SENATE, No. 1728



STATE OF NEW JERSEY

218th LEGISLATURE



INTRODUCED FEBRUARY 5, 2018

Sponsored by:

Senator JOSEPH P. CRYAN

District 20 (Union)

SYNOPSIS

Revises law concerning ticket sales.

CURRENT VERSION OF TEXT

As introduced.



An Act concerning ticket sales, amending and supplementing P.L.1983, c.135 and repealing various parts of statutory law.

**Be It Enacted** *by the Senate and General Assembly of the State of New Jersey:*

1. Section 1 of P.L.1983, c.135 (C.56:8-26) is amended to read as follows:

1. As used in this act:

a. "Director" means the director of the Division of Consumer Affairs in the Department of Law and Public Safety.

b. "Division" means the Division of Consumer Affairs in the Department of Law and Public Safety.

c. "Person" means corporations, companies, associations, societies, firms, partnerships and joint stock companies as well as individuals.

d. "Place of entertainment" means any privately owned and operated entertainment facility or publicly owned and operated entertainment facility within this State, such as a theater, stadium, museum, arena, racetrack or other place where performances, concerts, exhibits, games or contests are held and for which an entry fee is charged. A facility owned by a school, college, university, or house of worship is a place of entertainment only when an event is held for which an entry fee is charged, provided that the event is conducted by a third party independent of the owner of the facility. An entertainment facility that qualifies for tax exempt status under section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)(3)) is a place of entertainment only if it accommodates more than 1200 persons, except that the provisions of section 7 of P.L. , c. (C. ) (pending before the Legislature as this bill) shall also apply to a place of entertainment that qualifies for tax exempt status if it accommodates 1200 persons or less.

e. "Ticket" means any **[**piece of paper which indicates that the bearer has paid for entry or other**]** evidence **[**which permits**]** of the right of entry to a place of entertainment.

f. **[**"Ticket broker" means any person situated in and operating in this State who is involved in the business of reselling tickets of admission to places of entertainment and who charges a premium in excess of the price, plus taxes, printed on the tickets. For the purposes of this act, the term "ticket broker" shall not include an individual not regularly engaged in the business of reselling tickets, who resells less than 30 tickets during any one-year period, and who obtained the tickets for his own use, or the use of his family, friends, or acquaintances**]** (Deleted by amendment, P.L. , c. ) (pending before the Legislature as this bill).

g. "Resale" means a sale, other than a pre-sale, of a ticket by a person other than the owner or operator of a place of entertainment or of the entertainment event or an agent of any such person acting in that capacity. Resale shall not include an initial sale.

h. "Resell" means to offer for resale or to consummate a resale.

i. "Digger" means a person temporarily hired for the purpose of securing tickets by intimidating a purchaser waiting in line to procure event tickets.

j. "Reseller" means any person other than a place of entertainment or its agent or an online marketplace, who resells a ticket, including a season ticket holder or an insider.

k. "Affinity group" means an identifiable group of people who are members of the same organization, or who are customers of the same person, and who enjoy special privileges. Customers of a reseller shall not constitute an affinity group.

l. "Initial sale" means the first sale of a ticket for a specific entertainment event by the owner or operator of a place of entertainment, or of the entertainment event, or an agent of any such person. The term "initial sale" also shall include the distribution of tickets to insiders by a producer, promoter, or place of entertainment, under an agreement for the presentation of an entertainment event.

m. "Insider" means an employee of a place of entertainment or of its agent, a producer, promoter, performer, or any other person associated with an event, who lawfully controls any tickets prior to their release for sale to the general public.

n. "Pre-sale" means a sale of tickets at or below the price printed on the ticket by an owner or operator of a place of entertainment, or, with the permission of the owner or operator, by an insider, prior to their release for sale to the general public, directly, or indirectly through a third party who is not a reseller, to members of an affinity group or target market.

o. "Producer" means a person who stages entertainment events, such as a performance, concert, exhibit, game, or contest.

p. "Promoter" means a person who organizes financing and publicity for an entertainment event.

q. "Season ticket holder" means a person who purchases a package of one or more tickets to a series of similar events at a place of entertainment pursuant to a plan offered by the place of entertainment or by a ticket agent for the place of entertainment.

