S T A T E O F N E W Y O R K

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2009-2010 Regular Sessions

I N A S S E M B L Y

February 10, 2009

Introduced by M. of A. BRODSKY -- read once and referred to the Committee on Tourism, Arts and Sports Development

AN ACT to amend the arts and cultural affairs law, in relation to resale of royalties for artists

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Article 16 and section 16.01 of the arts and cultural affairs law are renumbered article 17 and section 17.01 and a new article 16 is added to read as follows:

ARTICLE 16

RESALE ROYALTIES FOR ARTISTS

SECTION 16.01. DEFINITIONS.
16.02. RESALE ROYALTY FOR ARTISTS.
16.03. EXCEPTIONS.
16.04. PAYMENT; ACTION FOR DAMAGES; EXEMPTION.
16.05. SEVERABILITY.

S 16.01. DEFINITIONS. AS USED IN THIS ARTICLE:

1. "ARTIST" MEANS A PERSON WHO CREATES A WORK OF FINE ART.

2. "FINE ART" MEANS AN ORIGINAL PAINTING, SCULPTURE, OR DRAWING.

S 16.02. RESALE ROYALTY FOR ARTISTS. WHENEVER A WORK OF FINE ART IS SOLD IN THIS STATE, THE SELLER OR HIS OR HER AGENT SHALL PAY TO THE ARTIST OF SUCH WORK OF FINE ART OR TO SUCH ARTIST'S AGENT FIVE PERCENT OF THE AMOUNT OF SUCH SALE. THE RIGHT OF THE ARTIST TO RECEIVE AN AMOUNT EQUAL TO FIVE PERCENT OF THE AMOUNT OF SUCH SALE IS NOT TRANSFERABLE AND MAY BE WAIVED ONLY BY AN INSTRUMENT IN WRITING PROVIDING FOR AN AMOUNT IN EXCESS OF FIVE PERCENT OF THE AMOUNT OF SUCH SALE.

S 16.03. EXCEPTIONS. SECTION 16.02 OF THIS ARTICLE SHALL NOT APPLY TO ANY OF THE FOLLOWING:

1. TO THE INITIAL SALE OF A WORK OF FINE ART WHERE LEGAL TITLE TO SUCH WORK AT THE TIME OF SUCH INITIAL SALE IS VESTED IN THE ARTIST THEREOF;

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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2. TO THE RESALE OF A WORK OF FINE ART FOR A GROSS SALES PRICE OF LESS THAN ONE THOUSAND DOLLARS;

3. TO THE RESALE OF A WORK OF FINE ART AFTER THE DEATH OF THE ARTIST THEREOF; OR

4. TO THE RESALE OF THE WORK OF FINE ART WHICH IS EXCHANGED FOR ONE OR MORE WORKS OF FINE ART OR FOR A COMBINATION OF CASH, OTHER PROPERTY, AND ONE OR MORE WORKS OF FINE ART WHERE THE FAIR MARKET VALUE OF THE PROPERTY EXCHANGED IS LESS THAN ONE THOUSAND DOLLARS.

S 16.04. PAYMENT; ACTION FOR DAMAGES; EXEMPTION. 1. WHEN A WORK OF ART IS SOLD AT AUCTION OR BY A GALLERY, DEALER, BROKER, MUSEUM, OR OTHER PERSON ACTING AS THE AGENT FOR THE SELLER, SUCH AGENT SHALL WITHHOLD FIVE PERCENT OF THE AMOUNT OF THE SALE, LOCATE THE ARTIST, AND PAY THE ARTIST.

2. IF THE SELLER OR HIS OR HER AGENT IS UNABLE TO LOCATE AND PAY THE ARTIST WITHIN NINETY DAYS, AN AMOUNT EQUAL TO FIVE PERCENT OF THE AMOUNT OF THE SALE SHALL BE TRANSFERRED TO THE COUNCIL ON THE ARTS.

3. IF A SELLER OR HIS OR HER AGENT FAILS TO PAY AN ARTIST THE AMOUNT EQUAL TO FIVE PERCENT OF THE SALE OF A WORK OF FINE ART BY THE ARTIST OR FAILS TO TRANSFER SUCH AMOUNT TO THE COUNCIL ON THE ARTS, THE ARTIST MAY BRING AN ACTION FOR DAMAGES WITHIN THREE YEARS AFTER THE DATE OF SALE OR ONE YEAR AFTER THE DISCOVERY OF THE SALE, WHICHEVER IS LONGER.

4. (A) IF THE COUNCIL IS UNABLE TO LOCATE THE ARTIST AND THE ARTIST OR HIS OR HER ESTATE DOES NOT FILE A WRITTEN CLAIM FOR THE MONEY RECEIVED BY THE COUNCIL WITHIN SEVEN YEARS OF THE DATE OF SALE OF THE WORK OF FINE ART, THE RIGHT OF THE ARTIST TO A RESALE ROYALTY FOR SUCH WORK OF FINE ART TERMINATES, AND SUCH MONEY SHALL BE TRANSFERRED TO THE OPERATING FUND OF THE COUNCIL TO FUND PROGRAMS OF THE COUNCIL.

