

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:

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

3 TITLE X
4 DOMESTIC INDEMNITY ACT
5 ARTICLE 62
6 DOMESTIC INDEMNITY ACT

7 SECTION 62.01. DEFINITIONS.
8 62.02. AGREEMENTS TO INDEMNIFY AGAINST LOSS OR DAMAGE.
9 62.03. ITEMS ELIGIBLE FOR INDEMNITY AGREEMENTS.
10 62.04. APPLICATION FOR INDEMNITY AGREEMENTS.
11 62.05. INDEMNITY LIMITS.
12 62.06. PREMIUMS.
13 62.07. CLAIMS FOR LOSSES.
14 62.08. AUTHORIZATION OF APPROPRIATIONS.
15 S 62.01. DEFINITIONS. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO
16 THE CONTRARY, FOR THE PURPOSES OF THIS ARTICLE THE FOLLOWING DEFINITIONS
17 SHALL APPLY:
18 1. "EXHIBITOR" SHALL MEAN A MUSEUM DOMICILED IN NEW YORK STATE WHICH
19 AS ITS PRIMARY MISSION DISPLAYS FOR PUBLIC VIEWING ANY ITEMS ELIGIBLE
20 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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1 2. "ON EXHIBITION" SHALL MEAN AN ORIGINAL OR SUPPLEMENTAL INDEMNITY
2 AGREEMENT MADE UNDER THIS TITLE SHALL COVER ELIGIBLE ITEMS WHILE ON
3 EXHIBITION IN NEW YORK STATE OR ELIGIBLE ITEMS HELD BY A NEW YORK STATE
4 DOMICILED INSTITUTION WHILE ON EXHIBITION ELSEWHERE WITHIN A STATE OR
5 TERRITORY OF THE UNITED STATES, WHEN PART OF AN EXCHANGE OF EXHIBITIONS.
6 A TERRORISM INDEMNITY AGREEMENT SHALL COVER ELIGIBLE ITEMS WHILE ON
7 EXHIBITION IN NEW YORK STATE OR ELIGIBLE ITEMS HELD BY A NEW YORK STATE
8 DOMICILED INSTITUTION WHILE ON EXHIBITION BOTH WITHIN NEW YORK STATE,
9 AND ANYWHERE OUTSIDE THE BORDERS OF THIS STATE. FOR PURPOSES OF THIS
10 TITLE, THE TERM "ON EXHIBITION" INCLUDES THAT PERIOD OF TIME BEGINNING
11 ON THE DATE THE ELIGIBLE ITEMS LEAVE THE PREMISES OF THE LENDER OR PLACE
12 DESIGNATED BY THE LENDER AND ENDING ON THE DATE SUCH ITEMS ARE RETURNED
13 TO THE PREMISES OF THE LENDER OR PLACE DESIGNATED BY THE LENDER, AND
14 SHALL INCLUDE ALL THAT TIME DURING WHICH SUCH ITEMS ARE BEING TRANS-
15 PORTED.

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

19 4. "SUPPLEMENTAL INDEMNITY AGREEMENT" SHALL MEAN AN AGREEMENT BETWEEN
20 AN EXHIBITOR AND THE STATE WHERE THE STATE IS PROVIDING INDEMNITY COVER-
21 AGE FOR ELIGIBLE ITEMS ON EXHIBITION, WHICH, ALREADY HAVE APPROVED
22 INDEMNITY AGREEMENTS UNDER THE UNITED STATES ARTS AND ARTIFACTS INDEM-
23 NITY PROGRAM ADMINISTERED BY THE NATIONAL ENDOWMENT FOR THE ARTS.

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

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

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

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

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

41 1. WITH RESPECT TO:

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

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

46 C. OTHER ARTIFACTS OR OBJECTS; OR

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

48 2. WHICH ARE:

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

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

53 S 62.04. APPLICATION FOR INDEMNITY AGREEMENTS. 1. PARTIES. ANY EXHIB-
54 ITOR DESIRING TO MAKE AN INDEMNITY AGREEMENT FOR ELIGIBLE ITEMS UNDER
55 THIS TITLE SHALL MAKE APPLICATION THEREFOR IN ACCORDANCE WITH SUCH

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

3 2. CONTENTS. AN APPLICATION UNDER THIS SECTION SHALL:

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

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

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

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

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

21 S 62.05. INDEMNITY LIMITS. 1. APPROVAL OF ESTIMATED VALUES. UPON
22 RECEIPT OF AN APPLICATION MEETING THE REQUIREMENTS OF SECTION 62.04 OF
23 THIS ARTICLE, THE COUNCIL SHALL REVIEW THE ESTIMATED VALUE OF THE ITEMS
24 FOR WHICH COVERAGE BY AN INDEMNITY AGREEMENT IS SOUGHT. IF THE COUNCIL
25 AGREES WITH SUCH ESTIMATED VALUE, FOR THE PURPOSES OF THIS TITLE, THE
26 COUNCIL SHALL, AFTER APPROVAL OF THE APPLICATION IS PROVIDED IN SUBDI-
27 VISION THREE OF SECTION 62.04 OF THIS ARTICLE, MAKE AN INDEMNITY AGREE-
28 MENT.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 2. TO PAY CLAIMS CERTIFIED PURSUANT TO SUBDIVISION TWO OF SECTION
8 62.07 OF THIS ARTICLE.

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

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

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

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

27 4. MONEYS SHALL BE PAID OUT OF THE FUND ON THE AUDIT AND WARRANT OF
28 THE STATE COMPTROLLER ON VOUCHERS CERTIFIED OR APPROVED BY THE COMMIS-
29 SIONER OF TAXATION AND FINANCE OR HIS OR HER DESIGNEE IN THE MANNER
30 PRESCRIBED BY LAW.

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