CHAPTER 11-C OF THE CONSOLIDATED LAWS
ARTS AND CULTURAL AFFAIRS LAW

TITLE A

SHORT TITLE

TITLE A

SHORT TITLE

ARTICLE 1

SHORT TITLE

§ 1.01. Short title. This chapter shall be known as the "arts and cultural affairs law" and may be cited as such.

TITLE B

PROMOTION OF THE ARTS

ARTICLE 3

COUNCIL ON THE ARTS

§ 3.01. Legislative findings and declaration of policy. It is hereby found that many of our citizens lack the opportunity to view, enjoy or participate in living theatrical performances, musical concerts, operas, dance and ballet recitals, art exhibits, examples of fine architecture, and the performing and fine arts generally. It is hereby further found that, with increasing leisure time, the practice and enjoyment of the arts are of increasing importance and that the general welfare of the people of the state will be promoted by giving further recognition to the arts as a vital aspect of our culture and heritage and as a valued means of expanding the scope of our educational programs.

It is hereby declared to be the policy of the state to join with private patrons and with institutions and professional organizations concerned with the arts to insure that the role of the arts in the life of our communities will continue to grow and will play an ever more significant part in the welfare and educational experience of our citizens and in maintaining the paramount position of this state in the nation and in the world as a cultural center.

It is further declared that all activities undertaken by the state in carrying out this policy shall be directed toward encouraging and assisting rather than in any ways limiting the freedom of artistic expression that is essential for the well-being of the arts.

§ 3.03. Council on the arts. 1. (a) The council on the arts in the executive department is hereby continued. The twenty-one members shall be, broadly representative of all fields of the performing and fine arts, to be appointed by the governor, with the advice and consent of the senate, from among private citizens who are widely known for their professional competence and experience in connection with the performing and fine arts; provided, however, that the council shall have at least one member from each of the ten regions of the state, as such regions are defined by the empire state development corporation. In making such appointments, due consideration shall be given to the recommendations made by representative civic, educational and professional associations and groups, concerned with or engaged in the production or presentation of the performing and fine arts generally.

(b) No amendments made to this section shall require any council member appointed prior to the effective date of such amendments to vacate their seat prior to the natural end of their term.

(c) The council on the arts shall not be out of compliance with this section upon vacancy, and shall retain its full powers enumerated in section 3.05 of this article, provided that such vacancy is filled within a reasonable time and the appointment made for such new vacancy shall move the composition of the council closer to the requirement that each of the ten regions of the state as defined by the empire state development corporation be represented by at least one member of the council to the extent practicable.

2. The term of office of each member of the council shall be five years. Vacancies in the council occurring otherwise than by expiration of term, shall be filled for the unexpired term in the same manner as original appointments. The governor shall designate a chairperson and two vice-chairpersons from the members of the council, to serve as such at the pleasure of the governor. The chairperson shall be the chief executive officer of the council.

3. The chairperson shall receive compensation fixed by the governor and shall be reimbursed for all expenses actually and necessarily incurred by him in the performance of his duties hereunder, within the amount made available by appropriation therefor. The other members of the council shall receive no compensation for their services, but shall be reimbursed for all expenses actually and necessarily incurred by them in the performance of their duties hereunder within the amount made

available by appropriation therefor.

4. The chairperson may appoint such officers, experts and other employees as he may deem necessary, prescribe their duties, fix their compensation and provide for reimbursement of their expenses within amounts available therefor by appropriation.

§ 3.05. General powers and duties of council. The council shall have the following powers and duties:

1. To stimulate and encourage throughout the state the study and presentation of the performing and fine arts and public interest and participation therein;

2. To make such surveys as may be deemed advisable of public and private institutions engaged within the state in artistic and cultural activities, including but not limited to, music, theatre, dance, painting, sculpture, architecture, and allied arts and crafts, and to make recommendations concerning appropriate methods to encourage participation in and appreciation of the arts to meet the legitimate needs and aspirations of persons in all parts of the state;

3. To take such steps as may be necessary and appropriate to encourage public interest in the cultural heritage of our state and to expand the state's cultural resources;

4. To hold public or private hearings;

5. To enter into contracts, within the amount available by appropriation therefor, with individuals, organizations and institutions for services furthering the educational objectives of the council's programs;

6. To enter into contracts, within the amount available by appropriation therefor, with local and regional associations for cooperative endeavors furthering the educational objectives of the

council's programs;

7. To accept gifts, contributions and bequests of unrestricted funds from individuals, foundations, corporations and other organizations or institutions for the purpose of furthering the educational objectives of the council's programs;

8. To make and sign any agreements and to do and to perform any acts that may be necessary, desirable or proper to carry out the purposes of this chapter;

9. To promote tourism by supporting arts and cultural projects which would stimulate tourism and improve the state's attractions for tourists.

10. To administer the New York state musical instrument revolving fund in accordance with the provisions of section ninety-seven-v of the state finance law.

11. To promote regions of cultural significance by providing cultural institutions within such regions grants, technical assistance, or other assistance authorized by this section as the council deems appropriate, including, but not limited to:

(a) East Harlem, also known as "El Barrio", this region shall be bounded by East 96th Street on the South, 5th Avenue on the West, East 125th Street on the North and the East River on the East; and

(b) the Harlem Renaissance Cultural District, this region shall be bounded by 110th Street on the South, the Hudson River on the West, 155th Street on the North and the 5th Avenue on the East.

The council may designate additional regions of cultural significance at its discretion but such regions shall be compact, contiguous, and have an identifiable cultural heritage which unites the region.

§ 3.07. State financial assistance for improvement, expansion or rehabilitation of existing buildings. 1. Any other provision of any other law to the contrary notwithstanding, state financial assistance may be provided for up to fifty percent of the approved costs (excluding feasibility studies, plans or similar activities) of eligible projects for the rehabilitation of existing buildings, including leasehold improvements, by an eligible nonprofit cultural organization, as provided herein. Such financial assistance may be in the form of grants and/or loans.

2. A nonprofit cultural organization may submit an application for state financial assistance for eligible projects as provided herein. The council, after review of the programmatic and fiscal needs and resources of the project and the organization, shall make a determination, subject to the restrictions, limitations, responsibilities and requirements of this section, as to the amount of state financial assistance in the form of a grant and/or state financial assistance in the form of a loan, or any combination thereof, that the organization may receive, provided, however, that subject to the requirements established herein:

(a) Any financial assistance in the form of a grant may be provided for any amount from funds appropriated specifically therefor up to and including the amount of fifty thousand dollars.

(b) Any financial assistance in the form of a loan may be provided from the arts capital revolving fund established pursuant to section ninety-seven-z of the state finance law for any amount up to and including the amount of one hundred thousand dollars, provided that interest in any such loan shall not exceed a maximum of ten or a minimum of three percent per annum.

(c) Any combined financial assistance in the form of a grant and a loan may be provided for an amount up to and including the amount of one hundred fifty thousand dollars and may include any amount of state financial assistance in the form of a grant and any amount of state financial assistance in the form of a loan, as shall be determined by the council subject to the provisions of paragraphs (a) and (b) of this subdivision and the requirements, duties and responsibilities imposed by this section.