r. "Ticket issuer" means any person, other than an online marketplace or reseller, that makes tickets available directly or indirectly, at an initial sale or pre-sale, to the general public, and may include the owner or operator of a place of entertainment, the producer or sponsor of an entertainment event, a sports team or sports league of teams participating in an entertainment event, a theater company, musical group or similar participant in an entertainment event, or an agent of any such person.

s. "Public sale tickets" means tickets that are offered for sale to the general public and not subject to a hold back by a ticket issuer.

t. "Online marketplace" means an Internet website that provides a forum for the buying and selling of tickets, but shall not include a reseller, ticket issuer, or an agent of an owner or operator of a place of entertainment.

u. "Public funding" means the provision of funding or financial support in any form by the State or any political subdivision thereof, or by any authority or similar body created by the State or any political subdivision thereof. Public funding shall include, but not be limited to, grants, payments, or financial support, the use of public funds through the issuance of tax-exempt bonds, payments in lieu of taxes, property tax abatements, lotteries, sales taxes or levies on parking, hotels, alcohol, car rentals, cigarettes or other goods or services.

v. "Publicly owned and operated entertainment facility" means an entertainment facility that accommodates more than 1,000 persons and for which public funding has been provided for the construction, maintenance, or operation of the entertainment facility or any infrastructure related thereto, or which is located on property owned by the State or any political subdivision thereof.

(cf: P.L.2008, c.55, s.1)

2. Section 8 of P.L.1983, c.135 (C.56:8-33) is amended to read as follows:

8. a. Each place of entertainment shall print on the face of each ticket and include in any advertising for any event the price charged therefor.

b. **[**No person other than a registered ticket broker shall resell or purchase with the intent to resell a ticket for admission to a place of entertainment at a maximum premium in excess of 20% of the ticket price or $3.00, whichever is greater, plus lawful taxes. No registered ticket broker shall resell or purchase with the intent to resell a ticket for admission to a place of entertainment at a premium in excess of 50% of the price paid to acquire the ticket, plus lawful taxes**]** (Deleted by amendment, P.L. , c. ) (pending before the Legislature as this bill).

c. **[**Notwithstanding the provisions of subsection a. or b. of this section, nothing shall limit the price for the resale or purchase of a ticket for admission to a place of entertainment sold by any person other than a registered ticket broker, provided such resale or purchase is made through an Internet web site**]** (Deleted by amendment, P.L. , c. ) (pending before the Legislature as this bill).

d. An owner or operator of a place of entertainment or of the entertainment event or an agent or affiliate of that person shall not advertise, offer to sell or sell any ticket as a resale that was not previously sold to the public in an initial sale, whether or not the resale is for its own account or the account of any corporate affiliate.

(cf: P.L.2008, c.55, s.2)

3. Section 9 of P.L.1983, c.135 (C.56:8-34) is amended to read as follows:

9. a. No person shall resell or purchase with the intent to resell any ticket, in or on any street, highway, driveway, sidewalk, parking area, or common area owned by a place of entertainment in this State, or any other area adjacent to or in the vicinity of any place of entertainment in this State as determined by the director; except that a person may resell, in an area which may be designated by a place of entertainment in this State, any ticket or tickets originally purchased for his own personal or family use at no greater than the lawful price permitted under this act. This subsection shall not apply to a business, located in a physical structure, selling or reselling tickets from that location prior to the effective date of P.L. , c. (C. ) (pending before the Legislature as this bill).

b. Notwithstanding any other provision of law, any ticket issuer, reseller or online marketplace shall guarantee to each purchaser of resold tickets that the ticket issuer, reseller or online marketplace 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:

(1) The event for which that 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 that previously disclosed guarantee specifies that those fees will not be refunded;

(2) 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 that purchaser; or

(3) The ticket fails to conform to its description as advertised or guaranteed.

c. No reseller shall employ a tentative ticket policy whereby the reseller sells tickets that are not in the reseller’s possession at the time of sale, unless that policy is disclosed to a ticket purchaser at the outset of the transaction. That disclosure shall include an approximate delivery date and the number of tickets that are guaranteed together, including the zone or section number. If the reseller is unsuccessful in securing those tickets the reseller shall refund any deposit made by a purchaser of those tickets within 10 days after the event.

d. No person shall use or cause to be used any means, method or technology that is designed, intended or functions to disguise the identity of the purchaser with the purpose of purchasing or attempting to purchase via online sale a quantity of tickets to a place of entertainment in excess of authorized limits established by the owner or operator of a place of entertainment or of the entertainment event or an agent of any such person.

