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

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I N A S S E M B L Y

February 2, 2011

Introduced by M. of A. GABRYSZAK, COOK, JACOBS, CYMBROWITZ, JAFFEE, DINOWITZ, REILLY, SCHIMEL -- Multi-Sponsored by -- M. of A. BARRON, CAHILL, COLTON, DESTITO, GIGLIO, GLICK, GOTTFRIED, MAISEL, MAYERSOHN, PEOPLES-STOKES, PERRY, SWEENEY, TOWNS, WEISENBERG -- read once and referred to the Committee on Tourism, Parks, Arts and Sports Development

AN ACT to amend the arts and cultural affairs law, in relation to the resale of tickets to places of entertainment; and to repeal certain provisions of such law relating thereto

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

Section 1. Section 25.01 of the arts and cultural affairs law, as amended by chapter 61 of the laws of 2007, is amended to read as follows:

S 25.01. Legislative findings. The legislature finds and declares that transactions involving tickets for admission to places of entertainment are a matter of public interest and subject to the supervision of New York and the appropriate political subdivisions of the state for the purpose of safeguarding the public against fraud, extortion, EXORBITANT RATES and similar abuses.

The legislature further finds that many ticket resellers advertise and sell tickets to places of entertainment within the boundaries of New York state often from locations outside the state, without adhering to the provisions of this article. The legislature objects to any claim that businesses domiciled outside New York state are exempted from this statute when selling tickets to events occurring in New York state, regardless of the territories of origin of both the buyer and seller. It is the legislature's intent that all governmental bodies charged with enforcement of this article, including the attorney general of New York state have the authority to regulate the activities of all persons reselling tickets to venues located within this state to the full extent

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

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of the state's powers under the federal and state constitutions and that this article be construed in light of this purpose.

THE LEGISLATURE FURTHER FINDS THAT CIRCUMSTANCES OCCASIONALLY ARISE THAT PRECLUDE THE USE OF TICKETS PURCHASED IN ADVANCE AND THAT PEOPLE NEED TO RECOVER THEIR EXPENSES. IT IS THE INTENT OF THE LEGISLATURE THAT ENFORCEMENT OF THIS ARTICLE SHALL ALSO DIFFERENTIATE BETWEEN THOSE WHO WOULD LAWFULLY RECOVER THEIR EXPENSES AND THOSE WHO WOULD GAIN SUBSTANTIAL PROFITS FROM UNLAWFUL RESELLING OF TICKETS.

S 2. Subdivision 3 of section 25.03 of the arts and cultural affairs law is REPEALED and a new subdivision 3 is added to read as follows:

3. "MAXIMUM PREMIUM PRICE" MEANS ANY PREMIUM OR PRICE IN EXCESS OF THE ESTABLISHED PRICE PRINTED OR ENDORSED ON THE TICKET PURSUANT TO SECTION 25.07 OF THIS ARTICLE, PLUS LAWFUL TAXES, SO THAT THE ULTIMATE PRICE TO THE PURCHASE OF ANY SUCH TICKET TO A PLACE OF ENTERTAINMENT SHALL NOT EXCEED THE SUM OF THE ESTABLISHED PRICE PLUS TEN DOLLARS OR TWENTY-FIVE PERCENT OF THE ESTABLISHED PRICE, WHICHEVER IS GREATER PLUS LAWFUL TAXES.

S 3. The opening paragraph of subdivision 1 of section 25.03 of the arts and cultural affairs law is designated paragraph (a) and a new paragraph (b) is added to read as follows:

(B) NO PRODUCER OR PROMOTER OF A FORM OF ENTERTAINMENT OR ANYONE WHO IS EMPLOYED BY SUCH PRODUCER OR PROMOTER 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. NOTHING IN THIS ARTICLE SHALL BAN A PRODUCER OR PROMOTER FROM RESELLING TICKETS THAT HAVE BEEN PREVIOUSLY PURCHASED BY BONA FIDE NON-ASSOCIATED INDIVIDUALS.

