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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. Section 11.01 of the arts and cultural affairs law is amended by adding a new subdivision 23 to read as follows:

23. "AUTHENTICATOR" AS USED IN SECTION 15.11, 15.12 AND 15.15 OF THIS CHAPTER SHALL MEAN, SUBJECT TO THE LIMITATIONS IN THIS SUBDIVISION, A PERSON OR ENTITY RECOGNIZED IN THE VISUAL ARTS COMMUNITY AS HAVING EXPERTISE REGARDING THE ARTIST, WORK OF FINE ART, OR VISUAL ART MULTIPLE WITH RESPECT TO WHOM SUCH PERSON OR ENTITY RENDERS AN OPINION AS TO THE AUTHENTICITY, ATTRIBUTION OR AUTHORSHIP OF A WORK OF FINE ART OR VISUAL ART MULTIPLE, 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 OR VISUAL ART MULTIPLE. "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 FINE ART OR VISUAL ART MULTIPLE IS EXPRESSED OR IMPLIED. "AUTHENTICATOR" SHALL NOT INCLUDE A PERSON OR ENTITY THAT HAS A FINANCIAL INTEREST IN THE WORK OF FINE ART OR VISUAL ART MULTIPLE FOR WHICH SUCH OPINION IS RENDERED OR IN ANY TRANSACTION CONCERNING SUCH WORK OF FINE ART OR VISUAL ART MULTIPLE FOR WHICH THE OPINION IS RENDERED, OTHER THAN TO BE COMPENSATED FOR

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

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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 VISUAL ART MULTIPLE OR TO PROVIDE INFORMATION ON WHICH SUCH AN OPINION IS BASED IN WHOLE OR IN PART.

S 2. Section 15.11 of the arts and cultural affairs law, as added by chapter 849 of the laws of 1984, is amended to read as follows:

S 15.11. Express warranties. Information provided pursuant to the provisions of this article shall create an express warranty pursuant to section 13.05 of this title. When such information is not supplied because not applicable, this shall constitute an express warranty that such required information is not applicable. THIS SECTION SHALL NOT APPLY TO AN AUTHENTICATOR'S OPINION OR INFORMATION CONCERNING A VISUAL ART MULTIPLE OR WORK OF FINE ART, AS SET FORTH IN SUBDIVISION 23 OF SECTION 11.01 OF THIS CHAPTER, SECTION 15.12 OF THIS ARTICLE, AND SUBDIVISION 4 OF SECTION 15.15 OF THIS ARTICLE.

S 3. The arts and cultural affairs law is amended by adding a new section 15.12 to read as follows:

S 15.12. AUTHENTICATION OF WORKS OF FINE ART AND VISUAL ART MULTIPLES. IN ANY CIVIL ACTION BROUGHT AGAINST AN AUTHENTICATOR, AS DEFINED IN SUBDIVISION 23 OF SECTION 11.01 OF THIS CHAPTER, THAT ARISES FROM OR RELATES TO THE AUTHENICATOR'S OPINION OR INFORMATION CONCERNING A VISUAL ART MULTIPLE OR WORK OF FINE ART, THE CLAIMANT SHALL SPECIFY WITH PARTICULARITY IN THE COMPLAINT FACTS SUFFICIENT TO SUPPORT EACH ELEMENT OF THE CLAIM OR CLAIMS ASSERTED.

S 4. Subdivision 4 of section 15.15 of the arts and cultural affairs law, as added by chapter 849 of the laws of 1984, is amended to read as follows:

4. (A) In any action to enforce any provision of this article, OTHER THAN A CIVIL ACTION BROUGHT AGAINST AN AUTHENTICATOR, AS DEFINED IN SUBDIVISION 23 OF SECTION 11.01 OF THIS CHAPTER, THAT ARISES FROM OR RELATES TO THE AUTHENTICATOR'S OPINION OR INFORMATION CONCERNING A VISUAL ART MULTIPLE OR WORK OF FINE ART, the court may allow the prevailing purchaser the costs of the action together with reasonable attorneys' and expert witnesses' fees.

(B) IN ANY CIVIL ACTION BROUGHT AGAINST AN AUTHENTICATOR, AS DEFINED IN SUBDIVISION 23 OF SECTION 11.01 OF THIS CHAPTER, THAT ARISES FROM OR RELATES TO THE AUTHENTICATOR'S OPINION OR INFORMATION CONCERNING A VISUAL ART MULTIPLE OR WORK OF FINE ART, THE COURT MAY ALLOW THE PREVAILING AUTHENTICATOR THE COSTS OF THE ACTION TOGETHER WITH REASONABLE ATTORNEYS' AND EXPERT WITNESSES' FEES, PROVIDED, HOWEVER, THAT NO SUCH COSTS OR FEES SHALL BE MADE PURSUANT TO THIS SECTION EXCEPT UPON A WRITTEN FINDING OF GOOD AND JUST CAUSE, WHICH SHALL SPECIFY THE GROUNDS THEREOF.

(C) In the event, however, the court determines that an action to enforce ANY PROVISION OF THIS ARTICLE was brought in bad faith it may allow such expenses to the art merchant as it deems appropriate; PROVIDED, HOWEVER, THAT IN ANY CIVIL ACTION BROUGHT AGAINST AN AUTHENTICATOR, AS DEFINED IN SUBDIVISION 23 OF SECTION 11.01 OF THIS CHAPTER, THAT ARISES FROM OR RELATES TO THE AUTHENTICATOR'S OPINION OR INFORMATION CONCERNING A VISUAL ART MULTIPLE OR WORK OF FINE ART, NO SUCH EXPENSES SHALL BE ASSESSED OR ALLOWED AGAINST THE AUTHENTICATOR.

S 5. Subdivision 5 of section 15.15 of the arts and cultural affairs law, as added by chapter 849 of the laws of 1984, is amended to read as follows:

5. An action to enforce any liability under this article, BUT NOT INCLUDING CIVIL ACTIONS AGAINST AUTHENTICATORS, shall be brought within

the period prescribed for such actions by article two of the uniform commercial code.

S 6. 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 or visual art multiple provided to someone other than the authenticator after such effective date.