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

3078

2009-2010 Regular Sessions

I N S E N A T E

March 10, 2009

Introduced by Sen. VALESKY -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

AN ACT to amend the arts and cultural affairs law, in relation to indemnity for domestic exhibitions and artifacts; and to amend the state finance law, in relation to creating the New York state arts and artifacts indemnity fund

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

Section 1. The arts and cultural affairs law is amended by adding a new title X to read as follows:

TITLE X
DOMESTIC INDEMNITY ACT
ARTICLE 62
DOMESTIC INDEMNITY ACT

SECTION 62.01. DEFINITIONS.
62.02. AGREEMENTS TO INDEMNIFY AGAINST LOSS OR DAMAGE.
62.03. ITEMS ELIGIBLE FOR INDEMNITY AGREEMENTS.
62.04. APPLICATION FOR INDEMNITY AGREEMENTS.
62.05. INDEMNITY LIMITS.
62.06. PREMIUMS.
62.07. CLAIMS FOR LOSSES.
62.08. AUTHORIZATION OF APPROPRIATIONS.

S 62.01. DEFINITIONS. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, FOR THE PURPOSES OF THIS ARTICLE THE FOLLOWING DEFINITIONS SHALL APPLY:

1. "EXHIBITOR" SHALL MEAN A MUSEUM DOMICILED IN NEW YORK STATE WHICH AS ITS PRIMARY MISSION DISPLAYS FOR PUBLIC VIEWING ANY ITEMS ELIGIBLE FOR INDEMNIFICATION PURSUANT TO SECTION 62.02 OF THIS ARTICLE.

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

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2. "ON EXHIBITION" SHALL MEAN AN ORIGINAL OR SUPPLEMENTAL INDEMNITY AGREEMENT MADE UNDER THIS TITLE SHALL COVER ELIGIBLE ITEMS WHILE ON EXHIBITION IN NEW YORK STATE OR ELIGIBLE ITEMS HELD BY A NEW YORK STATE DOMICILED INSTITUTION WHILE ON EXHIBITION ELSEWHERE WITHIN A STATE OR TERRITORY OF THE UNITED STATES, WHEN PART OF AN EXCHANGE OF EXHIBITIONS. A TERRORISM INDEMNITY AGREEMENT SHALL COVER ELIGIBLE ITEMS WHILE ON EXHIBITION IN NEW YORK STATE OR ELIGIBLE ITEMS HELD BY A NEW YORK STATE DOMICILED INSTITUTION WHILE ON EXHIBITION BOTH WITHIN NEW YORK STATE, AND ANYWHERE OUTSIDE THE BORDERS OF THIS STATE. FOR PURPOSES OF THIS TITLE, THE TERM "ON EXHIBITION" INCLUDES THAT PERIOD OF TIME BEGINNING ON THE DATE THE ELIGIBLE ITEMS LEAVE THE PREMISES OF THE LENDER OR PLACE DESIGNATED BY THE LENDER AND ENDING ON THE DATE SUCH ITEMS ARE RETURNED TO THE PREMISES OF THE LENDER OR PLACE DESIGNATED BY THE LENDER, AND SHALL INCLUDE ALL THAT TIME DURING WHICH SUCH ITEMS ARE BEING TRANSPORTED.

3. "ORIGINAL INDEMNITY AGREEMENT" SHALL MEAN AN AGREEMENT BETWEEN AN EXHIBITOR AND THE STATE WHERE THE STATE IS PROVIDING SOLE INDEMNITY COVERAGE UNDER THIS ARTICLE.

4. "SUPPLEMENTAL INDEMNITY AGREEMENT" SHALL MEAN AN AGREEMENT BETWEEN AN EXHIBITOR AND THE STATE WHERE THE STATE IS PROVIDING INDEMNITY COVERAGE FOR ELIGIBLE ITEMS ON EXHIBITION, WHICH, ALREADY HAVE APPROVED INDEMNITY AGREEMENTS UNDER THE UNITED STATES ARTS AND ARTIFACTS INDEMNITY PROGRAM ADMINISTERED BY THE NATIONAL ENDOWMENT FOR THE ARTS.

5. "TERRORISM INDEMNITY AGREEMENT" SHALL MEAN AN AGREEMENT BETWEEN AN EXHIBITOR AND THE STATE WHERE THE STATE IS PROVIDING INDEMNITY COVERAGE FOR ELIGIBLE ITEMS ON EXHIBITION WHEN LOSS OR DAMAGE TO SUCH ITEMS RESULTS FROM AN ACT OF TERRORISM.

