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

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I N S E N A T E

March 11, 2014

Introduced by Sen. LITTLE -- read twice and ordered printed, and when printed to be committed to the Committee on Cultural Affairs, Tourism, Parks and Recreation

AN ACT to amend the arts and cultural affairs law, in relation to opinions concerning authenticity, attribution and authorship of works of fine art

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 section 13.04 to read as follows:

S 13.04. OPINIONS AS TO THE AUTHENTICITY, ATTRIBUTION OR AUTHORSHIP OF WORKS OF FINE ART. 1. IN ANY CIVIL ACTION BROUGHT AGAINST AN AUTHENTICATOR THAT ARISES FROM OR RELATES TO THE AUTHENTICATOR'S OPINION OR INFORMATION CONCERNING A WORK OF FINE ART, THE CLAIMANT SHALL:

(A) SPECIFY WITH PARTICULARITY IN THE COMPLAINT FACTS SUFFICIENT TO SUPPORT EACH ELEMENT OF THE CLAIM OR CLAIMS ASSERTED; AND

(B) PROVE THE ELEMENTS OF SUCH CLAIM OR CLAIMS BY CLEAR AND CONVINCING EVIDENCE.

2. IN ANY ACTION DESCRIBED IN SUBDIVISION ONE OF THIS SECTION, THE AUTHENTICATOR SHALL BE ENTITLED TO RECOVER HIS, HER OR ITS REASONABLE ATTORNEYS' FEES, COSTS AND EXPENSES IF AND TO THE EXTENT THAT THE AUTHENTICATOR PREVAILS IN SUCH ACTION.

3. "AUTHENTICATOR" AS USED IN THIS SECTION SHALL MEAN, SUBJECT TO THE LIMITATIONS IN THE FINAL SENTENCE OF THIS PARAGRAPH, A PERSON OR ENTITY RECOGNIZED IN THE VISUAL ARTS COMMUNITY AS HAVING EXPERTISE REGARDING THE ARTIST OR WORK OF FINE ART WITH RESPECT TO WHOM SUCH PERSON OR ENTITY RENDERS AN OPINION IN GOOD FAITH AS TO THE AUTHENTICITY, ATTRIBUTION OR AUTHORSHIP OF A WORK OF FINE ART, OR A PERSON OR ENTITY RECOGNIZED IN THE VISUAL ARTS OR SCIENTIFIC COMMUNITY AS HAVING EXPERTISE IN UNCOVERING FACTS THAT SERVE AS A DIRECT BASIS, IN WHOLE OR IN PART, FOR AN OPINION AS TO THE AUTHENTICITY, ATTRIBUTION OR AUTHORSHIP OF A WORK OF FINE ART. "AUTHENTICATOR" SHALL INCLUDE, BUT NOT BE LIMITED TO, AUTHORS OF CATALOGUES RAISONNE OR OTHER SCHOLARLY TEXTS IN WHICH AN OPINION AS TO THE AUTHENTICITY, ATTRIBUTION OR AUTHORSHIP OF A WORK OF ART IS

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

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EXPRESSED OR IMPLIED. "AUTHENTICATOR" SHALL NOT INCLUDE A PERSON OR ENTITY THAT HAS A FINANCIAL INTEREST IN THE WORK OF FINE ART FOR WHICH SUCH OPINION IS RENDERED OR IN ANY TRANSACTION CONCERNING SUCH WORK OF FINE ART FOR WHICH THE OPINION IS RENDERED, OTHER THAN TO BE COMPENSATED FOR SERVICES SUCH PERSON OR ENTITY ENGAGED IN TO PROVIDE AN OPINION AS TO THE AUTHENTICITY, ATTRIBUTION OR AUTHORSHIP OF SUCH WORK OF FINE ART OR TO PROVIDE INFORMATION ON WHICH SUCH AN OPINION IS BASED IN WHOLE OR IN PART.

S 2. This act shall take effect on the sixtieth day after it shall have become a law and shall apply to all opinions as to the authenticity, attribution or authorship of a work of fine art provided to someone other than the authenticator after such effective date.