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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.