S 62.02. AGREEMENTS TO INDEMNIFY AGAINST LOSS OR DAMAGE. THE NEW YORK STATE COUNCIL ON THE ARTS ESTABLISHED BY ARTICLE THREE OF THIS CHAPTER IS AUTHORIZED TO ENTER INTO AGREEMENTS TO INDEMNIFY THOSE ITEMS ELIGIBLE UNDER SECTION 62.03 OF THIS ARTICLE AGAINST LOSS OR DAMAGE. SUCH INDEMNITY AGREEMENTS SHALL:

1. BE IN ACCORDANCE WITH THE PROVISIONS OF THIS TITLE; AND

2. BE ON SUCH TERMS AND CONDITIONS AS THE COUNCIL SHALL PRESCRIBE BY REGULATION, IN ORDER TO ACHIEVE THE PURPOSES OF THIS TITLE AND, CONSISTENT WITH SUCH PURPOSES, TO PROTECT THE FINANCIAL INTERESTS OF THE STATE.

S 62.03. ITEMS ELIGIBLE FOR INDEMNITY AGREEMENTS. WORKS OF ART; PRINTED OR PUBLISHED MATERIALS; OTHER ARTIFACTS OR OBJECTS; PHOTOGRAPHS, MOTION PICTURES, OR TAPES. THE COUNCIL MAY MAKE AN INDEMNITY AGREEMENT UNDER THIS TITLE

1. WITH RESPECT TO:

A. WORKS OF ART, INCLUDING TAPESTRIES, PAINTINGS, SCULPTURE, FOLK ART, GRAPHICS, AND CRAFT ARTS;

B. MANUSCRIPTS, RARE DOCUMENTS, BOOKS, AND OTHER PRINTED OR PUBLISHED MATERIALS;

C. OTHER ARTIFACTS OR OBJECTS; OR

D. PHOTOGRAPHS, MOTION PICTURES, OR AUDIO AND VIDEO TAPE; AND

2. WHICH ARE:

A. OF EDUCATIONAL, CULTURAL, HISTORICAL, OR SCIENTIFIC VALUE, AND

B. THE EXHIBITION OF WHICH IS CERTIFIED BY THE CHAIRPERSON OF THE COUNCIL ON THE ARTS OR HIS OR HER DESIGNEE AS BEING IN THE STATE'S INTEREST.

S 62.04. APPLICATION FOR INDEMNITY AGREEMENTS. 1. PARTIES. ANY EXHIBITOR DESIRING TO MAKE AN INDEMNITY AGREEMENT FOR ELIGIBLE ITEMS UNDER THIS TITLE SHALL MAKE APPLICATION THEREFOR IN ACCORDANCE WITH SUCH

PROCEDURES, IN SUCH FORM, AND IN SUCH MANNER AS THE COUNCIL SHALL, BY REGULATION, PRESCRIBE.

2. CONTENTS. AN APPLICATION UNDER THIS SECTION SHALL:

A. DESCRIBE EACH ITEM TO BE COVERED BY THE AGREEMENT (INCLUDING AN ESTIMATED VALUE OF SUCH ITEM);

B. SHOW EVIDENCE THAT THE ITEMS ARE ELIGIBLE UNDER SUBDIVISION ONE OF SECTION 62.03 OF THIS ARTICLE;

C. SET FORTH POLICIES, PROCEDURES, TECHNIQUES, AND METHODS WITH RESPECT TO PREPARATION FOR, AND CONDUCT OF, EXHIBITION OF THE ITEMS, AND ANY TRANSPORTATION RELATED TO SUCH ITEMS; AND

D. ANY SIGNED AND AUTHORIZED AGREEMENT FOR INDEMNITY HELD BETWEEN THE EXHIBITOR AND THE GOVERNMENT OF THE UNITED STATES.

3. APPROVAL. UPON RECEIPT OF AN APPLICATION UNDER THIS SECTION, THE COUNCIL SHALL, IF SUCH APPLICATION CONFORMS WITH THE REQUIREMENTS OF THIS TITLE, APPROVE THE APPLICATION AND MAKE AN INDEMNITY AGREEMENT WITH THE APPLICANT. UPON SUCH APPROVAL, THE AGREEMENT SHALL CONSTITUTE A CONTRACT BETWEEN THE COUNCIL AND THE APPLICANT PLEDGING THE FULL FAITH AND CREDIT OF NEW YORK STATE TO PAY ANY AMOUNT FOR WHICH THE COUNCIL BECOMES LIABLE UNDER SUCH AGREEMENT. THE COUNCIL, FOR SUCH PURPOSE, IS HEREBY AUTHORIZED TO PLEDGE THE FULL FAITH AND CREDIT OF NEW YORK STATE.

