STATE OF NEW YORK

2895

2017-2018 Regular Sessions

IN ASSEMBLY

January 23, 2017

Introduced by M. of A. ABINANTI, PRETLOW, MONTESANO, JAFFEE, GALEF, COLTON, GUNTHER, MOSLEY, STECK, GOTTFRIED, CAHILL -- Multi-Sponsored by -- M. of A. COOK, LOPEZ, McDONALD, SIMON -- 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 resale of tickets to places of entertainment; and to repeal article 25 of such law relating thereto

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Article 25 of the arts and cultural affairs law is REPEALED and a new article 25 is added to read as follows:

ARTICLE 25

TICKETS TO PLACES OF ENTERTAINMENT

Section 25.01. Legislative findings.
25.03. Definitions.
25.05. Ticket speculators.
25.07. Ticket prices.
25.09. Additional printing on tickets.
25.11. Resales of tickets within buffer zone.
25.13. Licensing of ticket resellers.
25.15. Bond.
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25.19. Posting of license or certificate.
25.21. Change of office location.
25.23. Posting of price lists; information to purchaser.
25.24. Automated ticket purchasing software.
25.25. Records of purchases and sales.
25.27. Commissions to employees of places of entertainment.
25.29. Unlawful charges in connection with tickets.
25.30. Operator prohibitions.
25.31. Suspension or revocation of licenses.

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

LBD00534-01-7

25.33. Enforcement.
25.35. Criminal penalties.

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

§ 25.03. Definitions. As used in this article the term:

1. "Entertainment" means all forms of entertainment including, but not limited to, theatrical or operatic performances, concerts, motion pictures, all forms of entertainment at fair grounds, amusement parks and all types of athletic competitions including football, basketball, baseball, boxing, tennis, hockey, and any other sport, and all other forms of diversion, recreation or show.

2. "Established price" means the price fixed at the time of sale by the operator of any place of entertainment for admission thereto, which must be printed or endorsed on each ticket of admission.

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 of the purchase of any such ticket to a place of entertainment shall not exceed the sum of the established price plus twenty percent of the established price.

4. "Not-for-profit organization" means a domestic corporation incorporated pursuant to or otherwise subject to the not-for-profit corporation law, a charitable organization registered with the department of law, a religious corporation as defined in section sixty-six of the general construction law, a trustee as defined in section 8-1.4 of the estates, powers and trusts law, an institution or corporation formed pursuant to the education law, a special act corporation created pursuant to chapter four hundred sixty-eight of the laws of eighteen hundred ninety-nine, as amended, a special act corporation formed pursuant to chapter two hundred fifty-six of the laws of nineteen hundred seventeen, as amended, a corporation authorized pursuant to an act of congress approved January fifth, nineteen hundred five, (33 stat. 599), as amended, a corporation established by merger of charitable organizations pursuant to an order of the supreme court, New York county dated July twenty-first, nineteen hundred eighty-six and filed in the department of state on July twenty-ninth, nineteen hundred eighty-six, or a corporation having tax exempt status under section 501 (c) (3) of the United States Internal Revenue Code, and shall further be deemed to mean and include any federation of charitable organizations.

5. "Operator" means any person who owns, operates, or controls a place of entertainment or who promotes or produces an entertainment.

6. "Place of entertainment" means any privately or publicly owned and operated entertainment facility such as a theatre, stadium, arena, race-track, museum, amusement park, or other place where performances, concerts, exhibits, athletic games or contests are held for which an entry fee is charged.

7. "Physical structure" means the place of entertainment, or in the case where a structure either partially or wholly surrounds the place of entertainment, such surrounding structure.

8. "Resale" means any sale of a ticket for entrance to a place of entertainment located within the boundaries of the state of New York other than a sale by the operator or the operator's agent who is expressly authorized to make first sales of such tickets. Resale shall include sales by any means, including in person, or by means of telephone, mail, delivery service, facsimile, internet, email or other electronic means, where the venue for which the ticket grants admission is located in New York state. Except as provided in sections 25.11 and 25.27 of this article, the term "resale" shall not apply to any person, firm or corporation which purchases any tickets solely for their own use or the use of their invitees, employees and agents or which purchases tickets on behalf of others and resells such tickets to such invitees, employees and agents or others at or less than the established price. Similarly, the term "resale" shall not apply to any not-for-profit organization, or person acting on behalf of such not-for-profit organization, as long as any profit realized from ticket reselling is wholly dedicated to the purposes of such not-for-profit organization.

