

STATE OF NEW YORK

8501

IN SENATE

May 9, 2018

Introduced by Sen. MURPHY -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

AN ACT to amend the arts and cultural affairs law, in relation to ticket websites; the online resale of tickets to places of entertainment; the sale of tickets to places of entertainment; the licensing fee for ticket resellers; ticket resellers operating a retail ticket purchasing platform provide a link to a copy of their license; and the resale of tickets to places of entertainment; to amend chapter 704 of the laws of 1991, amending the arts and cultural affairs law and chapter 912 of the laws of 1920 relating to the regulation of boxing and wrestling matches relating to tickets to places of entertainment, in relation to the effectiveness thereof; and to amend chapter 151 of the laws of 2010, amending the arts and cultural affairs law relating to resale of tickets to places of entertainment, in relation to the effectiveness thereof

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

1 Section 1. The arts and cultural affairs law is amended by adding a
2 new section 25.34 to read as follows:

3 § 25.34. Ticket websites. 1. As used in this section:

4 (a) "Ticket website" means an internet website advertising the sale of
5 tickets, offering the sale of such tickets, or facilitating a secondary
6 ticket exchange.

7 (b) "URL" means the uniform resource locator for a website on the
8 internet.

9 2. (a) A person creating, owning, operating, controlling, or maintain-
10 ing an interest in a ticket website for an event scheduled at a place of
11 entertainment shall not use a subdomain or domain name in a ticket
12 website's URL that contains:

13 (i) all or part of the name of the place of entertainment;

14 (ii) all or part of the name of the event, including the name of a
15 person or entity scheduled to perform or appear at the event; or

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

LBD15773-02-8

1 (iii) a name substantially similar to those in subparagraph (i) or
2 (ii) of this paragraph.

3 (b) Paragraph (a) of this subdivision shall not apply if the person is
4 acting on behalf of the place of entertainment for which the website is
5 being created.

6 3. It shall be unlawful for any person, firm, corporation or other
7 entity to create, own, operate, control, or maintain any interest in a
8 ticket website as described in subdivision two of this section.

9 4. Any person, firm, corporation or other entity who knowingly
10 creates, owns, operates, controls, or maintains an interest in such a
11 ticket website shall be subject to a civil penalty in an amount of no
12 less than five hundred dollars and no more than one thousand five
13 hundred dollars for each such violation, and shall forfeit all profits
14 made from the creation, ownership, operation, control, or interest in or
15 of such website.

16 5. Any person, firm, corporation or other entity who intentionally
17 creates, owns, operates, controls, or maintains any interest in such a
18 ticket website shall be subject to a civil penalty in an amount of no
19 less than seven hundred fifty dollars and no more than one thousand five
20 hundred dollars for each such violation, and shall forfeit all profits
21 made from the creation, ownership, operation, control, or interest in or
22 of such website.

23 6. Any person, firm, corporation or other entity who knowingly resells
24 or offers to resell a ticket that such person, firm, corporation or
25 other entity knows was obtained using such a ticket website and was not
26 obtained for their own use or the use of their invitees, employees, or
27 agents shall be subject to a civil penalty in an amount of no less than
28 five hundred dollars and no more than one thousand five hundred dollars
29 for each such violation, and shall forfeit all profits made from the
30 sale of such ticket.

31 7. Any person, firm, corporation or other entity who for the purpose
32 of selling or offering to sell tickets in order to derive a profit ther-
33 efrom (a) knowingly creates, owns, operates, controls, or maintains any
34 interest in such website; (b) intentionally creates, owns, operates,
35 controls, or maintains any interest in such website; or (c) knowingly
36 resells or offers to resell a ticket that such person, firm, corporation
37 or other entity knows was obtained using such website and was not
38 obtained for their own use or the use of their invitees, employees, or
39 agents, shall be guilty of a class A misdemeanor.

40 8. Any person who is subject to a civil penalty under this section and
41 has been assessed a penalty under this section in the previous three
42 years shall be guilty of a violation and may be fined no less than one
43 thousand dollars and no more than five thousand dollars for each such
44 violation and shall forfeit all profits from the creation, ownership,
45 operation, control, or interest in or of such a ticket website, from the
46 sale of any ticket knowingly sold on such website, or from the resale of
47 any ticket knowingly sold on such website. In addition, a person
48 convicted of a violation under this section may be required to forfeit
49 any and all equipment used in the creation, ownership, operation, or
50 control of such website, or in the sale or resale of any ticket knowin-
51 gly sold on such a ticket website.

52 9. The attorney general shall have jurisdiction to enforce the
53 provisions of this section in accordance with the powers granted to him
54 or her by section sixty-three of the executive law.

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

§ 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. No operator or its agent shall transfer a prospective ticket purchaser through any means to a licensee or secondary ticket reseller without providing a clear and conspicuous disclosure that informs the prospective purchaser that the ticket is not being offered by the operator or its agent, but rather by a licensee or other ticket reseller in the secondary market.

3. An online resale marketplace shall post a clear and conspicuous notice on the website that the website is for the secondary sale of a ticket and that the price of such ticket offered for sale may exceed the established price and the refund policy of the platform in connection with the cancellation or postponement of an event. An online resale marketplace shall require that the user confirm having read such notice before starting any transaction. For the purposes of this section, an "online resale marketplace" means 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 the resale of tickets to places of entertainment.

