

STATE OF NEW YORK

7398

2017-2018 Regular Sessions

IN ASSEMBLY

April 25, 2017

Introduced by M. of A. O'DONNELL -- 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 the
online resale of tickets to places of entertainment

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

1 Section 1. This act shall be known and may be cited as the "fans
2 against inflated rates for tickets act".

3 § 2. Section 25.03 of the arts and cultural affairs law is amended by
4 adding a new subdivision 11 to read as follows:

5 11. "Online resale marketplace" means any operator or manager of a
6 website or other electronic service that serves as a platform to facili-
7 tate resale, or resale by way of a competitive bidding process, solely
8 between third parties and does not in any other manner engage in the
9 resale of tickets to places of entertainment.

10 § 3. The arts and cultural affairs law is amended by adding a new
11 section 25.06 to read as follows:

12 § 25.06. Third party sales of tickets issued to generate revenue for
13 charitable purposes. 1. Every operator of a place of entertainment
14 shall, if a price be charged for admission thereto for entertainment
15 dedicated to charity or not-for-profit cause, print or endorse on the
16 face of each such ticket the established price or the final auction
17 price if such ticket was sold or resold by auction through the operator
18 or its agent. Such operator shall also be required to print or endorse
19 on each ticket that the established price is the maximum price at which
20 such ticket or other evidence of the right of entry may be resold or
21 offered for resale if an event generates ticket sales revenue dedicated
22 to a charity or not-for-profit cause. It shall be unlawful for any
23 person, firm or corporation to resell or offer to resell any ticket or
24 other evidence of right of entry to any place of entertainment if an
25 event generates ticket sale revenue dedicated to a charity or not-for-

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

LBD10250-03-7

1 profit cause for more than the established price or if the ticket was
2 initially offered to the public at no charge.

3 2. (a) Any person, firm or corporation that, in violation of subdivi-
4 sion one of this section, unlawfully resells, or offers to resell, a
5 ticket to an event that generates ticket sale revenue dedicated to a
6 charity or not-for-profit cause at a price that exceeds the maximum
7 price at which such ticket may be resold or offers to resell any ticket
8 or other evidence of right of entry that was initially offered to the
9 public at no charge shall be guilty of a misdemeanor punishable by a
10 term of imprisonment not to exceed one year or a fine not to exceed
11 seven hundred fifty dollars on the first conviction; one thousand five
12 hundred dollars on the second conviction; and two thousand dollars on
13 each subsequent conviction or by both such fine and imprisonment.

14 (b) Notwithstanding any other provision to the contrary, when the
15 finest included in this section are imposed on a firm, corporation or
16 other entity that is not a single person, such fines may be imposed up
17 to two times the amount otherwise allowed, or, where applicable, three
18 times the amount of the defendant's gain.

19 3. As used in this section the term "entertainment dedicated to a
20 charity or not-for-profit cause" shall mean all forms of entertainment
21 including, but not limited to, theatrical or operatic performances,
22 concerts, motion pictures, all forms of entertainment at fair grounds,
23 amusement parks and all types of athletic competitions including foot-
24 ball, basketball, baseball, boxing, tennis, hockey, and any other sport,
25 and all other forms of diversion, recreation or show from which signif-
26 icant revenue is designated for a not-for-profit organization.

27 § 4. Section 25.07 of the arts and cultural affairs law is amended by
28 adding a new subdivision 2-a to read as follows:

29 2-a. Any person, firm or corporation who resells a ticket shall
30 provide the purchaser with such ticket reseller's name, address and
31 telephone number or other information necessary to obtain a refund of
32 the ticket price, if necessary. Such person, firm or corporation shall
33 disclose to the purchaser what portion of each ticket price, stated in a
34 dollar amount, will be collected by the reseller and whether such
35 reseller is in any way acting on behalf of the operator organizing the
36 event.

37 § 5. Section 25.13 of the arts and cultural affairs law is amended by
38 adding a new subdivision 2-a to read as follows:

39 2-a. No ticket seller shall resell any ticket during the first forty-
40 eight hours after such ticket is first available for primary sale;
41 provided that such restriction shall not apply with respect to season
42 tickets or bundled series tickets. No ticket seller shall sell or resell
43 any ticket that such seller does not own at the time of the offer or
44 sale.

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

47 § 25.23. Posting of price lists; information to purchaser. 1. In
48 every principal office or branch office, bureau, agency or sub-agency of
49 any licensee under this article, there shall be conspicuously posted and
50 at all times displayed a price list showing the established price
51 charged by the operator of the place of entertainment for which a ticket
52 is being sold by such licensee, together with the price being charged by
53 such licensee for the resale of such ticket, so that all persons visit-
54 ing such place may readily see the same. The licensee shall also on
55 request furnish each purchaser of a ticket with a receipt showing the
56 same information. Further, if the licensee conducts business through the

1 use of the internet, the same price list, or hyperlink to the same,
2 shall be conspicuously displayed on the internet page on which tickets
3 are accessed. In addition the licensee shall publish in a conspicuous
4 place, or hyperlink to on the internet a statement clearly detailing the
5 required guarantees required by section 25.07 of this article.

6 2. No operator or its agent shall transfer a prospective ticket
7 purchaser through any means to a secondary seller without providing a
8 clear and conspicuous disclosure that informs the prospective purchaser
9 that the ticket offered is in the secondary market.