(B) IF THE ARTIST OR HIS OR HER ESTATE DOES FILE A WRITTEN CLAIM FOR THE MONEY RECEIVED BY THE COUNCIL WITHIN SEVEN YEARS OF THE DATE OF SALE OF THE WORK OF FINE ART, THE COUNCIL, UPON APPROVAL OF SUCH WRITTEN CLAIM, SHALL PAY OVER SUCH MONEYS HELD TO THE CREDIT OF SUCH ARTIST LESS TEN PERCENT TO BE RETAINED BY THE COUNCIL AS THE COST OF ADMINISTERING SUCH MONEYS HELD FOR SUCH ARTIST. SUCH RETAINED PERCENTAGE SHALL BE TRANSFERRED TO THE OPERATING FUND OF THE COUNCIL TO FUND PROGRAMS OF THE COUNCIL.

5. ANY AMOUNTS OF MONEY HELD BY ANY SELLER OR AGENT FOR THE PAYMENT OF ARTISTS PURSUANT TO THIS SECTION SHALL BE EXEMPT FROM ATTACHMENT OR EXECUTION OF JUDGMENT BY THE CREDITORS OF SUCH SELLER OR AGENT.

S 16.05. SEVERABILITY. IF ANY PROVISION OF THIS ARTICLE OR THE APPLICATION THEREOF TO ANY PERSON OR CIRCUMSTANCE IS HELD INVALID FOR ANY REASON, SUCH INVALIDITY SHALL NOT AFFECT ANY OTHER PROVISIONS OR APPLICATIONS OF THIS ARTICLE WHICH CAN BE EFFECTED WITHOUT THE INVALID PROVISION OR APPLICATION, AND TO THIS END THE PROVISIONS OF THIS ARTICLE ARE SEVERABLE.

S 2. The arts and cultural affairs law is amended by adding a new section 3.17 to read as follows:

S 3.17. RESALE ROYALTIES IN ESCROW. 1. MONEYS RECEIVED BY THE COUNCIL PURSUANT TO SECTION 16.04 OF THIS CHAPTER AS RESALE ROYALTIES DUE ARTISTS SHALL BE SEPARATELY ACCOUNTED FOR AND DEPOSITED IN A SPECIAL FUND WITH THE STATE COMPTROLLER, WHO SHALL DEPOSIT THE SAME AT INTEREST AND CREDIT THE AVAILS THEREOF TO SUCH FUND. THE COUNCIL SHALL ATTEMPT TO LOCATE ANY ARTIST FOR WHOM IT HOLDS MONEYS RECEIVED PURSUANT TO SAID SECTION 16.04 OF THIS CHAPTER AND PAY THE PROCEEDS TO HIM OR HER; FOR THIS PURPOSE THE COUNCIL SHALL MAKE EVERY REASONABLE EFFORT TO LOCATE SUCH ARTIST, INCLUDING MAINTAINING A REGISTRY OF STATE ARTISTS AND PUBLISHING THE EXISTENCE THEREOF.

2. IN THE EVENT THAT THE COUNCIL IS UNABLE TO LOCATE THE ARTIST, AND SUCH ARTIST OR HIS OR HER ESTATE DOES NOT FILE A WRITTEN CLAIM FOR THE MONEY RECEIVED BY THE COUNCIL WITHIN SEVEN YEARS OF THE DATE OF SALE OF THE WORK OF FINE ART, OR IN THE EVENT THAT THE ARTIST OR HIS OR HER ESTATE DOES FILE A WRITTEN CLAIM WITHIN SUCH SEVEN YEAR PERIOD, AND THE COUNCIL RETAINS TEN PERCENT AS ADMINISTRATION COSTS, SUCH MONEYS SHALL BE TRANSFERRED TO THE OPERATING FUND OF THE COUNCIL TO FUND PROGRAMS OF THE COUNCIL AND THE ARTIST'S RIGHT THERETO SHALL BE DEEMED EXTINGUISHED.

3. ANY SUCH MONEYS TRANSFERRED TO THE COUNCIL PURSUANT TO SUBDIVISION TWO OF THIS SECTION SHALL NOT BE CONSIDERED A REVENUE OF THE COUNCIL SO AS TO OFFSET ANY APPROPRIATION, NOR SHALL ANY APPROPRIATION TO THE COUNCIL BE IN ANY WAY DIMINISHED THEREBY.

S 3. This act shall take effect on the ninetieth day after it shall have become a law and shall apply to all works of fine art created on, before, or after such effective date.