

Licensing of Ticket Resellers

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Licensing of Ticket Resellers

Arts and Cultural Affairs Law, Article 25*

Tickets to Places of Entertainment

Section

- 25.01. Legislative findings
- 25.03. Definitions
- 25.07. Ticket prices
- 25.08. Additional printing on tickets
- 25.09. Ticket speculators
- 25.10. Ticket resale requirements
- 25.11. Resales of tickets within buffer zone
- 25.12. Professional sports organization membership pass
- 25.13. Licensing of ticket resellers
- 25.15. Bond
- 25.17. Supervision and regulation
- 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
- 25.33. Private right of action
- 25.34. Ticket websites
- 25.35. Criminal penalties

*NB Effective until July 1, 2021

§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. "Final auction price" shall mean the price paid for a single ticket by a winning bidder. In the case of a single action price for a ticket package, including packages containing tickets to multiple events, the final auction price per ticket shall be established by evenly dividing a prorated share of the winning bid, which shall be determined by the seller, by the number of tickets to such event.

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, racetrack, 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.

§ 25.07. 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, or the final auction price if such ticket was sold or resold by auction through the operator or its agent.

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.

4. Every operator or operator's agent of a place of entertainment, any licensee or other ticket reseller or platform that facilitates the resale of tickets shall disclose in a clear and conspicuous manner the total price of the ticket and the portion of the ticket price stated in dollars that represents a service charge, or any other fee or surcharge prior to accepting payment therefor.

§ 25.08. 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".

§ 25.09. Ticket speculators.

1. Any person who in violation of section 25.13 of this article unlawfully resells or offers to resell or solicits the purchase of any ticket to any place of entertainment shall be guilty of ticket speculation.

2. Any person, firm or corporation which in violation of section 25.13 of this article unlawfully resells, offers to resell, or purchases with the intent to resell five or more tickets to any place of entertainment shall be guilty of aggravated ticket speculation.

§ 25.10. Ticket resale requirements.

1. It shall be unlawful for a licensee or other ticket reseller to contract for the sale of tickets, contract to obtain tickets for another, or accept consideration for payment in full or for a deposit for the sale of tickets unless such licensee or other ticket reseller meets one or more of the following requirements:

(a) such licensee or other ticket reseller has the offered ticket in its possession;

(b) such licensee or other ticket reseller has a written contract to obtain the offered ticket at a certain price from a person in possession of the ticket or from a person who has a contractual right to obtain such ticket; or

(c) such licensee or other ticket reseller informs the purchaser in a clear and conspicuous manner and in plain language at the time of offering such ticket for sale and in a written notice prior to the completion of the transaction that such licensee or other ticket reseller does not have possession of the ticket, has no contact to obtain the offered ticket at a certain price from a person in possession of the ticket or from a person who has a contractual right to obtain such ticket, may not be able to supply the ticket at the contracted price or range of prices, and requires such purchaser to expressly confirm prior to completing the transaction that the purchaser has read such notice.

2. Nothing in this section shall prohibit a licensee or other ticket reseller from accepting a deposit from a prospective purchaser for a resale pursuant to paragraph (c) of subdivision one of this section, provided that such licensee or other ticket reseller informs the purchaser in writing prior to receipt of consideration of the terms of the deposit agreement, and includes in the written notice the disclosures otherwise required by this section. If a licensee or ticket reseller has entered into a contract with or received consideration from a prospective purchaser for the sale of a ticket or tickets and cannot supply such ticket or tickets at the contracted price or price range, such licensee or ticket reseller shall refund any monies paid by such prospective purchaser within ten business days of receipt of a request for a refund from such purchaser.

3. Nothing in this section shall be construed to nullify, expand, restrict, or otherwise amend or modify now existing laws or regulations outside of this article, and nothing in this section shall be construed as making lawful any fraudulent, deceptive, or illegal act or practice that is unlawful pursuant to now existing laws or regulations.

4. 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.

§ 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.

§ 25.12. Professional sports organization membership pass.

Notwithstanding section 25.30 of this article, an operator of a place of entertainment or such operator's agent may offer paperless tickets which do not allow for independent transferability provided that such tickets are included in a membership pass at a discounted price offered by a professional sports organization for seating in venues or stadiums with a fixed capacity of over thirty thousand seats that guarantees entry to a specified number of events in a specified time period with seat assignments assigned no more than four hours prior to the commencement of the event and such seat assignment must be variable from game to game and not intended for season ticket holders. Tickets provided under such membership pass may be restricted from being transferred or resold, including through the operator or operators' agents, and must be clearly marked as such prior to initial offering or sale. Such membership pass shall not mean a subscription or season ticket package offered for sale and shall not result in the sale of more than five percent of the maximum amount of all seats that will be made available at a venue for a particular event to be sold under this section.

§ 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.

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 therefore 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 regard 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, including via a retail ticket purchasing platform, to provide a license number displayed in a conspicuous manner or 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 website, application, phone system, or other technology platform used to sell tickets.

§ 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. 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, that the price of such ticket offered for sale may exceed the established price and shall also state 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 completing 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 resells tickets or serves as a platform to facilitate resale, or resale by way of a competitive bidding process.

