

## Outside Counsel

# Sweeping Changes Proposed to New York Ticketing Regime

**N**ew York's Arts and Cultural Affairs Law (ACAL) has long been one of the most complex regulatory regimes for the sale of tickets to places of entertainment. On May 12, 2021, after conducting a year-long investigation into event ticketing, New York State Senator James Skoufis introduced a bill with widespread changes to New York's ticketing landscape. This article discusses the key proposals of the bill, which reached the New York Senate floor on May 20, 2021. As discussed below, the bill proposes a prohibition on exclusive ticket sale relationships for primary ticket sales, the elimination of dynamic pricing, and more stringent refund requirements for cancelled and postponed events. With several key provisions of ACAL set to sunset on June 30, 2021, the New York State Assembly recently passed a bill

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that would extend the expiration date to June 30, 2023. With the Skoufis bill and the Assembly's extension both before the state Senate, it seems like an appropriate time to take a closer look at what may be in store for ACAL's future.

### ACAL Background

Since New York expanded the ticket resale business in 2007 by removing the cap on resale prices (see 2007 N.Y. Laws 2738), the legislature has continued to revise ACAL in response to concerns about ticket price and availability. In 2010, the legislature amended ACAL to regulate service fees and paperless tickets, as well as ban the use of ticket purchasing software (sometimes called "bots"). See 2010 N.Y. Laws 781, 785; see also Anthony J. Dreyer, "Hold All

Tickets: New York Adopts (Yet Another) Ticket Resale Law," N.Y.L.J. (July 28, 2010). In 2016, the New York Attorney General surveyed the state ticket landscape and issued recommendations to further improve ACAL. See Eric T. Schneiderman, N.Y. State Attorney General, "Obstructed View: What's Blocking New Yorkers From Getting Tickets" (2016). In 2018, the state legislature amended ACAL to add clearer disclosures of ticket prices, exceptions to paperless ticket restrictions, additional notice requirements for ticket resellers, and increased penalties for using bots to obtain tickets for resale. See 2018 N.Y. Laws 110; see also Anthony J. Dreyer and Andrew Green, "Further Ticket Sale (and Resale) Reforms Come to New York State," N.Y.L.J., Sept. 21, 2018.

### A Ban on Exclusive Ticket Sale Relationships

Senator Skoufis's bill would significantly alter the primary and secondary ticket sales regimes. Perhaps most notably, the bill seeks to place additional restrictions on operators

of entertainment venues by amending General Obligations Law §5-338. The bill would prevent any entertainment venue from entering into a contract with a primary ticket vendor to serve as the venue's sole and exclusive ticket vendor. Although the 2016 NYAG report raised concerns about service fees, it did not issue any recommendations regarding the exclusive relationship between venue operators and ticket vendors. It is therefore notable that Senator Skoufis's bill seeks to prohibit such exclusive agreements. If the bill remains in its current form, it is unclear how the amendment would work in practice. Are operators required to have multiple primary sales partners for a single event (which would be logistically and practically untenable)? Could an operator comply with the new law by having a different partner for only a few events? Would existing agreements be "grandfathered"?

### Significant Proposed Changes to Ticket Refunds For Cancelled Events

In what appears to be a direct response to the widespread cancellation of sports and entertainment events due to the COVID-19 pandemic, Senator Skoufis's bill proposes an expansion of ACAL's refund provisions for cancelled and postponed events. Currently, ACAL requires primary ticket sellers to provide a refund for cancelled or rescheduled events *except* if (1) there was no material change in the time or location of the event;

(2) the event was rescheduled due to a catastrophe such as an Act of God and the purchaser may use the ticket to attend the rescheduled event or exchange it for a comparable ticket to a similar event; or (3) the ticket states that a refund is not required if the purchaser may, within 12 months, attend the rescheduled event or exchange the ticket for a comparable ticket to a similar event. See ACAL §23.08. Ticket resellers, however, must guarantee all

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purchasers a full refund if the event is cancelled. See ACAL §25.07.

