Hold All Tickets: New York Adopts (Yet Another) Ticket Resale Law

Among the flurry of legislation passed by the New York State Legislature earlier this month was a bill amending New York’s Arts and Cultural Affairs Law. The bill, which subsequently was signed into law by Governor David A. Paterson, governs the sale of tickets to places of entertainment in the state, and represents New York’s third ticketing resale law in as many months.

The new ticketing law imposes several, potentially significant changes affecting New York venue operators and ticket sellers, including new rules governing the use of paperless tickets, limitations on service charges that can be imposed on ticket buyers, a ban on the use of automated ticket buying software, tighter restrictions on “ticket holds,” and twice annual reporting obligations for licensed ticket sellers in the state. In addition, the new law provides for increased criminal penalties against companies found to have violated the ticketing law.

History of Ticket Sales

By way of background, since the 1920s, New York has regulated the sale of tickets to places of entertainment within the state. Since that time, New York imposed limits on the price at which tickets to New York sports and entertainment events could be sold. In 2007, however, New York State enacted a ticket resale law (the 2007 Ticketing Law) that reflected a shift toward a more open and expansive market for ticket resale.

In particular, the 2007 Ticketing Law removed the long-standing price cap on the resale of tickets. The 2007 Ticketing Law also prohibited venue operators from refusing to honor or renew season tickets and subscriptions if the tickets had been resold by the original purchaser. These changes removed potential barriers on ticket brokers and online secondary ticketing Web sites (such as StubHub.com and TicketsNow.com), which have developed a robust market for the resale of tickets to New York sporting events, concerts, and theatrical events.

Because it repealed longstanding resale limits, the 2007 Ticketing Law was passed with a mere two-year shelf life, and was to expire on June 1, 2009. But, on the eve of its expiration, in order to allow the Department of State to consider whether the 2007 Ticketing Law benefited the state as a whole, the 2007 Law was extended through May 15, 2010, albeit with two changes.

The new law broadens the state’s efforts to limit ticket holds and make more tickets available to the general public.

First, in order to curb a heavily criticized practice known as “ticket holds”—in which blocks of tickets are diverted to ticket brokers and resellers without first being offered to the general public—agents of venue operators were prohibited from selling or conveying tickets to a ticket reseller owned or controlled by the operator’s agent. Second, operators were required to determine whether a seat had an obstructed view, and if so, to disclose such obstruction.

In February 2010, the New York Department of State issued a 59-page “Report on Ticket Reselling and Article 25 of the Arts & Cultural Affairs Law,” which concluded, among other things, that:

• As a general matter, an open and unfettered secondary market benefits the public as a whole, enabling purchasers to obtain tickets to sold out events, and helping ticket holders “sell off” purchased tickets that they cannot use;
• There was no conclusive evidence before the Department of State that imposing price caps on ticket resale affects the availability (or price to consumers) of tickets on the secondary market;
• Ticket holds harm the public and damage the reputation of the ticket industry in New York State;
• The use, typically by ticket brokers, of computer programs and auto-dialing systems gives users of such methods an unfair advantage over the general public in obtaining tickets; and
• New York State would benefit from greater auditing rights and stronger reporting requirements for ticket sellers and re-sellers.

During this time, the state Legislature considered extending the 2007 Ticketing Law, with certain modifications. Efforts stalled, however, largely because of a debate over paperless ticketing—a form of admission under which purchasers are not issued paper or electronic tickets, but instead gain admission to a venue by presenting the credit card used to buy the tickets. Proponents of paperless ticketing—which include major recording artists—argued that the system benefits the public by making it harder for brokers to obtain tickets and resell them at significantly higher prices. Opponents argued that the system prevents consumers from selling tickets they cannot use, and from obtaining tickets on the secondary market.

Because the Senate and Governor Paterson could not agree how the paperless ticketing issue should be addressed, if at all, the 2007 Ticketing Law expired on May 15, 2010 without passage of a bill to extend or replace it. Thus, New York reverted to the ticket resale law in place in 1991, which, among other things, contained a maximum ticket resale price of $2 above face value. As a result, the New York ticket resale market was thrown into a state of flux for nearly two months until the passage of the new legislation. The new ticketing law is based in large part on the 2007 Ticketing Law, with no limits on ticket resale price, but with several notable differences.