e. No person shall use or cause to be used software, or other technology or device, that is designed, intended or functions to interfere with a computer, computer network, or computer system, or any part thereof, for the purpose of purchasing or attempting to purchase via online sale a quantity of tickets to a place of entertainment in excess of authorized limits established by the owner or operator of a place of entertainment or of the entertainment event or an agent of any such person, or that is designed, intended or functions to circumvent or disable any access control systems, electronic queues, waiting periods or other sales volume limitation systems to ensure the equitable distribution of tickets instituted on the website of the ticket seller.

(cf: P.L.2001, c.394, s.7)

4. Section 12 of P.L.1983, c.135 (C.56:8-37) is amended to read as follows:

12. **[**Any**]** a. A violation of P.L.1983, c.135 (C.56:8-26 et seq.) shall constitute an unlawful practice and a violation of P.L.1960, c.39 (C.56:8-1 et seq.), and any person who violates P.L.1983, c.135 (C.56:8-26 et seq.) shall be subject to all remedies and penalties available pursuant to P.L.1960, c.39 (C.56:8-1 et seq.).

b. In addition to any other penalty provided by law, any person who violates any provision of this act shall be guilty of a crime of the fourth degree.

(cf: P.L.1983, c.135, s.12)

5. (New Section) a. No later than 15 days after an entertainment event, a ticket issuer shall publish on its website a notice setting forth the following information concerning the sale and disposition of tickets for the entertainment event:

(1) the total number of tickets issued for the entertainment event, which shall equal the sum of the number of public sale tickets made available at the general on sale date for the event and the number of tickets held back at the general on sale date of the event;

(2) the number of public sale tickets made available for the entertainment event at the general on sale date of the event; and

(3) the number of tickets not made available as public sale tickets for the entertainment event at the general on sale date of the event due to all pre-sales, initial sales, and holdbacks and for any other purpose.

b. The notice required pursuant to subsection a. of this section shall add up to 100 percent of the seating capacity for the place of entertainment in the configuration used for the entertainment event.

6. (New section) a. Except as otherwise provided in P.L.1983, c.135 (C.56:8-26 et seq.), no ticket issuer shall:

(1) Impose license or contractual terms on the initial sale of event tickets or any policies including, but not limited to, terms printed on the ticket that prohibit resale of the ticket, or that restrict the price or other terms and conditions under which a ticket may be resold;

(2) Require the purchaser of a ticket, whether for a single event or for a series or season of events, to agree not to resell the ticket, or to resell the ticket only through a specific channel approved by the ticket issuer; or

(3) Limit or restrict the price at which a ticket may be resold.

b. No ticket issuer shall bring legal action, based on a prohibition or restriction on the resale of a ticket that is in violation of P.L.1983, c.135 (C.56:8-26 et seq.) against:

(1) A purchaser who resells or offers to resell a ticket without permission of the ticket issuer, or in violation of a restriction purportedly imposed by the ticket issuer;

(2) Persons who facilitate or provide services for the resale of tickets without permission or in alleged violation of a restriction; or

(3) The operator of a physical or electronic marketplace in which a ticket is offered for resale without permission or in alleged violation of such a restriction.

c. No ticket issuer shall impose any penalty on a ticket purchaser who resells or offers to resell a ticket without permission or in violation of a restriction purportedly imposed by the ticket issuer, or treat that purchaser in any material way less favorably than a similarly situated purchaser who does not resell or offer to resell an event ticket, or who complies with resale restrictions imposed by the ticket issuer in violation of P.L.1983, c.135 (C.56:8-26 et seq.).

7. (New section) a. No ticket issuer shall employ a paperless ticketing system unless the ticket purchaser is given the option to purchase paperless tickets that the ticket purchaser can transfer at any price and at any time without additional fees, independent of the ticket issuer.

b. Notwithstanding the provisions of subsection a. of this section, a ticket issuer may employ a paperless ticketing system that does not allow for independent transferability of the paperless ticket only if the ticket purchaser is offered at the time of initial sale the option to purchase the same ticket or tickets in some other form that is transferable, at any time, independent of the ticket issuer, including, but not limited to, paper tickets of paperless tickets. The established price for any ticket shall be the same regardless of the form or transferability of the ticket. The ability of a ticket to be transferred independent of the ticket issuer shall not constitute a special service for the purpose of imposing a service charge.

c. A ticket issuer shall not offer as the only option available to a ticket purchaser pursuant to this section the requirement to pick up a ticket at the will-call window or the box office of an entertainment facility in advance of the entertainment event for which the ticket is issued. Nothing in this subsection shall prohibit a ticket issuer from requiring pick up at a will-call window as the only delivery method for tickets purchased within four days of the entertainment event for which the ticket is purchased, provided that the initial sale or pre-sale of the ticket occurred more than four days prior to the entertainment event.