(d) Nothing contained herein shall be deemed to require approval of a total of fifty thousand dollars in state financial assistance in the form of a grant, or approval of a total of one hundred thousand dollars in state financial assistance in the form of a loan, or to prevent the council from approving a loan or any combination of a grant and loan in any amount, subject only to the limitation on such financial assistance imposed by paragraphs (a) and (b) of this subdivision, and the council's determination of the programmatic and fiscal needs and resources of the project and the organization, and other requirements of this section, irrespective of the amount of state financial assistance in the form of a grant and/or state financial assistance in the form of a loan requested or suggested by the applicant.

(e) The council may contract with outside entities to effect the purposes of this paragraph and to disburse loans and receive payments on such loans.

3. (a) For the purposes of this section, organizations or eligible organizations shall mean nonprofit cultural organizations which received funding from the council in each of the three previous state fiscal years and which own a condominium or a building or a part of a building or which own shares representing a cooperative interest in a building or which have entered into a lease-purchase agreement to own a building or which lease a building or space in it, and which operate a program therein, provided that evidence of such ownership, lease or lease-purchase agreement shall be provided by the eligible organization in such manner and form as is satisfactory to the council. Nothing contained herein shall prevent an eligible organization from receiving financial assistance under this section which has satisfactory occupancy agreements in a building which is owned by a local government.

(b) Eligible organizations shall not include:

(1) public school districts, their components, and affiliate organizations, state agencies or departments, or, except as provided hereunder, public universities, their components and affiliate organizations; or

(2) the provisions of subparagraph one of this paragraph to the contrary notwithstanding, a public university, its components or affiliate organizations may be funded if it serves and is located in a rural or minority community, as such shall be determined by the council pursuant to subdivisions seven and fifteen of this section and meets all other applicable requirements for funding under this section, provided

that applications from such entities for state financial assistance shall not be considered by the council prior to December thirty-first in any state fiscal year.

(c) Eligible projects shall include:

(1) improvement, expansion or rehabilitation of a building for arts purposes;

(2) improvement, expansion or rehabilitation of existing buildings to increase or assure public access;

(3) improvement or rehabilitation of existing buildings for energy conservation purposes or for such other purposes as will serve to reduce the organization's costs of operation in such building;

(4) improvement or rehabilitation of existing buildings to address known health and safety deficiencies;

(5) improvement, expansion or rehabilitation of existing buildings to provide for handicapped accessibility;

(6) such other projects of substantive character as are in keeping with the spirit and intent of this section.

(d) No project shall be considered eligible if it is approved for financing from any other state assistance program.

4. Each application for financial assistance shall be submitted to the council by the governing body of the eligible organization. Each application shall:

(a) demonstrate that adequate operating support and resources will be available at the completion of the project to provide an improved or increased level of service;

(b) contain verification in such form as may be acceptable to the council that the remaining cost of the project, exclusive of state financial assistance, has been or will be obtained;

(c) demonstrate that the project will be completed promptly and in accordance with the application;

(d) either demonstrate that the operation of the organization will be made more economical or efficient as a consequence of approval or demonstrate that health and safety concerns will be repaired or access to handicapped provided;

(e) demonstrate that the project will be conducted in accordance with applicable federal, state and local laws and regulations;

(f) demonstrate that, where appropriate, competitive bidding procedures will be followed as required by law, or provide such other evidence of competition as shall be satisfactory to the council;

(g) provide an assessment of the useful life of the project, and such recommendation, analysis of needs or feasibility studies as may be required by the council provided, however, that for the purposes of this section the term "useful life" shall mean such method of calculating the worth of a project and the amount of annual depreciation necessary for effecting contracts under this section as the council shall require after consultation with the state comptroller and upon approval by the state division of the budget;

(h) demonstrate that contracts for the project will be executed in accordance with subdivision twelve of this section;

(i) provide such other information as may be required by the council including such guarantees as are further required by subdivisions eight and nine of this section.

5. Each organization may submit no more than one application annually. Any other provision of this section to the contrary notwithstanding, no organization shall receive state financial assistance under this section funding more than three years in any consecutive five-year period.

6. (a) Each application for state financial assistance shall be reviewed by the council for its merits and for the programmatic and fiscal needs and resources of the proposed project and the applicant organization. Any application for a project whose total cost equals or exceeds the sum of one million dollars which is deemed preliminary acceptable shall be submitted by the council to the dormitory authority of the state of New York for technical review. Provided, however, that nothing contained herein shall prevent the council from submitting any application for financial assistance, irrespective of the amount of financial assistance requested or the total project cost, to the authority for technical review and recommendations pursuant to the provisions of this section.

(b) Within thirty days of the receipt of an application from the council, the authority shall provide the council with a written evaluation of the project which shall include the following factors:

(1) feasibility of the proposed project from an engineering standpoint;

(2) total project cost estimate;

(3) proposed project schedule;

(4) useful life of the proposed project as defined pursuant to paragraph (b) of subdivision four of this section;

(5) such other factors which the authority shall determine are applicable to its evaluation of the project.

(c) If within the thirty-day period the authority finds more information is necessary, the authority shall so notify the council and shall have a maximum of ninety days to complete its review.

(d) Concurrent with its approval of any application, the authority shall include its recommendation as to the manner in which the design and construction of the project should be managed.

(e) In any case where the authority and the council and the organization have agreed that the authority will award contracts for the design and construction of the project, the authority shall prepare or cause to be prepared a feasibility design and performance plan which shall set forth the terms and conditions associated with the construction management process. Such plan shall contain provisions relating to the relative responsibilities of the authority, appropriate performance and surety bonds, remedies against architects, contractors and sureties deemed to be in default in the performance of their obligations, and, generally, the management of the construction process in a professional manner in accordance with prevailing construction industry standards.

(f) Should the authority fail to provide the council with an approval, disapproval or request for additional information within thirty days of receipt of the original application or within ninety days as may be appropriate, the application shall be submitted to the council for its final approval or disapproval.

(g) If approved by the authority, the application shall be returned to the council, which may provide final approval for state financial assistance.

(h) Subject to approval by the director of the division of the budget, the council shall enter into an agreement to insure that the authority shall be reimbursed for reasonable expenses incurred in fulfilling its responsibilities under this section and shall authorize payment to the authority out of monies earned on interest in the arts capital revolving fund established pursuant to section ninety-seven-z of the state finance law or from any other funds allocated by it to fulfill the purposes of this section, provided, however, that in no event shall the council authorize payment under this paragraph an amount greater than the sum of fifty thousand dollars in any state fiscal year.

7. In approving any application, the council shall consider:

(a) the condition of the existing building;

(b) the recommendation and analysis of need as provided in the feasibility study or other documentation required by the council;

(c) the available resources for the project;

(d) the nature of the activities proposed to take place at the site which is the subject of the application;

(e) such other criteria as the council may deem appropriate or necessary to the approval of any application, including the fiscal resources of the applicant, which shall be determined after review of any one of the prior year's report of the following: a financial statement prepared by an independent certified public accountant; an annual statement of income and expenses; a federal tax return with all itemizations and breakdowns; or a long form report from the office of charities registration; and

(f) where appropriate and in keeping with the provisions of subdivision fifteen of this section, the needs of rural and minority communities.