Significant Changes

One of the most significant changes is the regulation of paperless ticketing sales. Section 25.30 of the amended Arts & Cultural Affairs Law, as

By Anthony J. Dreyer
Affairs Law generally prohibits an operator of a place of entertainment (and an operator’s agent) from using paperless tickets unless consumers can transfer those tickets on their own, at any price, at any time, and without incurring any additional fees. The law does allow operators and their agents to sell non-transferable paperless tickets, but only if consumers also are offered—at the time of tickets’ initial sale—the option to purchase the same tickets in a form that is transferable, such as a paper ticket or e-ticket.

The state has also instituted restrictions on the service charges that may be imposed. The 2007 Ticketing Law permitted an operator or its agent to impose a service charge over and above the face value of a ticket for “special services, including but not limited to, sales away from the office box, credit card sales or delivery.” Now, however, operators may only impose a “reasonable service charge” for such services (emphasis added).

The new law also creates reporting requirements for licensed ticket resellers. Section 25.25 of the 2007 Ticketing Law already required operators and licensed ticket resellers to maintain records showing the prices at which all tickets have been bought and sold by the licensee, as well as information about the source of the tickets. The new law retains this requirement, but also requires licensees who resell tickets (or facilitate resale or auction between third parties) to report to the Department of State twice a year on “the total number of, and average resale or average final resale auction price of, all tickets to each ticketed event.”

Another significant change is a ban on automated ticket purchasing software, used by some brokers to gain an advantage over the general public in obtaining tickets. Section 25.24 of the new law makes it unlawful for any person to purchase tickets using such software, defining such software as “any machine, device, computer program or computer software that navigates or runs automated tasks on retail ticket purchasing websites in order to bypass security measures.” In addition, §25.24 grants the New York attorney general power to enforce the ban, and also grants a private right of action to parties injured by use of the prohibited software. Finally, a court may award treble damages, issue an injunction, and/or award reasonable attorney’s fees and costs in connection with any violation of §25.24.

Section 25.30 has also been amended to include an exception permitting an operator to restrict the resale of tickets, but only those tickets initially provided at a discount or for free as part of a “targeted promotion” to specific individuals or groups due to 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.” However, the exception does not apply to promotional or discount tickets offered “to the general public,” meaning that holders of such tickets must be allowed to re-sell them. In addition, any tickets offered promotionally to specific groups and that are subject to resale restriction must be clearly marked as such.

The new law also broadens the state’s efforts to limit ticket holds and make more tickets available to the general public. Specifically, §25.30 has been expanded to prohibit not only the operator’s agent, but also the operator itself from selling or conveying tickets to any secondary ticket reseller owned or controlled by the operator’s agent, or the operator itself.

Other changes include expanded disclosure obligations for obstructed view seats (with certain exceptions), and a revision to the procedure for drawing down upon bonds posted by licensed ticket sellers and resellers. In addition, the state has prohibited the resale of tickets immediately outside any “Ticket Office,” which is defined as a location away from a place of entertainment at which tickets are offered for initial sale.

Section 25.35 of the 2007 Ticketing Law had imposed criminal penalties available for those convicted of violating §25.27 (providing commissions to employees of places of entertainment), §25.29 (including unlawful charges in an initial ticket price), §25.09 (unlawful reselling), §25.07 (ticket price printing requirements), §25.13 (licensing requirements), §25.15 (posting a bond), or §25.11 (prohibiting the resale of tickets within the buffer zone).

Although the criminal penalties remain largely unchanged, the new law expands the fines that may be imposed upon “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.”

As a general matter, the new law is effective retroactively to May 16, 2010; thus, the resale of tickets after May 15, 2010 for more than $2 above face value will not violate New York Law. There are, however, certain exemptions to the retroactive application of the law. For example, paperless tickets sold between May 16 and July 2 need not comply with the new restrictions.

Conclusion

For those who find it difficult to keep all of these changes straight, you can take comfort in the fact that you might not need to do so for long. Notwithstanding the efforts that went into analyzing, drafting, and debating the current ticket resale law, most of the new provisions will only be in effect until May 15, 2011, at which time it will be up to the state Legislature to once again decide whether to extend, modify, or let lapse New York's ticket resale laws. One provision that will not need to be extended, however, is the ban against the use of ticket purchasing software; that prohibition expressly survives any expiration of the law in May 2011.