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Cal. No. 536

I N S E N A T E

March 8, 2016

Introduced by Sens. LANZA, BOYLE -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the arts and cultural affairs law, in relation to disclosure by certain platform operators and ticket purchasing software

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

1 Section 1. Section 25.23 of the arts and cultural affairs law, as  
2 amended by chapter 106 of the laws of 2005, is amended to read as  
3 follows:

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

19 NOTWITHSTANDING ANY OTHER PROVISION OF LAW, ANY OPERATOR OR MANAGER OF  
20 A WEBSITE OR OTHER ELECTRONIC SERVICE THAT SERVES AS A PLATFORM TO  
21 FACILITATE RESALE, OR RESALE BY WAY OF A COMPETITIVE BIDDING PROCESS,

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

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1 SOLELY BETWEEN THIRD PARTIES AND DOES NOT IN ANY OTHER MANNER ENGAGE IN  
2 REALES OF TICKETS TO PLACES OF ENTERTAINMENT SHALL DISCLOSE CLEARLY AND  
3 CONSPICUOUSLY THAT IT IS SUCH A PLATFORM, THAT PRICES OF TICKETS OFFERED  
4 FOR SALE MAY EXCEED THE ESTABLISHED PRICE AND THE REFUND POLICY OF THE  
5 PLATFORM IN CONNECTION WITH THE CANCELLATION OR POSTPONEMENT OF AN  
6 EVENT, AND SHALL PROVIDE LICENSEES AND OTHERS THAT OFFER TO RESELL TICK-  
7 ETS THROUGH THE WEBSITE OR ELECTRONIC SERVICE THE CAPABILITY TO SUPPLY  
8 THE ESTABLISHED PRICE CHARGED BY THE OPERATOR OF THE PLACE OF ENTER-  
9 TAINMENT AND SHALL DISPLAY CONSPICUOUSLY SAID ESTABLISHED PRICE, OR  
10 HYPERLINK TO THE SAME, ON THE INTERNET PAGE ON WHICH TICKETS ARE  
11 ACCESSED.

12 S 2. Section 25.24 of the arts and cultural affairs law, as added by  
13 chapter 151 of the laws of 2010, is amended to read as follows:

14 S 25.24. [Automated ticket] TICKET purchasing software. 1. The term  
15 "[automated] ticket purchasing software" shall mean, any machine,  
16 device, computer program or computer software that [navigates or runs  
17 automated tasks on retail ticket purchasing websites in order to  
18 bypass], ON ITS OWN OR WITH HUMAN ASSISTANCE, BYPASSES security measures  
19 [to purchase tickets] OR ACCESS CONTROL SYSTEMS ON A RETAIL TICKET  
20 PURCHASING PLATFORM, OR OTHER CONTROLS OR MEASURES ON A RETAIL TICKET  
21 PURCHASING PLATFORM THAT ARE USED TO ENSURE EQUITABLE CONSUMER ACCESS TO  
22 TICKETS. FOR PURPOSES OF THIS SECTION, THE TERM "RETAIL TICKET PURCHAS-  
23 ING PLATFORM" SHALL MEAN A RETAIL TICKET PURCHASING WEBSITE, APPLICA-  
24 TION, PHONE SYSTEM, OR OTHER TECHNOLOGY PLATFORM USED TO SELL TICKETS.

25 2. (A) It shall be unlawful for any person, FIRM, CORPORATION OR OTHER  
26 ENTITY to utilize [automated] ticket purchasing software [to purchase  
27 tickets].

28 (B) IT SHALL BE UNLAWFUL FOR ANY PERSON, FIRM, CORPORATION OR OTHER  
29 ENTITY TO RESELL OR OFFER TO RESELL A TICKET KNOWINGLY OBTAINED USING  
30 TICKET PURCHASING SOFTWARE.

31 3. (A) Any person, FIRM, CORPORATION OR OTHER ENTITY who knowingly  
32 utilizes [automated] ticket purchasing software in order [to bypass  
33 security measures] to purchase tickets shall be subject to a civil  
34 penalty in an amount of no less than [five hundred dollars] SEVEN  
35 HUNDRED FIFTY DOLLARS and no more than [one thousand dollars] ONE THOU-  
36 SAND FIVE HUNDRED DOLLARS for each such violation and shall forfeit all  
37 profits made from the sale of any such unlawfully obtained tickets.