8. Any other provision of law or of this section to the contrary notwithstanding, state financial assistance shall not be provided pursuant to this section until the council has (a) considered the useful life of the eligible project as such term is defined herein; (b) determined the grant, loan or combined amount of state financial assistance to be provided; and (c) executed an agreement to provide such assistance. Such agreement shall be executed by the council and the organization or, in the case of a leasehold or lease-purchase agreement, with the eligible nonprofit cultural organization and, where appropriate, the owner of the property for which the eligible project

has been proposed. Any such agreement shall provide for the creation of a lien or other security interest or such other guarantee as shall be satisfactory to the council to assure repayment of financial assistance provided under this section. Such agreement shall assure that the length of a loan shall not exceed the useful life of the project and shall include, in addition to such other provisions as the council may require, the following:

(i) the amount of financial assistance, the terms and conditions upon which it is provided, the useful life of the eligible project and the method of depreciating the eligible project for purposes of the repayment provisions of the agreement;

(ii) a requirement that the organization provide the council with such prior notice as the council may require of a sale or other disposition of the subject property or of a termination of the lease prior to the expiration of such useful life or the expiration of the term of any loan made hereunder;

(iii) a requirement that, in the event of such sale or disposition of the property or termination of the lease prior to the expiration of the useful life or the expiration of the term of any loan made hereunder, the owner of the subject property or such other guarantor shall repay to the council an amount equal to that portion of the approved costs of the project financed by financial assistance provided under this section, less accumulated depreciation, as of the date of such sale, disposition or termination, or, in the case of a loan or a combination of a grant and loan, repay an amount equal to the unpaid balance of the loan;

(iv) a requirement that, upon a finding by the council that a project has not been completed, or has not been completed in accordance with the terms of the agreement, the full amount of the financial assistance provided in the form of a grant, or the outstanding balance of financial assistance provided in the form of a loan shall be repaid to the council by the guarantor, provided that upon a showing of good cause by the organization the council shall grant an extension of up to ninety days from the date of such finding to allow the organization to complete the project in accordance with the terms of the agreement, and further provided that the council shall provide no more than two such extensions from the date of such finding to allow the organization to complete the project in accordance with the terms of the agreement.

9. In any case in which state financial assistance is provided in the form of a loan or as a combination of a grant and loan, the following shall additionally be included in the agreement:

(i) a requirement that the organization shall obtain, in addition to such other security as may be required by the council or by other provisions of law, an undertaking or surety bond from any person or entity which has contracted to perform work on an approved project to assure the faithful performance of such project and/or a labor and/or material bond as may be appropriate; and

(ii) a requirement that the authority shall provide such construction management services as have been specified and agreed to pursuant to paragraphs (d) and (e) of subdivision six of this section.

10. Any lien, security interest or guarantee established created under the provisions of subdivision eight or nine of this section shall be in addition to any other rights or obligations of the council under the provisions of the lien law or any other law.

11. The council shall cause to be filed and to be recorded in the office of the county clerk in the county where the subject property is situated any lien or other security interest as may be required to assure repayment of financial assistance in accordance with the provisions of this section. The department of law shall provide such assistance as the council may require to create and perfect any such liens or other security interests.

12. (a) All contracts for design, construction, services and materials pursuant to this section of whatever nature and all documents soliciting bids or proposals therefor shall contain or make reference to the following provisions:

(i) That the contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability, or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group persons and women are afforded equal opportunity without discrimination. Such programs shall include, but not be limited to, recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, rates of pay or other forms of compensation, and selection for training and retraining, including apprenticeship and on-the-job training;

(ii) That the contractor shall request any employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding and which is involved in the performance of the contract to furnish a written statement that it will not discriminate because of race, creed, color, national origin, sex, age, disability or marital status and it will cooperate in the implementation of the contractor's obligations hereunder;

(iii) That the contractor will state, in any solicitations or advertisements for employees placed by or on behalf of the contractor in the performance of the contract, that all qualified applicants will be afforded equal employment opportunity without discrimination because of race, creed, color, national origin, sex, age, disability or marital status;

(iv) That the contractor will include the provisions of subparagraphs (i) through (iii) of this paragraph in every subcontract or purchase order in such a manner that such provisions will be binding upon each subcontractor or vendor as to its work in connection with the contract with the agency.

(b) The council shall establish appropriate measures, procedures and guidelines to ensure that contractors and subcontractors undertake meaningful programs to employ and promote qualified minority group members and women. Such procedures may require after notice in a bid solicitation, the submission of a minority and women workforce utilization program prior to the award of any contract, or at any time thereafter, and may require the submission of compliance reports relating to the operation and implementation of any workforce utilization program adopted hereunder. The council may take appropriate action, including the impositions of sanctions for non-compliance to effectuate the provisions of this subdivision and the monitoring of compliance with this subdivision.

(c) (i) In the performance of projects pursuant to this section, minority and women-owned business enterprises shall be given the opportunity for meaningful participation. For purposes hereof, minority business enterprise shall mean any business enterprise which is at least fifty-one per centum owned by, or in the case of a publicly owned business, at least fifty-one per centum of the stock or other voting interest is owned by citizens or permanent resident aliens who are Black, Hispanic, Asian, American Indian, Pacific Islander, or Alaskan native, and such ownership interest is real, substantial and continuing and has the authority to independently control the day to day business decisions of the entity for at least one year; and women-owned business enterprise shall mean any business enterprise which is at least fifty-one per centum owned by, or in the case of a publicly owned business, at least fifty-one per centum of the stock to other voting interests of which is owned by citizens or permanent resident aliens who are women, and such ownership interest is real, substantial and continuing and has the authority to independently control the day to day business decisions of the entity for at least one year.

The provisions of this subdivision shall not be construed to limit the ability of any minority business enterprise to bid on any contract.

(ii) In order to implement the requirements and objectives of this section, the council shall request, as appropriate, the assistance of other state agencies to monitor the contractors' compliance with provisions hereof, provide assistance in obtaining competing qualified minority and women-owned business enterprises to perform contracts proposed to be awarded, and take other appropriate measures to improve the access of minority and women-owned business enterprises to these contracts.

13. In approving applications pursuant to this section, the council shall seek to insure that:

(a) sixty percent of the funds appropriated pursuant to this section and made available for grants, and sixty percent of the funds made available for loans shall be made available in such a manner as to insure that the ratio of the amount received within each county to the whole of the financial assistance made available pursuant to this paragraph is no greater than the ratio of the population of such county to the population of the state, provided;

(b) notwithstanding the provisions of paragraph (a) of this subdivision the council shall make such additional allocations for rural and minority communities as to insure that the needs of cultural development are met; and

(c) any funds made available pursuant to paragraph (a) or (b) of this subdivision which, by December thirty-first of the year in which this section shall have become a law, and October thirty-first of each year thereafter are declined by or which cannot be used by such organizations within such counties, and/or such communities, as such shall be determined by the council, shall be made available to other eligible nonprofit cultural organizations for eligible projects.

14. Any other provision of this section or of any other law to the contrary notwithstanding, the council shall provide a reasonable amount not exceeding seven and one-half percent of the funds appropriated pursuant to this section to organizations located in rural or minority communities, as such shall be determined by the council, to obtain technical and/or financial assistance necessary to bring a project to fruition, provided, however that this subdivision shall only be effective until March thirty-first, nineteen hundred eighty-nine.

15. The council shall establish a written policy recognizing the importance of and making provision to further cultural development in rural and minority communities, as such shall be determined by the council. Copies of the council policy concerning minority and rural cultural development shall be provided to the senate finance and the assembly ways and means committees.

