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

March 24, 2016

Introduced by M. of A. CRESPO -- read once and referred to the Committee on Tourism, Parks, Arts and Sports Development -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

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:

Section 1. 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. 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.

NOTWITHSTANDING ANY OTHER PROVISION OF LAW, ANY OPERATOR OR MANAGER OF A WEBSITE OR OTHER ELECTRONIC SERVICE THAT SERVES AS A PLATFORM TO FACILITATE RESALE, OR RESALE BY WAY OF A COMPETITIVE BIDDING PROCESS, SOLELY BETWEEN THIRD PARTIES AND DOES NOT IN ANY OTHER MANNER ENGAGE IN RESALES OF TICKETS TO PLACES OF ENTERTAINMENT SHALL DISCLOSE CLEARLY AND CONSPICUOUSLY THAT IT IS SUCH A PLATFORM, THAT PRICES OF TICKETS OFFERED

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

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FOR SALE MAY EXCEED THE ESTABLISHED PRICE AND THE REFUND POLICY OF THE PLATFORM IN CONNECTION WITH THE CANCELLATION OR POSTPONEMENT OF AN EVENT, AND SHALL PROVIDE LICENSEES AND OTHERS THAT OFFER TO RESELL TICKETS THROUGH THE WEBSITE OR ELECTRONIC SERVICE THE CAPABILITY TO SUPPLY THE ESTABLISHED PRICE CHARGED BY THE OPERATOR OF THE PLACE OF ENTERTAINMENT AND SHALL DISPLAY CONSPICUOUSLY SAID ESTABLISHED PRICE, OR HYPERLINK TO THE SAME, ON THE INTERNET PAGE ON WHICH TICKETS ARE ACCESSED.

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

S 25.24. [Automated ticket] 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], ON ITS OWN OR WITH HUMAN ASSISTANCE, BYPASSES security measures [to purchase tickets] OR ACCESS CONTROL SYSTEMS ON A RETAIL TICKET PURCHASING PLATFORM, OR OTHER CONTROLS OR MEASURES ON A RETAIL TICKET PURCHASING PLATFORM THAT ARE USED TO ENSURE EQUITABLE CONSUMER ACCESS TO TICKETS. FOR PURPOSES OF THIS SECTION, THE TERM "RETAIL TICKET PURCHASING PLATFORM" SHALL MEAN A RETAIL TICKET PURCHASING WEBSITE, APPLICATION, PHONE SYSTEM, OR OTHER TECHNOLOGY PLATFORM USED TO SELL TICKETS.

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

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

3. (A) Any person, FIRM, CORPORATION OR OTHER ENTITY 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] SEVEN HUNDRED FIFTY DOLLARS and no more than [one thousand dollars] ONE THOUSAND FIVE HUNDRED DOLLARS for each such violation and shall forfeit all profits made from the sale of any such unlawfully obtained tickets.

4. Any person, FIRM, CORPORATION OR OTHER ENTITY 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, FIRM, CORPORATION OR OTHER ENTITY WHO RESELLS OR OFFERS TO RESELL A TICKET KNOWINGLY OBTAINED USING TICKET PURCHASING SOFTWARE 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 TICKET.

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

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

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

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

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