38 4. Any person, FIRM, CORPORATION OR OTHER ENTITY who intentionally  
39 maintains any interest in or maintains any control of the operation of  
40 [automated] ticket purchasing software to [bypass security measures to]  
41 purchase tickets shall be subject to a civil penalty in an amount of no  
42 less than seven hundred fifty dollars and no more than one thousand five  
43 hundred dollars for each such violation and shall forfeit all profits  
44 made from the sale of any such unlawfully obtained tickets.

45 5. ANY PERSON, FIRM, CORPORATION OR OTHER ENTITY WHO RESELLS OR  
46 OFFERS TO RESELL A TICKET KNOWINGLY OBTAINED USING TICKET PURCHASING  
47 SOFTWARE SHALL BE SUBJECT TO A CIVIL PENALTY IN AN AMOUNT OF NO LESS  
48 THAN SEVEN HUNDRED FIFTY DOLLARS AND NO MORE THAN ONE THOUSAND FIVE  
49 HUNDRED DOLLARS FOR EACH SUCH VIOLATION AND SHALL FORFEIT ALL PROFITS  
50 MADE FROM THE SALE OF ANY SUCH UNLAWFULLY OBTAINED TICKET.

51 6. Any person who is subject to a civil penalty under this section and  
52 has been assessed a penalty under this section in the previous [five]  
53 THREE years shall be guilty of a violation and may be fined no less than  
54 one thousand dollars and no more than five thousand dollars for each  
55 such violation and shall forfeit all profits from the sale of any such  
56 unlawfully obtained tickets. In addition, a person convicted of a

1 violation under this section may be required to forfeit any and all  
2 equipment used in the unlawful purchasing of tickets.

3 [6.] 7. The attorney general shall have jurisdiction to enforce the  
4 provisions of this section in accordance with the powers granted to him  
5 or her by section sixty-three of the executive law.

6 [7.] 8. In addition to the power given to the attorney general to  
7 enforce the provisions of this section, any place of entertainment, as  
8 defined by section 23.03 of this chapter, or any aggrieved party that  
9 has been injured by wrongful conduct prescribed by this section may  
10 bring an action to recover all actual damages suffered as a result of  
11 any of such wrongful conduct. The court in its discretion may award  
12 damages up to three times the amount of actual damages. The court may  
13 enjoin the respondent from any and all activity prohibited under this  
14 section. The court may also award reasonable attorney's fees and costs.

15 S 3. Subdivisions 6 and 7 of section 25.35 of the arts and cultural  
16 affairs law are renumbered subdivisions 7 and 8 and a new subdivision 6  
17 is added to read as follows:

18 (6) (A) ANY PERSON, FIRM, CORPORATION OR OTHER ENTITY, WHICH IS  
19 CONVICTED OF KNOWINGLY VIOLATING SUBDIVISION THREE, FOUR OR FIVE OF  
20 SECTION 25.24 OF THIS ARTICLE SHALL BE GUILTY OF A CLASS A MISDEMEANOR  
21 AS DEFINED IN THE PENAL LAW.

22 (B) ANY PERSON, FIRM, CORPORATION OR OTHER ENTITY, WHICH IS CONVICTED  
23 OF KNOWINGLY VIOLATING SUBDIVISION THREE, FOUR OR FIVE OF SECTION 25.24  
24 OF THIS ARTICLE TWO OR MORE TIMES WITHIN THE THIRTY-SIX MONTH PERIOD  
25 PRECEDING SUCH FIRST CONVICTION SHALL BE GUILTY OF A CLASS E FELONY AS  
26 DEFINED IN THE PENAL LAW.

27 (C) NOTHING IN THIS SUBDIVISION SHALL LIMIT THE APPLICABILITY OF CIVIL  
28 PENALTIES THAT MAY BE IMPOSED PURSUANT TO SECTION 25.24 OF THIS ARTICLE.

29 S 4. This act shall take effect on the ninetieth day after it shall  
30 have become a law; provided, that the amendments to sections 25.23 and  
31 25.35 of the arts and cultural affairs law, made by sections one and  
32 three of this act, shall not affect the repeal of article 25 of such  
33 law, and shall be deemed repealed therewith.