEGATIONS
FROM THE PUBLIC OF IMPROPER TICKET ACQUISITION, DISTRIBUTION OR SALES
PRACTICES, INCLUDING DECEPTIVE PRACTICES, CORRUPTION, FRAUD OR IRREGULAR
PRACTICES WITH RESPECT TO TICKET SALES FOR EVENTS IN NEW YORK STATE OR
WITH RESPECT TO TICKETS SOLD TO RESIDENTS OF THE STATE. THE ATTORNEY
GENERAL SHALL PROMINENTLY DISPLAY ON ITS WEBSITE INFORMATION REGARDING
THE HOTLINE. THE ATTORNEY GENERAL SHALL INVESTIGATE AS APPROPRIATE ALL
CREDIBLE ALLEGATIONS RECEIVED REGARDING IMPROPER TICKET ACQUISITION,
DISTRIBUTION OR SALES PRACTICES.

1 B. ANY PERSON, FIRM, CORPORATION OR OTHER ENTITY, WHETHER OR NOT DOMI-
2 CILED, LICENSED OR REGISTERED WITHIN THE STATE, CONVICTED OF VIOLATING
3 THE PROVISIONS OF SECTION 25.27 OR 25.29 OF THIS ARTICLE SHALL BE GUILTY
4 OF A CLASS A MISDEMEANOR PUNISHABLE BY A FINE NOT TO EXCEED TWO THOUSAND
5 DOLLARS OR FOUR TIMES THE AMOUNT OF THE DEFENDANT'S GAIN, TO BE DETER-
6 MINED PURSUANT TO THE PROCEDURES SET FORTH IN SECTION 400.30 OF THE
7 CRIMINAL PROCEDURE LAW, WHICHEVER IS GREATER, OR BY A TERM OF IMPRISON-
8 MENT NOT TO EXCEED ONE YEAR, OR BY BOTH SUCH FINE AND IMPRISONMENT.

9 2. Private right of action. Notwithstanding any right of action grant-
10 ed to any governmental body pursuant to this chapter, any person who has
11 been injured by reason of a violation of this article may bring an
12 action in his or her own name to enjoin such unlawful act, an action to
13 recover his or her actual damages or fifty dollars, whichever is great-
14 er, or both such actions. The court may award reasonable attorney's fees
15 to a prevailing plaintiff.

16 S 14. Section 25.35 of the arts and cultural affairs law, as added by
17 chapter 704 of the laws of 1991, subdivision 1 as amended by chapter 56
18 of the laws of 2001, subdivisions 2, 3, 4, 5 and 6, as amended by chap-
19 ter 374 of the laws of 2007, is amended to read as follows:

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

29 (b) Any person, firm, corporation or other entity, whether or not
30 domiciled, licensed, or registered within the state, which is convicted
31 of violating section 25.27 or 25.29 of this article, when the value of
32 the commission, gratuity, bonus, premium or price unlawfully paid or
33 accepted exceeds one thousand dollars for an event as defined in section
34 23.03 of this chapter, whether or not such payment is for tickets to a
35 single performance of that event, shall be guilty of a class E felony,
36 punishable by a term of imprisonment in accordance with the penal law,
37 or by a fine of [five] TEN thousand dollars or [two] FOUR times the
38 amount of the defendant's gain, to be determined pursuant to the proce-
39 dures set forth in section 400.30 of the criminal procedure law, which-
40 ever is greater, or by both such fine and imprisonment.

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

49 3. Any person, firm or corporation which is convicted of knowingly
50 violating subdivision one of section 25.07 or section 25.13 or section
51 25.15 of this article shall be guilty of a misdemeanor punishable by a
52 term of imprisonment not to exceed one hundred eighty days or by a fine
53 not to exceed [five hundred] ONE THOUSAND dollars on the first
54 conviction; [one] TWO thousand dollars on the second conviction; and
55 [two] FOUR thousand dollars on each subsequent conviction or by both
56 such fine and imprisonment.

1 4. Notwithstanding any other penalty which may be imposed for any
2 other violation of this article, any person, firm or corporation which
3 is convicted of violating section 25.11 of this article shall be guilty
4 of a violation punishable by a fine not to exceed [two] FOUR hundred
5 dollars on the first conviction; five hundred dollars on the second
6 conviction; and one thousand dollars on each subsequent conviction.

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

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

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

19 S 15. The arts and cultural affairs law is amended by adding a new
20 section 25.24 to read as follows:

21 S 25.24. AUTOMATED TICKET PURCHASING SOFTWARE. 1. THE TERM "AUTOMATED
22 TICKET PURCHASING SOFTWARE" SHALL MEAN, ANY MACHINE, DEVICE, COMPUTER
23 PROGRAM OR COMPUTER SOFTWARE THAT NAVIGATES OR RUNS AUTOMATED TASKS ON
24 RETAIL TICKET PURCHASING WEBSITES IN ORDER TO BYPASS SECURITY MEASURES
25 TO PURCHASE TICKETS.