9. "Ticket" means any evidence of the right of entry to any place of entertainment.

10. "Ticket office" means a building or other structure located other than at the place of entertainment, at which the operator or the operator's agent offers tickets for first sale to the public.

§ 25.05. Ticket speculators. Any person who:

1. Conducts on or in any street in a city or in the county of Nassau the business of selling or offering for sale any ticket of admission or any other evidence of the right of entry to any performance or exhibition in or about the premises of any theatre or concert hall, place of public amusement, circus or common show; or

2. Solicits on or in any street in a city or in the county of Nassau by words, signs, circulars or other means any person to purchase any such ticket or other evidence of the right of entry; or

3. In or from any building, store, shop, booth, yard, garden or in or from any opening, window, door, hallway, corridor or in or from any place of ingress or egress to or from any building, place of business, store, shop, booth, yard or garden in a city or in the county of Nassau indicates, holds out or offers for sale to any person or persons on or in the street by word of mouth, crying, calling, shouting or other means that such ticket or other evidence of the right of entry may be purchased in such building, store, shop, booth, yard, garden or any other place; or

4. In or from any such place or places in a city or in the county of Nassau solicits by word of mouth, crying, calling, shouting or other means any person on or in the street to purchase any such ticket or other evidence of the right of entry, is guilty of a misdemeanor.

§ 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. 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. 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.

2. 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 (including, 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. 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.

§ 25.09. Additional printing on tickets. Every operator of a place of entertainment having a permanent seating capacity in excess of five thousand persons shall, if a price be charged for admission thereto, print or endorse in a clear and legible manner on each ticket, "This ticket may not be resold within one thousand five hundred feet from the physical structure of this place of entertainment under penalty of law".

§ 25.11. Resales of tickets within buffer zone. 1. No person, firm, corporation or not-for-profit organization, whether or not domiciled, licensed or registered within the state, shall resell, offer to resell or solicit the resale of any ticket to any place of entertainment having a permanent seating capacity in excess of five thousand persons within one thousand five hundred feet from the physical structure of such place of entertainment, or a ticket office.

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

3. Notwithstanding subdivisions one and two of this section, an operator may designate an area within the property line of such place of entertainment for the lawful resale of tickets only to events at such

place of entertainment by any person, firm, corporation or not-for-profit organization, whether or not domiciled, licensed or registered within the state.

4. For purposes of this section, "ticket office" means a building or other structure located other than at the place of entertainment, at which the operator or the operator's agent offers tickets for first sale to the public.

§ 25.13. Licensing of ticket resellers. 1. No person, firm or corporation shall resell or engage in the business of reselling any tickets to a place of entertainment or operate an internet website or any other electronic service that provides a mechanism for two or more parties to participate in a resale transaction or that facilitates resale transactions by the means of an auction, or own, conduct or maintain any office, branch office, bureau, agency or sub-agency for such business without having first procured a license or certificate for each location at which business will be conducted from the secretary of state. Any operator or manager of a website 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 be exempt from the licensing requirements of this section. The department of state shall issue and deliver to such applicant a certificate or license to conduct such business and to own, conduct or maintain a bureau, agency, sub-agency, office or branch office for the conduct of such business on the premises stated in such application upon the payment by or on behalf of the applicant of a fee of five thousand dollars and shall be renewed upon the payment of a like fee annually. Such license or certificate shall not be transferred or assigned, except by permission of the secretary of state. Such license or certificate shall run to the first day of January next ensuing the date thereof, unless sooner revoked by the secretary of state. Such license or certificate shall be granted upon a written application setting forth such information as the secretary of state may require in order to enable him or her to carry into effect the provisions of this article and shall be accompanied by proof satisfactory to the secretary of state of the moral character of the applicant.