§ 25.24. Ticket purchasing software

1. The term “ticket purchasing software” shall mean, any machine, device, computer program or computer software that, on its own or with human assistance, bypasses security measures or access control systems on a retail ticket purchasing platform, or other controls or measures on a retail ticket purchasing platform that assist in implementing a limit on the number of tickets that can be purchased, to purchase tickets. For purposes of this section, the term “retail ticket purchasing platform” shall mean a retail ticket purchasing website, application, phone system, or other technology platform used to sell tickets.

2. (a) It shall be unlawful for any person, firm, corporation or other entity to utilize ticket purchasing software to purchase tickets.

(b) It shall be unlawful for any person, firm, corporation or other entity to knowingly resell or offer to resell a ticket that such person, firm, corporation or other entity knows was obtained using ticket purchasing software and was not obtained for their own use or the use of their invitees, employees, or agents.

3. (a) Any person, firm, corporation or other entity who knowingly utilizes ticket purchasing software in order 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 five hundred dollars for each such violation and shall forfeit all profits made from the sale of any such unlawfully obtained tickets.

4. Any person, firm, corporation or other entity who intentionally maintains any interest in or maintains any control of the operation of ticket purchasing software 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, firm, corporation or other entity who knowingly resells or offers to resell a ticket that such person, firm, corporation or other entity knows was obtained using ticket purchasing software and was not obtained for their own use or the use of their invitees, employees, or agents shall be subject to a civil penalty in an amount of no less than five hundred 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 ticket.

6. Any person who is subject to a civil penalty under this section and has been assessed a penalty under this section in the previous three 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.

7. 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.

8. 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.

9. Any person, firm, corporation or other entity who for the purpose of selling or offering to sell tickets in order to derive a profit therefrom (i) intentionally utilized ticket purchasing software to purchase such tickets, (ii) intentionally maintains any interest in or maintains any control of the operation of ticket purchasing software which is used to purchase such tickets, or (iii) knowingly resells or offers to resell a ticket that such person, firm, corporation or other entity knows was obtained using ticket purchasing software and was not obtained for their own use or the use of their invitees, employees, or agents, shall be guilty of a class A misdemeanor.

10. Any person, firm, corporation or other entity who is a licensee under this article who is adjudicated guilty of the following acts may lose their license and may be barred from licensure under this article for a period not to exceed three years to be determined by the Department of State pursuant to section 25.31 of this article if such licensee: (a) knowingly utilized ticket purchasing software in order to purchase tickets; (b) knowingly resold or offered to resell a ticket that such licensee knew was obtained using ticket purchasing software; or (c) intentionally maintained any interest in or maintained any control of the operation of ticket purchasing software to purchase tickets.

§ 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 Department of State.

§ 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 paperless ticketing system unless the consumer is given an option to purchase paperless tickets that the consumer can transfer at any price, and at any time, and without additional fees, independent of the operator or operator's agent. Notwithstanding the foregoing, an operator or operator's agent may employ a paperless ticketing system that does not allow for independent transferability of paperless tickets only if the consumer is offered an option at the time of initial sale to purchase the same tickets in some other form that is transferable independent of the operator or operator's agent including, but not limited to, paper tickets or e-tickets. The established price for any given ticket shall be the same regardless of the form or transferability of such ticket. The ability for a ticket to be transferred independent of the operator or operator's agent shall not constitute a special service for the purpose of imposing a service charge pursuant to section 25.29 of this article.

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 or such operator's agent, from restricting the resale of tickets that are offered as part of a targeted promotion, at a discounted price, or for free, to specific individuals or groups of individuals because of their status as, or membership in, a specific community or group, including, but not limited to, persons with disabilities, students, religious or civic organizations, or persons demonstrating economic hardship; provided, however that tickets offered promotionally to the general public shall not be considered as tickets offered to specific individuals or groups of individuals. Any promotional discounted or free tickets for which the operator or operator's agent restricts resale must be clearly marked as such. 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 shall sell or convey tickets to any secondary ticket reseller owned or controlled by the operator or operator's agent.

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.

5. 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.

§ 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 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. Private right of action.

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.

§ 25.34. Ticket websites.

1. As used in this section:

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

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

2. (a) It shall be unlawful for any person or other entity to, with intent to mislead or deceive, own, operate, or control a ticket website for an event scheduled at a place of entertainment to use a subdomain or domain name in a ticket website's URL that contains:

(i) the name of the place of entertainment, provided that this paragraph shall not preclude the use of general terms to depict a geographical location or venue category;

(ii) the name of the specific event, including the name of a person or entity scheduled to perform or appear at the event; or

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

(b) Paragraph (a) of this subdivision shall not apply if the person is acting on behalf of, and with the consent of, the place of entertainment, event, artist or sports team for which the website is being created.

3. Any person, firm, corporation or other entity who intentionally owns, operates, or controls such ticket website shall be subject to a civil penalty in an amount of no more than one thousand five hundred dollars for each such violation.

4. Any person who is subject to a civil penalty under this section and has been assessed a penalty under this section in the previous three years shall be assessed a civil penalty of no more than five thousand dollars for each such violation.

5. 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.

§ 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 one thousand dollars or two 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 five thousand dollars or two 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 dollars on the first conviction; one thousand five hundred dollars on the second conviction; and two 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 five hundred dollars on the first conviction; one thousand dollars on the second conviction; and two 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 two 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 subdivision one of section 25.09 of this article shall be guilty of a violation punishable by a fine not to exceed five hundred 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 two hundred fifty 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.