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

28 3. ANY PERSON WHO KNOWINGLY UTILIZES AUTOMATED TICKET PURCHASING SOFT-
29 WARE IN ORDER TO BYPASS SECURITY MEASURES TO PURCHASE TICKETS SHALL BE
30 SUBJECT TO A CIVIL PENALTY IN AN AMOUNT OF NO LESS THAN FIVE HUNDRED
31 DOLLARS AND NO MORE THAN ONE THOUSAND DOLLARS FOR EACH SUCH VIOLATION
32 AND SHALL FORFEIT ALL PROFITS MADE FROM THE SALE OF ANY SUCH UNLAWFULLY
33 OBTAINED TICKETS.

34 4. ANY PERSON WHO INTENTIONALLY MAINTAINS ANY INTEREST IN OR MAINTAINS
35 ANY CONTROL OF THE OPERATION OF AUTOMATED TICKET PURCHASING SOFTWARE TO
36 BYPASS SECURITY MEASURES TO PURCHASE TICKETS SHALL BE SUBJECT TO A CIVIL
37 PENALTY IN AN AMOUNT OF NO LESS THAN SEVEN HUNDRED FIFTY DOLLARS AND NO
38 MORE THAN ONE THOUSAND FIVE HUNDRED DOLLARS FOR EACH SUCH VIOLATION AND
39 SHALL FORFEIT ALL PROFITS MADE FROM THE SALE OF ANY SUCH UNLAWFULLY
40 OBTAINED TICKETS.

41 5. ANY PERSON WHO IS SUBJECT TO A CIVIL PENALTY UNDER THIS SECTION AND
42 HAS BEEN ASSESSED A PENALTY UNDER THIS SECTION IN THE PREVIOUS FIVE
43 YEARS SHALL BE GUILTY OF A VIOLATION AND MAY BE FINED NO LESS THAN ONE
44 THOUSAND DOLLARS AND NO MORE THAN FIVE THOUSAND DOLLARS FOR EACH SUCH
45 VIOLATION AND SHALL FORFEIT ALL PROFITS FROM THE SALE OF ANY SUCH UNLAW-
46 FULLY OBTAINED TICKETS. IN ADDITION, A PERSON CONVICTED OF A VIOLATION
47 UNDER THIS SECTION MAY BE REQUIRED TO FORFEIT ANY AND ALL EQUIPMENT USED
48 IN THE UNLAWFUL PURCHASING OF TICKETS.

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

52 7. IN ADDITION TO THE POWER GIVEN TO THE ATTORNEY GENERAL TO ENFORCE
53 THE PROVISIONS OF THIS SECTION, ANY PLACE OF ENTERTAINMENT, AS DEFINED
54 BY SECTION 23.03 OF THIS CHAPTER, OR ANY AGGRIEVED PARTY THAT HAS BEEN
55 INJURED BY WRONGFUL CONDUCT PRESCRIBED BY THIS SECTION MAY BRING AN
56 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. ANY PENALTY OR RECOVERY AUTHORIZED BY THIS SECTION MAY BE RECOVERED IN A CLASS ACTION.

S 16. 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 17. This act shall take effect immediately; provided:

a. that the amendments to section 25.03 of the arts and cultural affairs law, made by sections one and two 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 four of this act shall take effect;

b. that the amendments to section 25.07 of the arts and cultural affairs law made by section three of this act shall not affect the expiration and reversion of such section and shall expire and be deemed repealed therewith;

c. that the amendments to section 25.13 of the arts and cultural affairs law made by section six of this act shall not affect the expiration and reversion of such section and shall expire and be deemed repealed therewith;

d. that the amendments to section 25.15 of the arts and cultural affairs law made by section seven of this act shall not affect the expiration and reversion of such section and shall expire and be deemed repealed therewith;

e. that the amendments to section 25.23 of the arts and cultural affairs law made by section nine of this act shall not affect the expiration and reversion of such section and shall expire and be deemed repealed therewith;

f. that the amendments to section 25.25 of the arts and cultural affairs law, made by section ten of this act shall not affect the repeal of such section and shall be deemed repealed therewith;

g. that the amendments to section 25.29 of the arts and cultural affairs law, made by section eleven of this act shall not affect the repeal of such section and shall be deemed repealed therewith;

h. that the amendments to section 25.30 of the arts and cultural affairs law, made by section twelve of this act, shall not affect the repeal of such section and shall be deemed repealed therewith;

i. that the amendments to section 25.33 of the arts and cultural affairs law made by section thirteen of this act shall not affect the expiration and reversion of such section and shall expire and be deemed repealed therewith;

j. that the amendments to section 25.35 of the arts and cultural affairs law, made by section fourteen of this act, shall not affect the repeal of such section and shall be deemed repealed therewith; and

k. that section 25.24 of the arts and cultural affairs law, as added by section fifteen of this act, shall survive the reversion of article 25 of such law as provided in section 4 of chapter 704 of the laws of 1991, as amended.