16. To insure effective evaluation of applications made to it for financial assistance under this section at least three or one-fourth whichever is less of the persons designated by the chairman to provide a review of such application shall be licensed professional engineers. Such engineers shall be chosen for their expertise in the disciplines critical to the design process including but not limited to structural, mechanical and electrical and acoustical. The recommendations made by such engineers concerning each application shall be considered specifically and apart from the reviews of any other persons designated

to provide a review of such applications, and, any other provision of any other law to the contrary notwithstanding, such engineers may be designated to conduct audits or may be retained as consultants by the council. Nothing contained herein shall prevent the council from meeting the requirements of this subdivision by retaining an engineering firm as a consultant. Nothing contained in this subdivision shall be deemed to affect quorum requirements of any review group or panel established by the chairman to review such applications, or to require the presence of all of such engineers at each such meeting of each such review group or panel. The council shall establish appropriate quorum requirements for this panel or review group.

17. In the event an eligible organization fails to make a payment on a loan or fails to make any other payment required under the provisions of this section, the council shall inform the comptroller of such failure and of the amount overdue, which amount the comptroller may recover from any payments due from the state to the eligible organization, including local assistance payments.

18. The council shall adopt guidelines within sixty days of the effective date of this section, and shall promulgate rules and regulations not later than September first, nineteen hundred eighty-eight as are necessary to carry out the purposes and provisions of this section. In addition to any other requirements set forth by this section, the council shall, in establishing such guidelines, rules and regulations, delimit the application process, provide for an appeals procedure, establish the written policy required by subdivision fifteen of this section and establish procedures for the recoupment of financial assistance provided in the event that a project is not completed or not completed as proposed by the applicant organization. Copies of such rules and regulations shall be provided at least sixty days prior to the time they shall be effective to the senate finance committee and the assembly ways and means committee.

19. The council shall report to the governor, the temporary president of the senate, the speaker of the assembly, the chairs of the senate finance committee and assembly ways and means committee not later than

January fifteenth of each year concerning the amounts appropriated and expended pursuant to this section, the number of applications received, the total amount of financial assistance requested, the total number of applications funded, the amount of funding provided, and such other information as the chairman shall deem appropriate, including any recommendations for program improvement, recommendations for increasing the total amount of funding from state and nonstate sources available to increase total funds for projects available to the arts and cultural community of this state, in particular for rural and minority communities, and identification of and proposals for removing barriers or limits faced by communities in accessing the program or in maximizing use of funds provided hereunder.

§ 3.09. Assistance of other agencies. To effectuate the purposes of this article, the council on the arts may request from any department, board, bureau, commission or other agency of the state, and the same are authorized to provide, such assistance, services and data as will enable the council properly to carry out its powers and duties hereunder.

§ 3.11. Grants by council; consideration to certain applicants. In issuing grants to applicants for council funds in the area of the performing arts the council may give consideration to the applicant's demonstration of an ability to enhance the state's capacity to attract tourists as evidenced by showing that significant numbers of persons in such audiences are or will be attracted to the applicant's geographical area by reason of such applicant's program and evidence of advertising and publicity designed and planned in such a manner as to reach potential audiences from outside the applicant's geographical area.

§ 3.13. Participation in programs to promote progress and scholarship in the humanities and the arts. 1. As used in this section, the following terms shall mean and include:

a. "Municipal corporation". A county, city, town, village, or school district of the state, or a board of higher education in a city having a population of one million or more.

b. "National foundation act". The national foundation on the arts and humanities act of nineteen hundred sixty-five and any federal laws amendatory or supplemental thereto heretofore or hereafter enacted.

2. Any municipal corporation shall have power, either individually or jointly with one or more other municipal corporations, to apply for, accept, and expend funds made available by the federal government pursuant to the provisions of the national foundation act in order to administer, conduct or participate with the federal government in a program which has as its purpose the promotion of progress and scholarship in the humanities and the arts. Any such municipal corporation is authorized to appropriate and expend such sums as are required to administer, conduct, or participate in any such program and may perform any and all acts necessary to effectuate the purposes of any such program.

3. Any municipal corporation, either individually or jointly with one or more other municipal corporations, may enter into agreements with private, non-profit agencies which are authorized to apply for and accept funds made available by the federal government pursuant to the provisions of the national foundation act. Such agreements may provide that funds, services, or facilities will be made available by any such municipal corporation or municipal corporations to such private, non-profit agency upon such terms and conditions as may be prescribed by such municipal corporation or municipal corporations, in order to defray that portion of the cost of any program administered by any such private, non-profit agency which is not paid for by funds made available by the federal government. Such private, non-profit agency shall file annually with each such municipal corporation with which it has entered into such an agreement, or at such more frequent periods as may be required by such municipality, a financial report with respect to such program or programs and shall make available for inspection or audit by each such municipal corporation, its books, records and other data.

4. No funds, services, or facilities shall be made available by a municipal corporation to a private, non-profit agency pursuant to the provisions of subdivision three of this section unless such agency has obtained approval of its application for a federal grant-in-aid as required by the provisions of the national foundation act, and its program is designed to promote progress and scholarship in the humanities and the arts within the municipal corporation or municipal corporations with which it has entered into such an agreement.

§ 3.19. Prohibition. 1. (a) The council on the arts shall be prohibited from awarding grants to an organization unless such organization is incorporated as a nonprofit organization either in the state or, if an organization is incorporated elsewhere, such organization must be registered to do business in the state through the department of state and must have its principal place of business located within the state.

(b) Any organization applying for grant funding shall provide to the council on the arts documentation demonstrating compliance with this provision. Any applicant which fails to provide such documentation shall be deemed ineligible to receive grant funding under this article. Such documentation shall be considered valid for a period of two years from the date it was provided or until the organization undertakes a change in status, whichever occurs sooner.

(c) Any organization that is incorporated elsewhere but registered to do business in the state, when applying for grant funding, shall certify to the council on the arts as part of its grant application that its principal place of business is located within the state. Any applicant which fails to provide such certification shall be deemed ineligible to receive grant funding under this article.

(d) Any applicant which fails to demonstrate that grant funds are to be used toward programs in the state shall be deemed ineligible to receive grant funding under this article. Any organization, when applying for grant funding, shall provide in its grant application materials documentation demonstrating compliance with this provision.

ARTICLE 4

EMPIRE STATE PLAZA ART COMMISSION

§ 4.01. Legislative findings and declaration of policy. The legislature hereby finds and declares that the Governor Nelson A. Rockefeller empire state plaza is a unique architectural entity and is intensively used by the public for recreation, for conventions of business and governmental groups and for participation in exhibits and exhibitions of the visual and performing arts.

It is hereby declared a policy of the state that there be created in the executive department the empire state plaza art commission, with a legislative mandate regarding the works of art of great value to the people of the state of New York which are located in the empire state plaza.

§ 4.03. Definitions. Except as otherwise provided herein and unless the context shall otherwise require, the following terms as used in this article shall have the following meanings:

1. "Commission" shall mean the empire state plaza art commission created by this article.

2. "Empire state plaza" shall mean the Governor Nelson A. Rockefeller empire state plaza, excluding the cultural education center, the legislative office building and any other offices and facilities of the legislature in said plaza.

3. "State agency" shall mean any state board, body, bureau,

commission, council, department, public authority, public corporation, division, office, or other governmental entity performing a governmental or proprietary function for the state, but shall not include the legislature.

§ 4.05. Empire state plaza art commission; creation. 1. The empire state plaza art commission is hereby created in the executive department.

2. The main office of the commission shall be located in the empire state plaza in space designated therein by the commissioner of general services.