2. No operator's agent shall sell or convey tickets to any secondary ticket reseller owned or controlled by the operator's agent.

2-a. No ticket seller shall resell any ticket during the first forty-eight hours after such ticket is first available for primary sale; provided that such restriction shall not apply with respect to season tickets or bundled series tickets. No ticket seller shall sell or resell any ticket that such seller does not own at the time of the offer or sale. The provisions of this subdivision shall not apply to venues containing less than six thousand seats.

3. 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. Every sale or resale of such ticket shall include a disclosure of such obstructed view.

4. If any licensee under this section demonstrates that their business provides a service to facilitate ticket transactions without charging any fees, surcharges or service charges above the established price, on every transaction, except a reasonable and actual charge for the delivery of tickets, then the fees for licensing under this section shall be waived.

§ 25.15. Bond. The secretary of state shall require the applicant for a license to file with the application therefor a bond in due form to

the people of New York in the penal sum of twenty-five thousand dollars, with two or more sufficient sureties or a duly authorized surety company, which bond shall be approved by the secretary of state. Each such bond shall be conditioned that the obligor will not be guilty of any fraud or extortion, will not violate directly or indirectly any of the provisions of this article or any of the provisions of the license or certificate provided for in this article, will comply with the provisions of this article and will pay all damages occasioned to any person by reason of any misstatement, misrepresentation, fraud or deceit or any unlawful act or omission of such obligor, his or her agents or employees, while acting within the scope of their employment, made, committed or omitted in connection with the provisions of this article in the business conducted under such license or caused by any other violation of this article in carrying on the business for which such license is granted. One or more recoveries or payments upon such bond shall not vitiate the same but such bond shall remain in full force and effect, provided, however, that the aggregate amount of all such recoveries or payments shall not exceed the penal sum thereof. Before the secretary shall draw upon such bond, the secretary shall issue a determination in writing which shall include the basis of such action. The secretary shall notify in writing the licensee of any such determination and shall afford the licensee an opportunity to respond within twenty days of the receipt of such determination. In no event may the bond be drawn upon in less than twenty-five days after the service of a determination to the licensee. Such written notice may be served by delivery thereof personally to the licensee, or by certified mail to the last known business address of such licensee. Only upon such determination of the secretary shall moneys be withdrawn from the bond. Upon the commencement of any action or actions against the surety upon any such bond for a sum or sums aggregating or exceeding the amount of such bond the secretary of state shall require a new and additional bond in like amount as the original one, which shall be filed with the department of state within thirty days after the demand therefor. Failure to file such bond within such period shall constitute cause for the revocation of the license pursuant to section 25.31 of this article theretofore issued to the licensee upon whom such demand shall have been made. Any suit or action against the surety on any bond required by the provisions of this section shall be commenced within one year after the cause of action shall have accrued.

§ 25.17. Supervision and regulation. The secretary of state shall have power, upon complaint of any person or on his or her own initiative, to investigate the business, business practices and business methods of any such licensee which relates to this state's or any other state's ticket resale law, or in regards to ticket resale practices generally. Each such licensee shall be obliged, on the reasonable request of the secretary of state, to supply such information as may be required concerning his or her business, business practices or business methods provided that the information requested is related to the complaint which forms the basis of such investigation. Each operator of any place of entertainment shall also be obliged, on request of the secretary of state, to supply such information as may be required concerning the business, business practices or business methods of any licensee provided that the information requested is related to the complaint which forms the basis of such investigation. The secretary of state shall have the power to promulgate such rules and regulations as may be deemed necessary for the enforcement of this article.