S 4. Section 25.07 of the arts and cultural affairs law, as amended by chapter 61 of the laws of 2007, is amended to read as follows:

S 25.07. Ticket prices. 1. Every operator of a place of entertainment shall, if a price be charged for admission thereto, print or endorse on the face of each such ticket the established price[, or the final auction price if such ticket was sold or resold by auction through the operator or its agent]. SUCH OPERATOR SHALL LIKEWISE BE REQUIRED TO PRINT OR ENDORSE ON EACH TICKET THE MAXIMUM PREMIUM PRICE AT WHICH SUCH TICKET OR OTHER EVIDENCE OF THE RIGHT OF ENTRY MAY BE RESOLD OR OFFERED FOR RESALE.

2. MAXIMUM PREMIUM PRICE. IT SHALL BE UNLAWFUL FOR ANY PERSON, FIRM OR CORPORATION TO RESELL OR OFFER TO RESELL ANY TICKET TO ANY PLACE OF ENTERTAINMENT FOR MORE THAN THE MAXIMUM PREMIUM PRICE.

3. TICKETS TO ANY PLACE OF ENTERTAINMENT MAY NOT BE RESOLD UNTIL ONE MONTH AFTER THE DATE OF THE INITIAL PURCHASE OF SUCH TICKET.

4. EVERY OPERATOR OF A PLACE OF ENTERTAINMENT SHALL PRINT ON THE TICKET ANY OBSTRUCTION OR LIMITATION THAT MAY EXIST.

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

[2.] 6. Notwithstanding any other provision of law, any person, firm or corporation, regardless of whether or not licensed under this article, that resells tickets or facilitates the resale or resale auction of tickets between independent parties by any means, must guarantee to each purchaser of such resold tickets that the person, firm or corporation will provide a full refund of the amount paid by the purchaser (includ-

ing, but not limited to, all fees, regardless of how characterized) if any of the following occurs: (a) the event for which such ticket has been resold is cancelled, provided that if the event is cancelled then actual handling and delivery fees need not be refunded as long as such previously disclosed guarantee specifies that such fees will not be refunded; (b) the ticket received by the purchaser does not grant the purchaser admission to the event described on the ticket, for reasons that may include, without limitation, that the ticket is counterfeit or that the ticket has been cancelled by the issuer due to non-payment, or that the event described on the ticket was cancelled for any reason prior to purchase of the resold ticket, unless the ticket is cancelled due to an act or omission by such purchaser; or (c) the ticket fails to conform to its description as advertised unless the buyer has pre-approved a substitution of tickets.

[3.] 7. Prior to the payment of a refund it shall be the obligation of the seller and purchaser to first make a good faith effort to remedy any disputes where the seller and purchaser have agreed to terms established by the licensee or website manager for the disposition of disputes as a condition to facilitate the transaction.

8. TWICE A YEAR ANY PERSON, FIRM OR CORPORATION LICENSED UNDER THIS ARTICLE, THAT RESELLS TICKETS OR FACILITATES THE RESALE OR RESALE AUCTION OF TICKETS BETWEEN INDEPENDENT PARTIES BY ANY MEANS SHALL PUBLISH AND REPORT THE AVERAGE TICKET PRICE FOR EACH EVENT TO THE CONSUMER PROTECTION BOARD.

S 5. Section 25.35 of the arts and cultural affairs law, as added by chapter 704 of the laws of 1991, subdivision 1 as amended by chapter 56 of the laws of 2001, subdivisions 2, 3, 4, 5 and 6 as amended by chapter 374 of the laws of 2007 and subdivision 7 as added by chapter 151 of the laws of 2010, is amended to read as follows:

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

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

2. Any person, firm or corporation which is convicted of violating subdivision two of section 25.09 of this article shall be guilty of a misdemeanor punishable by a term of imprisonment not to exceed one year or by a fine not to exceed [seven hundred fifty] ONE THOUSAND FIVE HUNDRED dollars on the first conviction; [one] THREE thousand [five hundred] dollars on the second conviction; and [two] FOUR thousand

dollars, on each subsequent conviction or by both such fine and imprisonment.

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

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

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

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

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 6. This act shall take effect immediately; provided, however, that the amendments to article 25 of title G of the arts and cultural affairs law made by sections one, two, three, four and five of this act shall not affect the repeal and reversion of such article and shall expire and be deemed repealed therewith.