10 3. An online resale marketplace shall post a clear and conspicuous
11 notice on the website that the website is for the secondary sale of a
12 ticket and that the price of such ticket offered for sale may exceed the
13 established price and the refund policy of the platform in connection
14 with the cancellation or postponement of an event. An online resale
15 marketplace shall require that the user confirm having read such notice
16 before starting any transaction. An online resale marketplace shall
17 provide licensees and others that offer to resell a ticket through the
18 website or electronic service the capability to supply the established
19 price charged by the operator of the place of entertainment and shall
20 display conspicuously said established price, or hyperlink to the same,
21 on the webpage on which the ticket is accessed.

22 4. An online marketplace shall disclose clearly and conspicuously at
23 all times on its website the number of tickets available on the plat-
24 form.

25 § 7. Section 25.25 of the arts and cultural affairs law is amended by
26 adding a new subdivision 3 to read as follows:

27 3. Every operator of a place of entertainment shall make public the
28 percentage of tickets to a place of entertainment that will be made
29 available to the public and the percentage of tickets being allocated
30 through holds, pre-sale events or any other manner that withholds tick-
31 ets for sale to the public.

32 § 8. Section 25.29 of the arts and cultural affairs law, as amended by
33 chapter 61 of the laws of 2007 and subdivision 1 as amended by chapter
34 151 of the laws of 2010, is amended to read as follows:

35 § 25.29. Unlawful charges in connection with tickets. 1. No operator
36 of any place of entertainment, or his or her agent, representative,
37 employee or licensee shall, if a price be charged for admission thereto,
38 exact, demand, accept or receive, directly or indirectly, any premium or
39 price in excess of the established price plus lawful taxes whether
40 designated as price, gratuity or otherwise; provided, however: (a) noth-
41 ing in this article shall be construed to prohibit a reasonable service
42 charge by the operator or agents of the operator for special services,
43 including but not limited to, sales away from the box office, credit
44 card sales or delivery; and (b) nothing in this article shall be
45 construed to prohibit an operator or its agent from offering for initial
46 sale tickets by means of an auction.

47 2. The total price of the ticket and what portion of each ticket
48 price, stated in a dollar amount, represents a service charge, shall be
49 conspicuously disclosed in any advertisement or promotion, whether
50 displayed at the site of the event or elsewhere.

51 3. In any prosecution under subdivision one of this section the attor-
52 ney general shall have concurrent jurisdiction with any district attor-
53 ney and in any such prosecution he or she or his or her deputy shall
54 exercise all the powers and perform all the duties which the district
55 attorney would otherwise be authorized to exercise or perform therein.

§ 9. Section 25.33 of the arts and cultural affairs law, as added by chapter 704 of the laws of 1991, is amended to read as follows:

§ 25.33. Private right of action. 1. 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.

2. 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 the 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.

§ 10. Section 25.35 of the arts and cultural affairs law, as added by chapter 704 of the laws of 1991, subdivision 1 as amended by chapter 56 of the laws of 2001, subdivisions 2, 3, 4, 5 and 6 as amended by chapter 374 of the laws of 2007, and subdivision 7 as added by chapter 151 of the laws of 2010, is amended to read as follows:

§ 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 subdivision one of section 25.29 of this article shall be guilty of a class A misdemeanor punishable by a fine not to exceed ~~[one]~~ two thousand dollars or ~~[two]~~ 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 subdivision one of section 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 ~~[five]~~ ten thousand dollars or ~~[two]~~ 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 subdivision two of section 25.09 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 ~~[seven hundred fifty]~~ one thousand five hundred dollars on the first conviction; ~~[one]~~ three thousand ~~[five hundred]~~ dollars on the second conviction; and ~~[two]~~ 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

1 term of imprisonment not to exceed one hundred eighty days or by a fine
2 not to exceed [~~five hundred~~] one thousand dollars on the first
3 conviction; [~~one~~] two thousand dollars on the second conviction; and
4 [~~two~~] four thousand dollars on each subsequent conviction or by both
5 such fine and imprisonment.

6 4. Notwithstanding any other penalty which may be imposed for any
7 other violation of this article, any person, firm or corporation which
8 is convicted of violating section 25.11 of this article shall be guilty
9 of a violation punishable by a fine not to exceed [~~two~~] four hundred
10 dollars on the first conviction; five hundred dollars on the second
11 conviction; and one thousand dollars on each subsequent conviction.

12 5. Any person, firm or corporation which is convicted of violating
13 subdivision one of section 25.09 of this article shall be guilty of a
14 violation punishable by a fine not to exceed [~~five hundred~~] one thousand
15 dollars.

16 6. Any person, firm or corporation which is convicted of violating any
17 other section of this article shall be guilty of a violation punishable
18 by a fine not to exceed [~~two hundred fifty~~] five hundred dollars.

19 7. Notwithstanding any other provision to the contrary, when the fines
20 included in this section are imposed on a firm, corporation or other
21 entity that is not a single person, such fines may be imposed at up to
22 two times the amount otherwise allowed, or, where applicable, three
23 times the amount of the defendant's gain.

24 § 11. This act shall take effect immediately; provided, however, that
25 the amendments made by sections two, three, four, five, six, seven,
26 eight, nine and ten of this act shall not affect the repeal and rever-
27 sion of such article and shall be deemed repealed therewith.