§ 25.19. Posting of license or certificate. Immediately upon the receipt of the license or certificate issued pursuant to this article by the secretary of state, the licensee named therein shall cause such license to be posted and at all times displayed in a conspicuous place in the principal office of such business for which it is issued, and shall cause the certificate for each branch office, bureau, agency or sub-agency to be posted and at all times displayed in a conspicuous place in such branch office, bureau, agency or sub-agency for which it is issued, so that all persons visiting such principal office, branch office, bureau, agency or sub-agency may readily see the same, and if such licensee does business on the internet, to provide a hyperlink displayed in a conspicuous manner to a scanned copy of such license. Such license or certificate shall at all reasonable times be subject to inspection by the secretary of state or his or her authorized inspectors. It shall be unlawful for any person, firm, partnership or corporation holding such license or certificate to post such license or certificate or to permit such certificate to be posted upon premises other than those described therein or to which it has been transferred pursuant to the provisions of this article or unlawfully to alter, deface or destroy any such license or certificate.

§ 25.21. Change of office location. In the event of a change in the location of the premises covered by license or certificate issued under this article, the department of state shall be duly notified in writing of such change within twenty-four hours thereafter. The secretary of state shall cause to be written or stamped across the face of such license or certificate a statement to the effect that the holder of such license has removed on the date stated in such written notice such principal office, branch office, bureau, agency or sub-agency from the place originally described in such license or certificate to the place described in such written notice, and such license or certificate with the endorsement thereon shall be returned to the licensee named therein. No tickets shall be sold at any place other than places for which a license or certificate provided for by this article has been issued and posted.

§ 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.

§ 25.24. Automated 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 security measures to purchase tickets.

2. It shall be unlawful for any person to utilize automated ticket purchasing software to purchase tickets.

3. Any person 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 and no more than one thousand dollars for each such violation and shall forfeit all profits made from the sale of any such unlawfully obtained tickets.

4. Any person 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 who is subject to a civil penalty under this section and has been assessed a penalty under this section in the previous five 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. 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. 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. Any penalty or recovery authorized by this section may be recovered in a class action.

§ 25.25. Records of purchases and sales. 1. Every licensee shall at all times keep full and accurate sets of records showing: (a) the prices at which all tickets have been bought and sold by such licensee; and (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 shall be considered proprietary in nature and shall be governed by the protections set forth in subdivision five of section eighty-nine of the public officers law. These records shall be retained for a period of not less than ten years.

2. Twice annually, on June thirtieth and December thirty-first, every licensee that resells tickets or facilitates the resale or resale auction of tickets between independent parties by any and all means shall report to the department of state the total number of, and average resale or average final resale auction price of, all tickets to each ticketed event, provided, however, that repeat performances of a single event, and multiple events that are part of a season-long performance shall be treated as a single event for the purposes of the reporting requirement of this subdivision. The information required to be reported by this section shall be considered proprietary in nature and shall be governed by the protections set forth in subdivision five of section eighty-nine of the public officers law, and shall be used exclusively for analytical purposes by the consumer protection board.

3. 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.

§ 25.27. Commissions to employees of places of entertainment. No licensee, other person or entity, whether or not domiciled, licensed or registered within the state, shall pay to any officer or employee of any place of entertainment, any commission, gratuity or bonus in connection with the sale, delivery or payment of tickets or in connection with the business being done by such licensee, other person or entity, whether or not domiciled, licensed or registered within the state, in tickets of admission to such place.

§ 25.29. Unlawful charges in connection with tickets. 1. No operator of any place of entertainment, or his or her agent, representative, employee or licensee shall, if a price be charged for admission thereto, exact, demand, accept or receive, directly or indirectly, any premium or price in excess of the established price plus lawful taxes whether designated as price, gratuity or otherwise; provided, however: (a) nothing in this article shall be construed to prohibit a reasonable service charge by the operator or agents of the operator for special services, including but not limited to, sales away from the box office, credit card sales or delivery; and (b) nothing in this article shall be construed to prohibit an operator or its agent from offering for initial sale tickets by means of an auction.

2. In any prosecution under this section the attorney general shall have concurrent jurisdiction with any district attorney and in any such prosecution he or she or his or her deputy shall exercise all the powers and perform all the duties which the district attorney would otherwise be authorized to exercise or perform therein.