§ 3. Subdivision 2 of 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:

2. Notwithstanding any other provision of law, any person, firm or corporation, regardless of whether or not licensed under this article, that sells or resells tickets or facilitates the resale or resale auction of tickets between independent parties by any means, must guarantee to each purchaser of such sold or 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 sold or 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 sold or 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.

§ 4. Subdivision 1 of section 25.13 of the arts and cultural affairs law, as amended by chapter 374 of the laws of 2007, is amended to read as follows:

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]~~ two thousand five hundred 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.

§ 5. Section 25.19 of the arts and cultural affairs law, as amended by chapter 61 of the laws of 2007, is amended to read as follows:

§ 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, including via a retail ticket purchasing platform, 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. For purposes of this section, the term "retail ticket purchasing platform" shall mean a retail ticket purchasing

1 website, application, phone system, or other technology platform used to
2 sell tickets.

3 § 6. The arts and cultural affairs law is amended by adding a new
4 section 25.10 to read as follows:

5 § 25.10. Resale of tickets. 1. It shall be unlawful for any person,
6 firm or corporation to resell or offer to resell any ticket, unless such
7 person, firm or corporation either:

8 (a) has possession of the ticket;

9 (b) has a written contract to obtain the offered ticket at a certain
10 price from the person, firm or corporation in possession of the ticket
11 or who has a contractual right to obtain the ticket from the operator;
12 or

13 (c) the purchaser is notified in plain language that paragraphs (a)
14 and (b) of this subdivision do not apply, and that the person, firm or
15 corporation may not be able to supply the ticket at the contracted price
16 or range of prices; and requires that the purchaser confirm having read
17 such notice before completing any transaction.

18 2. Nothing in this section shall prohibit a person, firm or corpo-
19 ration from accepting a deposit from a prospective purchaser for a
20 resale pursuant to paragraph (c) of subdivision one of this section;
21 provided that the notice required therein includes the terms of the
22 deposit agreement.

23 3. In addition to other remedies available to purchasers by law, if a
24 person, firm or corporation violates the provisions of this section and
25 fails to supply a ticket at or below a contracted price, or within a
26 contracted price range, the purchaser shall receive a refund for the
27 contracted price of the ticket within ten business days after the tick-
28 eted event occurs.

29 § 7. Section 25.07 of the arts and cultural affairs law is amended by
30 adding a new subdivision 4 to read as follows:

31 4. Every operator of a place or entertainment, any licensee or other
32 ticket reseller shall disclose in a clear and conspicuous manner the
33 total price of the ticket and the portion of the ticket price stated in
34 dollars that represents a service charge, or any other fee or surcharge
35 prior to accepting payment therefor.

36 § 8. Section 4 of chapter 704 of the laws of 1991, amending the arts
37 and cultural affairs law and chapter 912 of the laws of 1920 relating to
38 the regulation of boxing and wrestling matches relating to tickets to
39 places of entertainment, as amended by chapter 68 of the laws of 2017,
40 is amended to read as follows:

41 § 4. This act shall take effect on the sixtieth day after it shall
42 have become a law, provided, chapter 61 of the laws of 2007 shall not
43 take effect with respect to the issuance of licenses or certificates
44 under this article by the secretary of state or department of state
45 until January 1, 2008 and regulation under this article by the commis-
46 sioners of licenses of the political subdivisions of the state shall
47 continue through December 31, 2007, and shall remain in full force and
48 effect only until and including June 30, ~~2018~~ 2023 when such act shall
49 be repealed and when, notwithstanding any other provision of law, the
50 provisions of article 25 of title G of the arts and cultural affairs
51 law, repealed by such act, shall be reinstituted; provided further that
52 section 25.11 of the arts and cultural affairs law, as added by section
53 one of this act, shall survive such repeal date. Provided, however, the
54 printing on tickets required pursuant to sections 25.07 and 25.08 of
55 article 25 of the arts and cultural affairs law, as added by this act,
56 shall not apply to tickets printed prior to enactment of such article so

1 long as notice of the higher maximum premium price and prohibition of
2 sales within one thousand five hundred feet from the physical structure
3 of the place of entertainment, where applicable, is prominently
4 displayed at the point of sale and at such place of entertainment.

5 § 9. Section 11 of chapter 151 of the laws of 2010, amending the arts
6 and cultural affairs law relating to resale of tickets to places of
7 entertainment, as amended by chapter 68 of the laws of 2017, is amended
8 to read as follows:

9 § 11. Notwithstanding the provisions of article 5 of the general
10 construction law, if this act shall take effect after May 15, 2010, the
11 provisions of article 25 of the arts and cultural affairs law, except
12 section 25.11 are hereby revived and shall continue in full force and
13 effect as they existed on May 15, 2010 through June 30, ~~2018~~ 2023,
14 when upon such date such provisions shall expire and be deemed repealed.

15 § 10. This act shall take effect immediately; provided, however, that
16 section 25.34 of the arts and cultural affairs law, as added by section
17 one of this act, shall survive the expiration and reversion of article
18 25 of such law as provided in section 4 of chapter 704 of the laws of
19 1991, as amended; and provided, further, that the amendments to article
20 25 of the arts and cultural affairs law made by sections two, three,
21 four, five, six and seven of this act, shall not affect the repeal and
22 reversion of such article and shall be deemed repealed therewith.