8. The following sections are repealed:

Section 2 of P.L.1983, c.135 (C.56:8-27);

Section 3 of P.L.1983, c.135 (C.56:8-28);

Section 4 of P.L.1983, c.135 (C.56:8-29);

Section 5 of P.L.1983, c.135 (C.56:8-30);

Section 6 of P.L.1983, c.135 (C.56:8-31);

Section 7 of P.L.1983, c.135 (C.56:8-32);

Section 9 of P.L.2001, c.394 (C.56:8-35.2); and

Section 13 of P.L.1983, c.135 (C.56:8-38).

9. This act shall take effect on the first day of the ninth month next following enactment.

STATEMENT

This bill restructures the law regarding ticket sales in New Jersey, introduces transparency into the market for event tickets, enhances consumer protections and protects consumers’ ability to buy, sell, and give away tickets.

The bill requires ticket issuers to publish on their websites a notice setting forth the following information concerning the sale and disposition of tickets for the entertainment event:

(1) the total number of tickets issued for the entertainment event, including the number of public sale tickets made available at the general on sale date for the event and the number of tickets held back at the general on sale date of the event;

(2) the number of public sale tickets made available for the entertainment event at the general on sale date of the event; and

(3) the number of tickets not made available as public sale tickets for the entertainment event at the general on sale date of the event.

The bill requires the number of tickets disclosed to add up to 100 percent of the seating capacity for the place of entertainment in the configuration used for the entertainment event.

The bill prohibits the use of software or technology that enables the purchase of tickets in excess of limits set by an issuer.

The bill allows the use of paperless tickets, but places some restrictions on how ticket issuers may issue paperless tickets. The bill prohibits ticket issuers from employing a paperless ticketing system unless the ticket purchaser is given the option to purchase paperless tickets that the ticket purchaser can transfer at any price and at any time without additional fees, independent of the ticket issuer. Also, ticket issuers may employ a paperless ticketing system that does not allow for independent transferability of the paperless ticket only if the ticket purchaser is offered, at the time of initial sale, the option to purchase the same ticket or tickets in some other form that is transferable, at any time, independent of the ticket issuer, including, but not limited to, paper tickets of paperless tickets.

To meet these requirements, the bill prohibits ticket issuers from offering as the only option available to a ticket purchaser to pick up a ticket at the will-call window or the box office of an entertainment facility, except within four days of the entertainment event for which the ticket is purchased.

This bill will enhance consumer protections by requiring all ticket issuers, resellers and online marketplaces to provide a full refund if: (1) an event is cancelled; (2) the ticket does not grant entry to the event; or (3) the ticket does not match its advertised description. The bill also prohibits the resale of tickets not in a reseller’s possession or control unless that policy is disclosed in advance, and a full refund is made within 10 days if the reseller is unsuccessful in securing tickets. Since the bill imposes consumer protections on all participants in the secondary market, it also eliminates separate regulation of, and price limitations that are currently imposed specifically on, ticket brokers.

The bill prohibits ticket issuers from:

(1) Imposing license or contractual terms on the initial sale of event tickets or any policies;

(2) Requiring the purchaser of a ticket, whether for a single event or for a series or season of events, to agree not to resell the ticket, or to resell the ticket only through a specific channel approved by the ticket issuer; or

(3) Limit or restrict the price at which a ticket may be resold.

The bill also restricts the ability of ticket issuers to bring legal suits or impose penalties on consumers for reselling tickets.

Current statutes limit the price at which certain tickets can be resold. The bill removes price limits on the resale of all tickets and at the same time enhances consumer protections. Concerning the resale of tickets.

The bill repeals certain statutes which are made unnecessary or obsolete by this restructuring of the law on ticket sales.