3. The commission shall consist of twenty-five members. Twenty-one of such members shall be appointed by the governor by and with the advice and consent of the senate, four of whom shall be so appointed on recommendation of the temporary president of the senate, four on recommendation of the speaker of the assembly, two on recommendation of the minority leader of the senate and two on recommendation of the minority leader of the assembly. The commissioner of education, the commissioner of general services, the commissioner of parks, recreation and historic preservation and the chairman of the state council on the arts shall serve as ex officio members and shall have the same rights as other members.

4. The governor shall designate one of the members to serve as chairman of the commission, by and with the advice and consent of the senate.

5. The term of each member appointed by the governor shall be for three years provided, however, that of the members first appointed (a) the persons appointed on recommendation of the temporary president of the senate and the speaker of the assembly shall be appointed for terms ending December thirty-first, nineteen hundred eighty-six, provided, however, that the persons first so appointed on or after December thirty-first, nineteen hundred eighty-six shall be appointed for terms

ending December thirty-first, nineteen hundred eighty-nine; (b) the persons appointed on recommendation of the minority leader of the senate and the minority leader of the assembly shall be appointed for terms ending December thirty-first, nineteen hundred eighty-five, provided, however, that the persons first so appointed on or after December thirty-first, nineteen hundred eighty-six shall be appointed for terms ending December thirty-first, nineteen hundred eighty-eight; and (c) the other nine persons appointed by the governor shall be appointed for terms ending December thirty-first, nineteen hundred eighty-four, provided, however, that the persons so appointed on or after December thirty-first, nineteen hundred eighty-six shall be appointed for terms ending December thirty-first, nineteen hundred eighty-seven. Vacancies shall be filled for the unexpired terms in the same manner as the original appointment. The ex officio members shall serve only during their tenures as commissioner or chairman.

6. Members shall receive no compensation for their services but shall be allowed their reasonable expenses actually and necessarily incurred in the performance of their duties. No member shall be disqualified from holding any other public office or employment by reason of such person's appointment or service as a member notwithstanding the provisions of any other law to the contrary.

7. The commission shall conduct at least four regular meetings a year at such times and places as may be fixed by it.

8. Thirteen members shall constitute a quorum for the transaction of business and, unless a greater number is required by the by-laws, the commission shall exercise its powers and duties by a vote of the majority of the total members of the commission then serving.

9. The commission shall adopt by-laws governing the calling and conduct of its meetings and all other matters relating to its organization and internal operations.

§ 4.07. Powers and duties of commission. The commission shall have the following responsibilities, powers and duties:

1. To make recommendations to state agencies regarding the custody, display, conservation, preservation and maintenance of works of art in the empire state plaza under the jurisdiction of such agencies;

2. To appraise and catalogue works of art in the empire state plaza;

3. To advise and assist state agencies in the preparation and distribution of publications by such agencies;

4. To make recommendations to the governor, the legislature and the commissioner of general services regarding the purchase of works of art for display at the empire state plaza;

5. To solicit and acquire by gift, grant or loan such works of art for display at the empire state plaza as it deems to be in the best interests of the people of the state;

6. To enter into such contracts as may be necessary or appropriate for the performance of the functions vested in it by this article;

7. To render such assistance as the legislature or either house thereof may request with respect to the legislative office building and other offices and facilities of the legislature in the empire state plaza;

8. To render such assistance as the commissioner of education may request with respect to the cultural education center;

9. To make an annual report to the governor and the legislature on or before December fifteenth which shall contain a complete inventory of the works of art in the empire state plaza, a summary of the accomplishments of the commission for the prior year, as well as its projects planned for the current year, and such recommendations pertinent to the duties of the commission as it deems advisable. Such report shall contain a full fiscal accounting of the activities of the

commission, both current and projected;

10. To solicit and accept gifts, contributions and bequests of funds from individuals, foundations, corporations and other organizations or institutions for purposes of the commission. All funds of the commission from such gifts, contributions and bequests shall be deposited in a state fiduciary fund, expenditures from which shall be limited to the purposes of the commission set forth in this article;

11. To establish a program, in consultation with the commissioner of general services, for the promotion of the empire state plaza art collection to the public through such means as determined by the commission to be appropriate, including, but not limited to, educational seminars, remote exhibitions, special events and the sale of souvenirs or mementos related to the collection. All receipts of the commission from promotional efforts shall be deposited in a state fiduciary fund, expenditures from which shall be limited to the purposes of the commission set forth in this article.

§ 4.09. Appointment of curator and other employees. 1. The chairman, with the concurrence of the commission and the commissioner of general services, shall appoint a curator who shall serve at the pleasure of the commission. The commission shall prescribe powers and duties of the curator and shall fix his or her compensation within the amounts appropriated therefor.

2. The commission may appoint such employees of the commission as it may require, prescribe their powers and duties and fix their compensation within the amounts appropriated therefor.

§ 4.11. Assistance of state agencies and political subdivisions. The commission may request and shall receive from any state agency or political subdivision of the state such assistance and information as will enable it to carry out its duties and accomplish its purposes.

ARTICLE 5

ART COMMISSION

§ 5.01. Purchase of art productions in certain cities. Cities of the first and second class are hereby authorized, in the discretion of those officers or bodies in such cities that have charge of the appropriation of the public funds, to purchase works of art which are the production of professional artists who are citizens of the United States, and which have been executed in the United States. The word "productions" shall be held to include among other works of art, mural paintings or decorations which artists may be employed to put on the walls of public buildings of such cities, mosaic and stained or painted glass. A city of the first class may expend under this section any amount not to exceed fifty thousand dollars annually. A city of the second class may expend under this section not to exceed ten thousand dollars annually.

§ 5.03. Art commissioners. Where provision is not made by law for an art commission for any city of the first or second class, the mayor of such city shall, as soon as any city decides to expend any moneys under the provisions of this article, appoint art commissioners for such city. Such commissioners shall not contain more than a bare majority of persons selected from any one political party. It shall be composed of persons who are experts in art matters.

§ 5.05. Selection and placing of art productions. All art productions purchased under this article shall be selected by the art commission of the city, and shall be placed in the public buildings, grounds or parks thereof for the purpose of beautifying the same.

ARTICLE 7

NEW YORK STATE SUMMER SCHOOL OF THE ARTS

§ 7.01. New York state summer school of the arts. The New York state summer school of the arts under the jurisdiction and control of the education department is hereby continued.

§ 7.03. Object of the summer school. The primary object of the summer school of the arts is to provide to high school and college students, who are residents of the state of New York, having exceptional artistic skills and talents and who are interested in pursuing professional careers in the arts, an opportunity to receive advanced training and instruction on the highest professional level from artists who are distinctly qualified by background, training, and experience to provide such instruction, at locations to be determined by the commissioner of education.

§ 7.05. Executive director. 1. The executive director heretofore appointed by the commissioner of education to be the head of the New York state summer school of the arts shall continue in office. The executive director shall hold office at the pleasure of the commissioner of education and shall be subject to such rules and regulations as he may prescribe.

2. The commissioner of education may appoint such deputies, directors and other officers, teachers, employees, agents, consultants and special

committees as he may deem necessary for the proper implementation of this article, prescribe their duties, fix their compensation and provide for reimbursement of their expenses within the amounts available therefor by appropriation. The executive director shall develop a program and plan for the establishment of a summer school of the arts in all branches of the arts whenever possible, and in accordance with the rules of such commissioner shall undertake all necessary action to execute such program and plan in accordance with the provisions of this section. The executive director shall undertake the necessary studies and evaluations and report to such commissioner for ways and means to improve the summer school of the arts.

