

# STATE OF NEW YORK

7021

## IN SENATE

(Prefiled)

January 3, 2018

Introduced by Sens. HOYLMAN, BAILEY, BRESLIN, BROOKS, COMRIE, DILAN, KAMINSKY, KRUEGER, MONTGOMERY, PARKER, SAVINO, SERRANO, STAVISKY -- 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 the online resale of tickets to places of entertainment

The People of the State of New York, represented in Senate and Assembly, 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.

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

3 § 25.33. Private right of action. 1. Notwithstanding any right of  
4 action granted to any governmental body pursuant to this chapter, any  
5 person who has been injured by reason of a violation of this article may  
6 bring an action in his or her own name to enjoin such unlawful act, an  
7 action to recover his or her actual damages or fifty dollars, whichever  
8 is greater, or both such actions. The court may award reasonable attor-  
9 ney's fees to a prevailing plaintiff.

10 2. The attorney general shall establish a toll-free telephone number  
11 and accept through its website allegations from the public of improper  
12 ticket acquisition, distribution or sales practices, including deceptive  
13 practices, corruption, fraud or irregular practices with respect to  
14 ticket sales for events in the state or with respect to tickets sold to  
15 residents of the state. The attorney general shall prominently display  
16 on its website information regarding the hotline. The attorney general  
17 shall investigate, as appropriate, all credible allegations received  
18 regarding improper ticket acquisition, distribution or sales practices.

19 § 10. Section 25.35 of the arts and cultural affairs law, as added by  
20 chapter 704 of the laws of 1991, subdivision 1 as amended by chapter 56  
21 of the laws of 2001, subdivisions 2, 3, 4, 5 and 6 as amended by chapter  
22 374 of the laws of 2007, and subdivision 7 as added by chapter 151 of  
23 the laws of 2010, is amended to read as follows:

24 § 25.35. Criminal penalties. 1. (a) Any person, firm, corporation or  
25 other entity, whether or not domiciled, licensed or registered within  
26 the state, which is convicted of violating section 25.27 or subdivision  
27 one of section 25.29 of this article shall be guilty of a class A misde-  
28 meanor punishable by a fine not to exceed [~~one~~] two thousand dollars or  
29 [~~two~~] four times the amount of the defendant's gain, to be determined  
30 pursuant to the procedures set forth in section 400.30 of the criminal  
31 procedure law, whichever is greater, or by a term of imprisonment not to  
32 exceed one year, or by both such fine and imprisonment.

33 (b) Any person, firm, corporation or other entity, whether or not  
34 domiciled, licensed, or registered within the state, which is convicted  
35 of violating section 25.27 or subdivision one of section 25.29 of this  
36 article, when the value of the commission, gratuity, bonus, premium or  
37 price unlawfully paid or accepted exceeds one thousand dollars for an  
38 event as defined in section 23.03 of this chapter, whether or not such  
39 payment is for tickets to a single performance of that event, shall be  
40 guilty of a class E felony, punishable by a term of imprisonment in  
41 accordance with the penal law, or by a fine of [~~five~~] ten thousand  
42 dollars or [~~two~~] four times the amount of the defendant's gain, to be  
43 determined pursuant to the procedures set forth in section 400.30 of the  
44 criminal procedure law, whichever is greater, or by both such fine and  
45 imprisonment.

46 2. Any person, firm or corporation which is convicted of violating  
47 subdivision two of section 25.09 of this article shall be guilty of a  
48 misdemeanor punishable by a term of imprisonment not to exceed one year  
49 or by a fine not to exceed [~~seven hundred fifty~~] one thousand five  
50 hundred dollars on the first conviction; [~~one~~] three thousand [~~five~~  
51 hundred] dollars on the second conviction; and [~~two~~] four thousand  
52 dollars, on each subsequent conviction or by both such fine and impri-  
53 sonment.

54 3. Any person, firm or corporation which is convicted of knowingly  
55 violating subdivision one of section 25.07 or section 25.13 or section  
56 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.