S 62.05. INDEMNITY LIMITS. 1. APPROVAL OF ESTIMATED VALUES. UPON RECEIPT OF AN APPLICATION MEETING THE REQUIREMENTS OF SECTION 62.04 OF THIS ARTICLE, THE COUNCIL SHALL REVIEW THE ESTIMATED VALUE OF THE ITEMS FOR WHICH COVERAGE BY AN INDEMNITY AGREEMENT IS SOUGHT. IF THE COUNCIL AGREES WITH SUCH ESTIMATED VALUE, FOR THE PURPOSES OF THIS TITLE, THE COUNCIL SHALL, AFTER APPROVAL OF THE APPLICATION IS PROVIDED IN SUBDIVISION THREE OF SECTION 62.04 OF THIS ARTICLE, MAKE AN INDEMNITY AGREEMENT.

2. MAXIMUM LIMITS OF ORIGINAL AND SUPPLEMENTAL COVERAGE. THE AGGREGATE OF LOSS OR DAMAGE COVERED BY ORIGINAL AND SUPPLEMENTAL INDEMNITY AGREEMENTS MADE UNDER THIS TITLE SHALL NOT EXCEED FIVE HUNDRED MILLION DOLLARS AT ANY ONE TIME.

3. LIMIT FOR ORIGINAL INDEMNITY AGREEMENT. NO ORIGINAL INDEMNITY AGREEMENT FOR A SINGLE EXHIBITION SHALL COVER LOSS OR DAMAGE IN EXCESS OF TEN MILLION DOLLARS, AND THE FOLLOWING DEDUCTIBLE LIMITS SHALL APPLY. IF THE ESTIMATED VALUE OF THE ITEMS COVERED BY AN ORIGINAL INDEMNITY AGREEMENT FOR A SINGLE EXHIBITION IS:

A. TWO MILLION DOLLARS OR LESS, THEN COVERAGE UNDER THIS TITLE SHALL EXTEND ONLY TO LOSS OR DAMAGE IN EXCESS OF THE FIRST THIRTY THOUSAND DOLLARS OF LOSS OR DAMAGE TO ITEMS COVERED; AND

B. MORE THAN TWO MILLION DOLLARS BUT LESS THAN OR EQUAL TO TEN MILLION DOLLARS THEN COVERAGE UNDER THIS TITLE SHALL EXTEND ONLY TO LOSS OR DAMAGE IN EXCESS OF THE FIRST SEVENTY-FIVE THOUSAND DOLLARS OF LOSS OR DAMAGE TO ITEMS COVERED.

4. PERCENTAGE OF THE AGGREGATE. THE TOTAL AMOUNT INDEMNIFIED BY THE STATE UNDER ALL ORIGINAL INDEMNITY AGREEMENTS SHALL NOT EVER EXCEED TWENTY-FIVE PERCENT OF THE MAXIMUM LIMITS OF COVERAGE PURSUANT TO SUBDIVISION TWO OF THIS SECTION.

5. LIMIT FOR SUPPLEMENTAL INDEMNITY AGREEMENT. NO SUPPLEMENTAL INDEMNITY AGREEMENT FOR A SINGLE EXHIBITION SHALL COVER LOSS OR DAMAGE IN EXCESS OF FIFTY MILLION DOLLARS, AND THE FOLLOWING DEDUCTIBLE LIMITS SHALL APPLY. IF THE ESTIMATED VALUE OF THE ITEMS COVERED BY AN ORIGINAL INDEMNITY AGREEMENT FOR A SINGLE EXHIBITION IS:

A. TWO MILLION DOLLARS OR LESS, THEN COVERAGE UNDER THIS TITLE SHALL EXTEND ONLY TO LOSS OR DAMAGE IN EXCESS OF THE FIRST THIRTY THOUSAND DOLLARS OF LOSS OR DAMAGE TO ITEMS COVERED; AND