3. The executive director shall pursue a course of action in connection with the performance of his duties and responsibilities to encourage and obtain the services, on a voluntary basis, of well-known and qualified artists and performers who have distinguished themselves in the visual and performing arts, and who by background, training and experience can provide such essential services to the students within the meaning and intent of this article.

§ 7.07. Advisory council; powers. 1. The advisory council heretofore appointed by the commissioner of education is hereby continued consisting of seven members who need not be residents of the state, and each of whom shall serve at the pleasure of such commissioner. The term of office of members of such council shall be for two years. The chairperson heretofore designated by the members shall continue in office and shall have the responsibility of enforcing all such regulations pertaining to such council as will be promulgated by such commissioner.

2. In the event that a vacancy occurs on the advisory council either because of incapacity, death or disability or expiration of a term, such vacancy shall be filled by appointment of the commissioner of education for the balance of the unexpired term.

3. The advisory council shall visit and inspect all facilities

maintained and operated by the department of education, and have such other powers and duties as may be required or authorized by the commissioner of education.

4. Meetings of the advisory council shall be bi-monthly, or more often as the commissioner of education may direct.

5. The members of the advisory council shall serve without pay but shall be paid their actual expenses necessarily incurred in the discharge of their official duties. No member of the council shall have any pecuniary interest in any contract pertaining to the operation and administration of the summer school of the arts or of any of its facilities.

§ 7.09. Areas of instruction; credits. The summer school of the arts shall consist of the following divisions:

1. Theatre.

2. Ballet and modern dance.

3. Visual arts.

4. Film/media.

5. Music/orchestral studies/choral studies.

6. Creative writing.

7. Technical theatre arts.

§ 7.11. Tuition. The executive director shall, subject to the approval of the commissioner of education and the director of the budget, fix and determine the amount of tuition to be paid by each applicant for admission. Such tuition may be paid by the local school district wherein such applicant resides in whole or in part. Payment of such tuition may be waived in whole or in part by the executive director upon a proper showing of financial hardship by an applicant for admission.

§ 7.13. Eligibility requirements for admission. 1. All applicants for admission must be residents of the state.

2. All applicants for admission must demonstrate to the satisfaction of the commissioner of education that such applicant:

(a) Intends to pursue a professional career in some branch of the arts as described in section 7.09 of this article;

(b) Possesses unique and distinctive skills, qualifications and talents in the visual and performing arts or such other areas related to the arts as described in section 7.09 of this article.

3. All applicants for admission shall be selected on the basis of open competition to determine their demonstrated and/or potential ability and performance capabilities.

§ 7.15. Regulations for admission and scholastic credits. The commissioner of education may make such regulations in relation to the admission of applicants into any of the facilities operated and maintained by the summer school of the arts. The commissioner may further promulgate all such rules which in his discretion are necessary and proper to effectuate the foregoing, and in addition thereto specify and further prescribe all scholastic credits and the degree thereof that may be granted to the students attending the facilities of the summer school of the arts upon successful completion of courses provided.

ARTICLE 8

NEW YORK STATE WRITERS' INSTITUTE

§ 8.01. Legislative findings and declaration of policy. The legislature hereby finds and declares that New York state is unique among states for its contribution to the art of writing and for the special resources and opportunities it offers to writers. It is hereby further found that the art of writing is of increasing importance and that the general welfare of the people of the state will be enhanced by the establishment of a center devoted to writing and the allied arts.

It is hereby declared a policy of the state that there be created a New York state writers' institute with a legislative mandate to encourage the development of writing skills at all levels of education throughout the state, to provide a milieu for established and aspiring writers to work together to encourage the development of, and increase the freedom of, the artistic imagination of this art in the state of New York.

§ 8.03. New York state writers' institute. The New York state writers' institute is hereby established under the jurisdiction of the state university of New York.

§ 8.05. Objectives. The New York state writers' institute shall:

1. Establish an arts and cultural program for the study of creative writing in the context of literary criticism, the humanities and other creative arts;

2. Hire such writers, artists and other personnel as may be necessary for programs, courses, workshops, lectures and readings to encourage the

development of writing skills in all phases and genres of writing including fiction, non-fiction, poetry, journalism, playwriting and screenwriting;

3. Offer such scholarships, grants and awards in writing as may help develop the talent of writers and the craft of writing;

4. Offer programs for teachers and high school students in New York that will serve to train them in the craft of writing and demonstrate it as a complement to other areas of education;

5. Authorize the trustees of the state university to accept, on behalf of the institute, gifts, contributions and bequests of unrestricted funds from individuals, foundations, corporations and other organizations or institutions for the purpose of furthering the institute's objectives;

6. Offer at least one lecture annually by a distinguished writer on an aspect of the creative imagination which will further the objectives of the institute's programs and which will enrich the community's exposure to the arts;

7. Establish and maintain such publications, records and documents as may help arts audiences for the future and stimulate and aid the craft of writing;

8. Foster cooperation among programs for writers in New York, including workshops that will serve to enhance continued development in the craft of writing and to increase opportunities for writers in New York state; and

9. Develop other programs that will enhance the craft of writing and opportunities for writers.

§ 8.07. Site. The site of the New York state writers' institute shall be at the state university of New York at Albany.

§ 8.09. Administration. The institute shall be administered by a director appointed by the trustees of the state university upon the recommendation of the chancellor of the state university.

§ 8.11. New York state Walt Whitman citation of merit for poets. 1. The governor shall biennially present the New York state Walt Whitman citation of merit to a distinguished New York poet upon the recommendation of the panel constituted in this section. The poet selected shall be considered the state poet and the citation shall carry an honorarium of ten thousand dollars.

2. The institute shall biennially appoint and convene an advisory panel of distinguished poets and persons with particular expertise in the field of poetry. The director of the institute shall be a permanent member of the advisory panel and each current state poet shall serve as a member of the panel in choosing the next New York state Walt Whitman poet. The panel shall recommend to the governor a poet whose achievements make him or her deserving of such recognition.

3. The state poet shall promote and encourage poetry within the state and shall give two public readings within the state each year.

4. The institute shall establish such procedures and guidelines as are necessary to effect the provisions of this section.

§ 8.13. New York state Edith Wharton citation of merit for fiction writers. 1. The governor shall biennially present the New York state Edith Wharton citation of merit to a distinguished New York author upon the recommendation of the panel constituted in this section. The author selected shall be considered the state author and the citation shall carry an honorarium of ten thousand dollars.

2. The institute shall biennially appoint and convene an advisory

panel of distinguished authors and persons with particular expertise in the field of fiction. The director of the institute shall be a permanent member of the advisory panel and each current state author shall serve as a member of the panel in choosing the recipient of the next New York state Edith Wharton citation of merit. The panel shall recommend to the governor an author whose achievements make him or her deserving of such recognition.

3. The state author shall promote and encourage fiction within the state and shall give two public readings within the state each year.

4. The institute shall establish such procedures and guidelines as are necessary to effect the provisions of this section.

ARTICLE 10
INSTITUTE FOR THE HUDSON RIVER COLLECTION

§ 10.01. Legislative findings and declaration of intent. The legislature hereby finds and declares that the Hudson river area of New York state, which includes that area of the state adjacent to the Hudson river and extending from the Adirondack Mountains to the tip of Manhattan Island in the city of New York, is unique for its contribution to the arts, culture, history and heritage of this state, this nation and the world.