Senator Skoufis's bill would expand the refund provisions of §25.07 to apply to all ticket sellers. The bill also proposes that ticketholders would be entitled to full refunds if an event is postponed more than once in a calendar year, rescheduled to a date more than one year from the original date, or postponed and not rescheduled within three months of the original event date. The proposed amendment also would give purchasers thirty days to elect to receive a full refund, retain the tickets, or receive a credit in lieu of a refund. The bill, however, does not clarify whether the proposed additions to Article 25 would supersede the refund

exemptions for primary ticket sellers in §23.08.

### Significant Proposed Changes For Primary Ticket Sales

The NYAG's 2016 report called on the legislature to require the ticket industry to increase transparency into the prices and availability of tickets. See *Obstructed View* at 5. In a partial response, the legislature in 2018 required both primary and secondary ticket sellers to disclose "in a clear and conspicuous manner the total price of the ticket" and any other fees. ACAL §25.07(4). Senator Skoufis's bill would further expand this section to require that such disclosures be made "before a ticket is selected for purchase."

The bill also would prevent ticket sellers from changing a ticket's price during the on-sale process. This common practice, known as dynamic pricing, is an important tool for venue operators to adjust pricing based on demand for their events. Furthermore, Senator Skoufis's bill requires that primary ticket sellers disclose the total number of tickets available for sale. The bill also would prevent primary ticket sellers from withholding more than ten percent of all available seating for the event.

ACAL §25.30(1)(c) restricts a venue operator's ability to offer non-transferable paperless tickets and requires that purchasers be given the option to receive tickets in an independently transferrable format, such as a paper ticket or PDF. In 2018, the legislature created a narrow exception to this

requirement, allowing professional sports organizations to offer paperless tickets that are not independently transferrable for no more than 5% of all available seats, “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 ...” ACAL §25.12. This provision had a limited impact, as it only applied to four professional teams that played in venues large enough to fit within the exception: the New York Yankees, New York Mets, Buffalo Bills and New York City Football Club. Senator Skoufis’s bill would expand this exception to include venues with a capacity of at least 13,500 seats, which would apply to many of the major sports and entertainment venues in the state, including Madison Square Garden and Barclays Center.

### Significant Proposed Changes For Secondary Ticket Sales

Senator Skoufis’s bill would strengthen the penalties for using “bots” to obtain tickets for resale by increasing the statutory fines and permanently banning licensed ticket resellers who knowingly violate the bot prohibitions. The bill also would require anyone who is aware of violations of the bot prohibitions to report them and would allow whistleblowers to recover five percent of the

penalties collected as a result of the violation.

Senator Skoufis’s bill also proposes a clearer distinction between professional ticket brokers, who must be licensed to resell tickets, and individuals who may resell a small number of tickets without a license. The bill would amend ACAL to define “Professional reseller” as a person or entity

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It remains to be seen whether Senator Skoufis’s bill will be approved by the legislature in its current form. Several of the proposals are likely to be controversial both because they could impact existing business relationships and models within the industry, and also because they may prove to be unclear and unworkable in practice.

who is “involved in the business of the resale of tickets.” On the contrary, “[i]ndividuals who do not regularly engage in the business of reselling tickets, who resell fewer than thirty tickets per year and who obtain the tickets for such individual’s personal use or the use of friends and family” are not professional resellers and would not be required to obtain a license.

Senator Skoufis’s bill also proposes that ticket sellers be prohibited from setting a minimum price—or “price floor”—for the resale of any ticket purchased from a primary seller. Furthermore, the bill would prevent primary ticket sellers that also resell tickets

from charging an additional fee to resell tickets that were originally purchased from the seller.

### Looking Ahead

It remains to be seen whether Senator Skoufis’s bill will be approved by the legislature in its current form. Several of the proposals are likely to be controversial both because they could impact existing business relationships and models within the industry, and also because they may prove to be unclear and unworkable in practice. At all events, because several key provisions of ACAL are about to sunset and the state Senate has yet to approve the Assembly’s bill extending ACAL through June 30, 2023, further legislative action is expected, if only to extend the current regime.