§ 25.30. Operator prohibitions. 1. A ticket is a license, issued by the operator of a place of entertainment, for admission to the place of entertainment at the date and time specified on the ticket, subject to the terms and conditions as specified by the operator. Notwithstanding any other provision of law to the contrary, it shall be prohibited for any operator of a place of entertainment, or operator's agent, to:

(a) restrict by any means the resale of any tickets included in a subscription or season ticket package as a condition of purchase, as a condition to retain such tickets for the duration of the subscription or season ticket package agreement, or as a condition to retain any contractually agreed upon rights to purchase future subscription or season ticket packages that are otherwise conferred in the subscription or season ticket agreement;

(b) deny access to a ticket holder who possesses a resold subscription or season ticket to a performance based solely on the grounds that such ticket has been resold; or

(c) employ a form of paperless ticketing that is not readily transferable 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 however, that nothing in this paragraph shall prohibit the operator or operator's agent from imposing a nominal surcharge on paperless tickets.

2. Additionally, nothing in this article shall be construed to prohibit an operator of a place of entertainment from maintaining and enforcing 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 tickets 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 individuals 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.

§ 25.31. Suspension or revocation of licenses. 1. Powers of department of state. The department of state may deny an application or may revoke or suspend a license issued pursuant to this article, impose a fine not exceeding one thousand dollars per violation payable to the department of state, issue a reprimand and order restitution upon proof to the satisfaction of the secretary of state that the holder thereof has: (a) violated any provision of this article or any rule or regulation adopted hereunder; (b) made a material misstatement in the application for such license; (c) engaged in fraud or fraudulent practices; (d) demonstrated untrustworthiness or incompetency; or (e) been convicted of a serious offense or misdemeanor which, in the discretion of the secretary, bears such a relationship to licensure as to constitute a bar to licensure or renewal.

2. Determination of department of state. In the event that the department of state shall revoke or suspend any such license, or impose any fine or reprimand on the holder thereof, its determination shall be in writing and officially signed. The original of such determination, when so signed, shall be filed with the department of state and copies thereof shall be served personally or by certified mail upon the licensee or applicant and addressed to the principal place of business of such licensee.

3. No license shall be suspended or revoked nor shall any fine or reprimand be imposed, nor shall any application be denied, until after an opportunity for a hearing had before an officer or employee of the department of state designated for such purpose by the secretary of state upon notice to the licensee or applicant of at least ten days. The notice shall be served by certified mail and shall state the date and place of hearing and set forth the ground or grounds constituting the charges against the licensee or the reasons for the proposed denial of the application. The licensee or applicant shall have the opportunity to be heard in his or her defense either in person or by counsel and may produce witnesses and testify on his or her behalf. A stenographic record of the hearing shall be taken and preserved. The hearing may be adjourned from time to time. The person conducting the hearing shall make a written report of his or her findings and a recommendation to the secretary of state for decision. The secretary of state shall review such findings and the recommendation and, after due deliberation, shall issue an order accepting, modifying or rejecting such recommendation and dismissing the charges or suspending or revoking the license or imposing a fine or reprimand upon the licensee. For the purpose of this article, the secretary of state or any officer or employee of the department of state designated by him or her, may administer oaths, take testimony, subpoena witnesses and compel the production of books, papers, records and documents deemed pertinent to the subject of investigation.

§ 25.33. Enforcement. 1. 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.

2. Notwithstanding any right of action granted to any governmental body pursuant to this chapter, any person who has been injured by reason of a violation of this article may bring an action in his or her own name to enjoin such unlawful act, an action to recover his or her actual damages or fifty dollars, whichever is greater, or both such actions. The court may award reasonable attorney's fees to a prevailing plaintiff.

§ 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 two thousand dollars or 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 ten thousand dollars or 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 section 25.05 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 one thousand five hundred dollars on the first conviction; three thousand dollars on the second conviction; and 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 one thousand dollars on the first conviction; two thousand dollars on the second conviction; and 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 four hundred dollars on the first conviction; five hundred dollars on the second conviction; and one thousand dollars on each subsequent conviction.

5. Any person, firm or corporation which is convicted of violating section 25.05 of this article shall be guilty of a violation punishable by a fine not to exceed 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 five hundred 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.

§ 2. This act shall take effect immediately and shall be deemed to have been in full force and effect on and after July 1, 2017.