It is further found and declared that efforts to identify and conserve the literary and visual arts record of the Hudson river valley; to maintain and make accessible the artistic and cultural materials that document the heritage of this area; to support research, publications, educational programs and to promote contemporary artistic works interpreting the cultural and natural history of the area; and to facilitate statewide, interstate and international collaborations and exchange programs of art, artists and scholars concerning the history, art and cultural contributions of the area to the state and to the cultural, historic and artistic life of the country and the world are in every respect in the public interest and to the benefit of all persons in this state.

It is hereby declared a policy of the state that there be created the Institute for the Hudson River Collection with a legislative mandate to take such actions as are necessary and appropriate to assure the strengthening, perpetuation and continued availability of the artistic and cultural heritage of the Hudson river area to this state, the country and the world.

§ 10.03. Definitions. Except as otherwise provided herein and unless the context shall otherwise require, as used in this article:

1. "Hudson river area" or "Hudson river valley" means the Hudson river and adjacent areas between the Adirondack Mountains and the tip of Manhattan Island in the city of New York.

2. "Institute" means the Institute for the Hudson River Collection created by this article.

3. "State agency" means any state board, body, bureau, commission, council, department, public authority, public corporation, division, office or other governmental entity performing a governmental or proprietary function for the state.

§ 10.05. Institute for the Hudson River Collection; creation; board of

directors; governance. 1. The Institute for the Hudson River Collection is hereby established under the jurisdiction of the New York state museum of the state education department.

2. The institute shall consist of fifteen members. Nine of such members shall be appointed by the governor by and with the advice and consent of the senate, two of whom shall be the commissioner of parks, recreation and historic preservation, and the chairman of the New York state council on the arts or his or her representative, two of whom shall be so appointed on recommendation of the temporary president of the senate, two on recommendation of the speaker of the assembly, one on recommendation of the minority leader of the senate and one on recommendation of the minority leader of the assembly. Each member so appointed shall be representative of those educational and cultural institutions of the state that hold significant collections or conduct continuing research and education programs on the cultural and natural history of the Hudson river area. The commissioner of education shall be a member and shall serve as chairman of the institute. Five of such members shall be appointed by the board of regents in consultation with the commissioner of education.

3. The term of each member appointed by the governor shall be for three years provided, however, that of the members first appointed (a) the members first appointed on recommendation of the temporary president of the senate and the speaker of the assembly shall be for terms ending December thirty-first, nineteen hundred ninety, provided however that persons first so appointed after December thirty-first, nineteen hundred ninety, shall be appointed for terms ending December thirty-first, nineteen hundred ninety-three; and (b) the persons appointed on recommendation of the minority leader of the senate and the minority leader of the assembly shall be appointed for terms ending December thirty-first, nineteen hundred eighty-nine, provided however that persons first so appointed after December thirty-first, nineteen hundred eighty-nine, shall be appointed for terms ending December thirty-first, nineteen hundred ninety-two. Vacancies shall be filled for the unexpired terms in the same manner as the original appointment. The commissioners of parks, recreation and historic preservation and education and the

chairman of the New York state council on the arts shall serve only during his tenure as such official.

4. Members shall receive no compensation for their services but shall be allowed their reasonable expenses actually and necessarily incurred in the performance of their duties, within the funds available from appropriations made pursuant to section ninety-two-q of the state finance law. No member shall be disqualified from holding any other public office or employment by reason of such person's appointment or service as a member notwithstanding the provisions of any other law to the contrary.

5. The institute shall conduct at least four regular meetings a year at such times and places as may be fixed by it.

6. Eight members shall constitute a quorum for the transaction of business and, unless a greater number is required by the by-laws, the institute shall exercise its powers and duties by a vote of the majority of the total members of the commission then serving.

7. The institute shall adopt by-laws governing the calling and conduct of its meetings and all other matters relating to its organization and internal operations.

§ 10.07. Objectives. The Institute for the Hudson River Collection shall:

1. Take steps to develop, enhance, stimulate and facilitate public and private study and appreciation and interpretation of the heritage, legacy and patrimony of the Hudson river area.

2. Support research, publications, educational programs and artistic works interpreting the cultural and natural history of the Hudson river valley and advise and assist any state department, board, bureau, commission or other agency, or political subdivision of the state, in the preparation and distribution of publications by such agencies

concerning the Hudson river area.

3. Facilitate statewide, interstate and international collaborations and exchange programs of art, artists and scholars on the Hudson river school of painting and the art history of the Hudson river valley.

4. Maintain and make accessible a comprehensive record of the artistic and cultural materials that document the heritage of the Hudson river valley.

5. Contract with other cultural institutions for the management of projects which it initiates or facilitates.

6. Accept and disburse private and public grants, gifts, contributions and bequests made in furtherance of its purposes.

7. Conduct such surveys as may be necessary, required or appropriate of the public and private institutions and individuals engaged in cultural and artistic activities in the Hudson river area, and make recommendations on means to encourage and expand public and private interest in the Hudson river area.

8. Hold public hearings on matters pertinent or appropriate to its purposes.

9. Enter into contracts, within the amounts appropriated therefor pursuant to section ninety-two-q of the state finance law, with individuals, organizations and institutions for cooperative endeavors furthering the cultural and artistic interests of the Hudson river area and the objectives stated in this article.

10. Establish a New York state Hudson river art collection composed of public and private holdings. The institute shall catalogue works of art in the New York state Hudson river art collection.

11. Make and sign any agreements and do and perform any acts necessary, desirable or appropriate to carry out the purposes of this

article.

§ 10.09. Reports. Not later than February first of each year the institute shall report to the governor and the legislature on the needs, opportunities and priorities for development of its programs.

§ 10.11. Assistance of other agencies. The institute may request and shall receive from any state agency or political subdivision of the state, and the same are authorized to provide, such assistance and information as will enable it to carry out its purposes and duties pursuant to this article.

§ 10.13. Additional considerations in fulfilling its responsibilities. In fulfilling its responsibilities under this article, the institute shall additionally:

1. Give consideration to the likelihood of any project undertaken to attract or enhance tourism through a greater appreciation of the artistic and cultural heritage of the Hudson river area.

2. Encourage the appreciation of the Hudson river area by individual artists.

TITLE C
TRANSACTIONS INVOLVING ARTISTS AND THEIR WORKS

ARTICLE 11
DEFINITIONS

§ 11.01. Definitions. As used in this title:

1. "Artist" means the creator of a work of fine art or, in the case of multiples, the person who conceived or created the image which is contained in or which constitutes the master from which the individual print was made.

2. "Art merchant" means a person who is in the business of dealing, exclusively or non-exclusively, in works of fine art or multiples, or a person who by his occupation holds himself out as having knowledge or skill peculiar to such works, or to whom such knowledge or skill may be attributed by his employment of an agent or other intermediary who by his occupation holds himself out as having such knowledge or skill. The term "art merchant" includes an auctioneer who sells such works at public auction, and except in the case of multiples, includes persons, not otherwise defined or treated as art merchants herein, who are consignors or principals of auctioneers.

3. "Author" or "authorship" refers to the creator of a work of fine art or multiple or to the period, culture, source or origin, as the case may be, with which the creation of such work is identified in the description of the work.

4. "Creditors" means "creditor" as defined in paragraph thirteen of subsection (b) of section 1--201 of the uniform commercial code.

5. "Counterfeit" means a work of fine art or multiple made, altered or copied, with or without intent to deceive, in such manner that it appears or is claimed to have an authorship which it does not in fact possess.