B. MORE THAN TWO MILLION DOLLARS BUT LESS THAN OR EQUAL TO TEN MILLION DOLLARS THEN COVERAGE UNDER THIS TITLE SHALL EXTEND ONLY TO LOSS OR DAMAGE IN EXCESS OF THE FIRST SEVENTY-FIVE THOUSAND DOLLARS OF LOSS OR DAMAGE TO ITEMS COVERED; AND

C. MORE THAN TEN MILLION DOLLARS BUT LESS THAN OR EQUAL TO TWENTY MILLION DOLLARS THEN COVERAGE UNDER THIS TITLE SHALL EXTEND ONLY TO LOSS OR DAMAGE IN EXCESS OF THE FIRST ONE HUNDRED FIFTY THOUSAND DOLLARS OF LOSS OR DAMAGE TO ITEMS COVERED; AND

D. MORE THAN TWENTY MILLION DOLLARS BUT LESS THAN OR EQUAL TO THIRTY MILLION DOLLARS THEN COVERAGE UNDER THIS TITLE SHALL EXTEND ONLY TO LOSS OR DAMAGE IN EXCESS OF THE FIRST THREE HUNDRED THOUSAND DOLLARS OF LOSS OR DAMAGE TO ITEMS COVERED; AND

E. MORE THAN THIRTY MILLION DOLLARS BUT LESS THAN OR EQUAL TO FORTY MILLION DOLLARS THEN COVERAGE UNDER THIS TITLE SHALL EXTEND ONLY TO LOSS OR DAMAGE IN EXCESS OF THE FIRST FIVE HUNDRED THOUSAND DOLLARS OF LOSS OR DAMAGE TO ITEMS COVERED; AND

F. MORE THAN FORTY MILLION DOLLARS BUT LESS THAN OR EQUAL TO FIFTY MILLION DOLLARS THEN COVERAGE UNDER THIS TITLE SHALL EXTEND ONLY TO LOSS OR DAMAGE IN EXCESS OF THE FIRST SEVEN HUNDRED FIFTY THOUSAND DOLLARS OF LOSS OR DAMAGE TO ITEMS COVERED.

6. LIMITS ON STATE PAYMENTS. NO PAYMENTS FOR ANY CLAIM MADE PURSUANT TO A SUPPLEMENTAL INDEMNITY AGREEMENT SHALL BE GRANTED UNTIL AFTER APPLICABLE CLAIMS HAVE BEEN PAID UNDER THE FEDERAL INDEMNITY AGREEMENT HELD BETWEEN THE EXHIBITOR AND THE GOVERNMENT OF THE UNITED STATES.

7. MAXIMUM LIMITS OF COVERAGE FOR TERRORISM INDEMNITY AGREEMENTS. THE AGGREGATE OF LOSS OR DAMAGE COVERED BY TERRORISM INDEMNITY AGREEMENTS MADE UNDER THIS TITLE SHALL NOT EXCEED ONE HUNDRED MILLION DOLLARS AT ANY ONE TIME.

8. LIMIT FOR TERRORISM INDEMNITY AGREEMENT. NO TERRORISM INDEMNITY AGREEMENT FOR A SINGLE EXHIBITION SHALL COVER LOSS OR DAMAGE IN EXCESS OF TEN MILLION DOLLARS, AND THE FOLLOWING DEDUCTIBLE LIMITS SHALL APPLY. IF THE ESTIMATED VALUE OF THE ITEMS COVERED BY AN ORIGINAL INDEMNITY AGREEMENT FOR A SINGLE EXHIBITION IS:

A. TWO MILLION DOLLARS OR LESS, THEN COVERAGE UNDER THIS TITLE SHALL EXTEND ONLY TO LOSS OR DAMAGE IN EXCESS OF THE FIRST THIRTY THOUSAND DOLLARS OF LOSS OR DAMAGE TO ITEMS COVERED; AND

B. MORE THAN TWO MILLION DOLLARS BUT LESS THAN OR EQUAL TO TEN MILLION DOLLARS THEN COVERAGE UNDER THIS TITLE SHALL EXTEND ONLY TO LOSS OR DAMAGE IN EXCESS OF THE FIRST SEVENTY-FIVE THOUSAND DOLLARS OF LOSS OR DAMAGE TO ITEMS COVERED.

