



## Outside Counsel

# New York Ticketing Regime Amended To Enhance Consumer Protections

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New York's regulatory scheme for event ticketing is one of the most complex of its kind, and is no stranger to overhauls of various provisions, which seek to protect consumers from unfair and predatory ticketing practices. The landscape's most recent update occurred on June 30, when Governor Hochul signed into law a bill (S. 9461, "Enacts Into Law Components of Legislation That Relate to Live Event Ticket Sales," 2021-2022 Legis. Sess. (N.Y. 2022)) modifying certain regulations governing live-event ticket sales, which are codified in New York's Arts and Cultural Affairs Law (ACAL). The bill was introduced by Sen. James Skoufis on May 30th following a year-long leg-

islative inquiry into the current state of ticketing practices in New York.

This article summarizes and discusses the key changes implemented by the new law, and provides some insights into what these changes might signal for New York's ticketing priorities in the future. As discussed further below, the new law principally (1) affects the rules governing disclosure requirements for primary ticket sale prices; and (2) restricts the means of secondary ticket resale, including by expanding penalties for the use of scalper bots and unauthorized ticket purchasing software.

### ACAL: A Recent History

ACAL has been revised by the New York legislature several times in the past 15 years, primarily in response to concerns about ticket pricing and availability. In 2007, the ability to resell tickets was expanded when the legislature removed the cap on ticket resale prices (2007 N.Y. Laws 2738), in turn leading to a 2010 prohibition on the use of automated ticket purchasing software. 2010 N.Y. Laws 781, 785. A subsequent amendment passed in 2018 included additional disclosure requirements

for ticket prices, included certain exceptions to paperless ticket regulations, and imposed notice requirements for ticket resellers. 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). Finally, a year-long investigation into event ticketing practices, conducted between 2020 and 2021, culminated in a 2021 proposal (also introduced by Senator Skoufis) seeking to institute major, sweeping changes to pricing and refund requirements and exclusive ticket sale relationships—a proposal that ultimately died in committee. See Anthony J. Dreyer and Andrew Patrick, "Sweeping Changes Proposed to New York Ticketing Regime," N.Y.L.J. (June 4, 2021). While the 2022 law has taken a more tempered approach and does not implement the sort of sweeping changes proposed in 2021, several provisions of ACAL have now been revised, as summarized below.

### Mandatory Disclosures

The most notable changes instituted by the new law aim to ensure that ticket

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buyers will have more information at their disposal during purchase. In particular, sellers and resellers will be obligated to clearly disclose the total cost, including fees, of a ticket for purchase, and the total cost must be provided in the ticket listing prior to purchase. S. 9461, 2021-2022 Legis. Sess., §25.07(4) (N.Y. 2022). This effectively will put an end to the practice of only making the purchaser aware of additional fees that they must pay to ticket sale and resale platforms at the very last step of the checkout process. In other words, the price that a consumer believes that they are paying for a ticket to a game or a live event cannot increase throughout the purchasing process. To further ensure transparency for purchasers, the bill mandates that no component of the total price can be false or misleading. *Id.* For example, no individual component of the price can be presented more prominently or in the same or larger size as the total price.

Moreover, ticket resellers are now obligated to clearly and conspicuously disclose the original printed or endorsed price of any ticket sold before the user completes a transaction. *Id.* at §25.23(2). While this may not necessarily result in reduced resale prices of tickets to highly coveted events, it does allow purchasers to have a better sense of whether the amount they are agreeing to pay is fair and reasonable. As articulated by Senator Skoufis in a statement about the bill, this policy ensures that purchasers will be able to know if they are “getting a good deal or a bad deal” on resale tickets.

Although the bill does not establish any caps on resale prices or fees

charged by ticket marketplaces such as Ticketmaster or StubHub, requiring full and accurate disclosure upfront of total prices could very well impact consumer decisions on whether to buy tickets in the first place.

### Restrictions on Resale and Fees

The law also implements certain restrictions on the types of tickets that may be lawfully resold and fees that may be assessed to the purchaser. In particular, it is now illegal to resell or offer to resell any ticket that was initially offered to the public for free (though the transfer of such tickets

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is still allowed). *Id.* at §25.06. Separately, while sellers may still charge purchasers the reasonable and actual costs for the physical delivery of tickets, they will no longer be allowed to charge any such fees for tickets that are delivered electronically or for tickets that are independently printed by the purchaser. *Id.* at §25.29.

### Increased Penalties

Lastly, the law increases the civil penalties for utilizing ticket purchasing software (sometimes called “bots”) to obtain tickets for resale. For exam-

ple, the range of potential penalties for knowingly using ticket purchasing software—or reselling tickets that the seller knows were obtained through the use of ticket purchasing software—has now increased from \$500-\$1,500 to \$1,000-\$2,500 per violation, in addition to the forfeiture of all profits. *Id.* at §25.24(3)-(5). The increased civil fines are meant to more harshly punish and hopefully deter anti-consumer ticketing practices that limit consumers’ ability to purchase tickets during initial on-sale periods.

### Looking Ahead

The modest changes implemented in the 2022 law take a lighter touch than the 2021 proposal; likely a sensible approach given the potential for controversy within the industry that could have materialized from last year’s bill. The new law attempts to strike a reasonable balance between imposing workable pro-consumer regulations without casting existing ticketing business models into disarray. It also extends the life of ACAL’s provisions until June 30, 2025.