S 62.06. PREMIUMS. APPLICANTS APPROVED FOR COVERAGE SHALL REMIT PREMIUMS TO THE COUNCIL, WHICH SHALL DEPOSIT THEM INTO THE NEW YORK STATE ARTS AND ARTIFACTS INDEMNITY FUND CREATED BY SECTION NINETY-SIX-A OF THE STATE FINANCE LAW. THE PREMIUMS COLLECTED SHALL BE EQUAL TO ONE-HALF OF ONE PERCENT OF THE TOTAL COVERAGE SOUGHT, OR TWENTY-FIVE THOUSAND DOLLARS, WHICHEVER IS LESS.

S 62.07. CLAIMS FOR LOSSES. 1. REGULATIONS FOR PROMPT ADJUSTMENT. THE COUNCIL SHALL PRESCRIBE REGULATIONS PROVIDING FOR PROMPT ADJUSTMENT OF VALID CLAIMS FOR LOSSES WHICH ARE COVERED BY AN AGREEMENT MADE PURSUANT TO SECTION 62.05 OF THIS ARTICLE, INCLUDING PROVISION FOR ARBITRATION OF ISSUES RELATING TO THE DOLLAR VALUE OF DAMAGES INVOLVING LESS THAN TOTAL LOSS OR DESTRUCTION OF SUCH COVERED OBJECTS.

2. CERTIFICATION. IN THE CASE OF A CLAIM OF LOSS WITH RESPECT TO AN ITEM WHICH IS COVERED BY AN AGREEMENT MADE PURSUANT TO SECTION 62.05 OF THIS ARTICLE, THE COUNCIL SHALL CERTIFY THE VALIDITY OF THE CLAIM AND

THE AMOUNT OF THE LOSS TO THE SPEAKER OF THE ASSEMBLY AND THE MAJORITY LEADER OF THE SENATE.

S 62.08. AUTHORIZATION OF APPROPRIATIONS. THERE ARE HEREBY AUTHORIZED TO BE APPROPRIATED SUCH SUMS AS MAY BE NECESSARY:

1. TO ENABLE THE COUNCIL TO CARRY OUT ITS FUNCTIONS UNDER THIS TITLE, AND

2. TO PAY CLAIMS CERTIFIED PURSUANT TO SUBDIVISION TWO OF SECTION 62.07 OF THIS ARTICLE.

S 2. The state finance law is amended by adding a new section 96-a to read as follows:

S 96-A. NEW YORK STATE ARTS AND ARTIFACTS INDEMNITY FUND. 1. THERE IS HEREBY CREATED IN THE JOINT CUSTODY OF THE COMPTROLLER AND THE COMMISSIONER OF TAXATION AND FINANCE A FUND TO BE KNOWN AS THE "NEW YORK STATE ARTS AND ARTIFACTS INDEMNITY FUND".

2. THE MONIES OF THE FUND SHALL CONSIST OF ALL PREMIUMS COLLECTED BY THE COUNCIL ON THE ARTS PURSUANT TO SECTION 62.06 OF THE ARTS AND CULTURAL AFFAIRS LAW, PLUS ANY MONEYS APPROPRIATED TO THE FUND FROM THE LEGISLATURE FOR WHATEVER PURPOSE. NOTHING SHALL PREVENT ANY PERSON OR ENTITY FROM GIFTING OR BEQUEATHING ANY MONEY OR PROPERTY TO THE FUND.

3. TWENTY-FIVE PERCENT OF THE TOTAL FUND BALANCE AT THE END OF EACH FISCAL YEAR MAY BE USED BY THE COUNCIL FOR THE PURPOSES OF MARKETING AND PROMOTING ANY EXHIBITION INDEMNIFIED BY THE COUNCIL PURSUANT TO TITLE X OF THE ARTS AND CULTURAL AFFAIRS LAW. NOTHING SHALL PREVENT THE COUNCIL FROM GRANTING THE AVAILABLE FUNDS FOR PROMOTION TO INDEMNIFIED ORGANIZATIONS, OR TO ANY OTHER ENTITY DEEMED APPROPRIATE TO MARKET THE EXHIBITIONS OF THE INDEMNIFIED ITEMS.

4. MONEYS SHALL BE PAID OUT OF THE FUND ON THE AUDIT AND WARRANT OF THE STATE COMPTROLLER ON VOUCHERS CERTIFIED OR APPROVED BY THE COMMISSIONER OF TAXATION AND FINANCE OR HIS OR HER DESIGNEE IN THE MANNER PRESCRIBED BY LAW.

S 3. This act shall take effect on the first of April next succeeding the date on which it shall have become a law.