6. "Certificate of authenticity" means a written statement by an art merchant confirming, approving or attesting to the authorship of a work of fine art or multiple, which is capable of being used to the advantage or disadvantage of some person.

7. "Conservation" means acts taken to correct deterioration and alteration and acts taken to prevent, stop or retard deterioration.

8. "Craft" means a functional or non-functional work individually designed, and crafted by hand, in any medium including but not limited to textile, tile, paper, clay, glass, fiber, wood, metal or plastic; provided, however, that if produced in multiples, craft shall not include works mass produced or produced in other than a limited edition.

9. "Fine art" means a painting, sculpture, drawing, or work of graphic art, and print, but not multiples.

10. "Limited edition" means works of art produced from a master, all of which are the same image and bear numbers or other markings to denote the limited production thereof to a stated maximum number of multiples, or are otherwise held out as limited to a maximum number of multiples.

11. "Master" when used alone is used in lieu of and means the same as such things as printing plate, stone, block, screen, photographic negative or other like material which contains an image used to produce visual art objects in multiples, or in the case of sculptures, a mold, model, cast, form or other prototype, other than from glass, which additional multiples of sculpture are produced, fabricated or carved.

12. "On consignment" means that no title to, estate in, or right to possession of, the work of fine art or multiple that is superior to that of the consignor vests in the consignee, notwithstanding the consignee's power or authority to transfer or convey all the right, title and interest of the consignor, in and to such work, to a third person.

13. "Person" means an individual, partnership, corporation, association or other group, however organized.

14. "Print" in addition to meaning a multiple produced by, but not limited to, such processes as engraving, etching, woodcutting, lithography and serigraphy, also means multiples produced or developed from photographic negatives, or any combination thereof.

15. "Proofs" means multiples which are the same as, and which are

produced from the same masters as, the multiples in a limited edition, but which, whether so designated or not, are set aside from and are in addition to the limited edition to which they relate.

16. "Reproduction" means a copy, in any medium, of a work of fine art, that is displayed or published under circumstances that, reasonably construed, evinces an intent that it be taken as a representation of a work of fine art as created by the artist.

17. "Reproduction right" means a right to reproduce, prepare derivative works of, distribute copies of, publicly perform or publicly display a work of fine art.

18. "Sculpture" means a three-dimensional fine art object produced, fabricated or carved in multiple from a mold, model, cast, form or other prototype, other than from glass, sold, offered for sale or consigned in, into or from this state for an amount in excess of fifteen hundred dollars.

19. "Signed" means autographed by the artist's own hand, and not by mechanical means of reproduction, after the multiple was produced, whether or not the master was signed or unsigned.

20. "Successor in interest" shall mean a "personal representative", "testamentary beneficiary", trustee or beneficiary of a "lifetime trust" or an "heir" (including heirs who acquire the work of fine art, craft or print from the artist or craftsperson or from another heir or beneficiary of the artist or craftsperson), which terms shall have the same meanings as set forth in the estates, powers and trusts law.

21. "Visual art multiples" or "multiples" means prints, photographs, positive or negative, sculpture and similar art objects produced in more than one copy and sold, offered for sale or consigned in, into or from this state for an amount in excess of one hundred dollars exclusive of any frame or in the case of sculpture, an amount in excess of fifteen hundred dollars. Pages or sheets taken from books and magazines and offered for sale or sold as visual art objects shall be included, but

books and magazines are excluded.

22. "Written instrument" means a written or printed agreement, bill of sale, invoice, certificate of authenticity, catalogue or any other written or printed note or memorandum or label describing the work of fine art or multiple which is to be sold, exchanged or consigned by an art merchant.

ARTICLE 12

ARTIST-ART MERCHANT RELATIONSHIPS

§ 12.01. Artist-art merchant relationships. 1. Notwithstanding any custom, practice or usage of the trade, any provision of the uniform commercial code or any other law, statute, requirement or rule, or any agreement, note, memorandum or writing to the contrary:

(a) Whenever an artist or craftsperson, or a successor in interest of such artist or craftsperson, delivers or causes to be delivered a work of fine art, craft or a print of such artist's or craftsperson's own creation to an art merchant for the purpose of exhibition and/or sale on a commission, fee or other basis of compensation, the delivery to and acceptance thereof by the art merchant establishes a consignor/consignee relationship as between such artist or craftsperson, or the successor in interest of such artist or craftsperson, and such art merchant with respect to the said work, and:

(i) such consignee shall thereafter be deemed to be the agent of such consignor with respect to the said work;

(ii) such work is trust property in the hands of the consignee for the benefit of the consignor;

(iii) any proceeds from the sale of such work are trust funds in the hands of the consignee for the benefit of the consignor;

(iv) such work shall remain trust property notwithstanding its purchase by the consignee for his own account until the price is paid in full to the consignor; provided that, if such work is resold to a bona fide third party before the consignor has been paid in full, the resale proceeds are trust funds in the hands of the consignee for the benefit of the consignor to the extent necessary to pay any balance still due to the consignor and such trusteeship shall continue until the fiduciary obligation of the consignee with respect to such transaction is discharged in full; and

(v) such trust property and trust funds shall be considered property held in statutory trust, and no such trust property or trust funds shall become the property of the consignee or be subject or subordinate to any claims, liens or security interest of any kind or nature whatsoever of the consignee's creditors.

(b) Waiver of any provision of this section is absolutely void except that a consignor may lawfully waive the provisions of clause (iii) of paragraph (a) of this subdivision, if such waiver is clear, conspicuous, in writing, in words which clearly and specifically apprise the consignor that the consignor is waiving rights under this section with respect to proceeds from the sale of the consignor's work, and subscribed by the consignor, provided:

(i) no such waiver shall be valid with respect to the first two thousand five hundred dollars of gross proceeds of sales received in any twelve-month period commencing with the date of the execution of such waiver;

(ii) no such waiver shall be valid with respect to the proceeds of a work initially received on consignment but subsequently purchased by the consignee directly or indirectly for his own account; and

(iii) no such waiver shall inure to the benefit of the consignee's creditors in any manner which might be inconsistent with the consignor's rights under this subdivision.

(c) Proceeds from the sale of consigned works covered by this section shall be deemed to be revenue from the sale of tangible goods and not revenue from the provision of services to the consignor or others, except that the provisions of this paragraph shall not apply to proceeds from the sale of consigned works sold at public auction.

2. If a consignee fails to treat the trust property or trust funds identified in paragraph (a) of subdivision one of this section in accordance with the requirements of fiduciaries in section 11-1.6 of the

estates, powers and trusts law, such failure shall constitute a violation of this article and of section 11-1.6 of the estates, powers and trusts law and shall be subject to the penalties provided therein.

3. Any person who has been injured by reason of a violation of this article may bring an action in his or her own name to enjoin such unlawful act, to recover his or her actual damages, or both. The court may award reasonable attorneys' fees, costs and expenses to a prevailing plaintiff in any such action.

4. Nothing in this section shall be construed to have any effect upon any written or oral contract or arrangement in existence prior to September first, nineteen hundred sixty-nine or to any extensions or renewals thereof except by the mutual written consent of the parties thereto.

§ 12.03. Exemption from seizure. No process of attachment, execution, sequestration, replevin, distress or any kind of seizure shall be served or levied upon any work of fine art while the same is enroute to or from, or while on exhibition or deposited by a nonresident exhibitor at any exhibition held under the auspices or supervision of any museum, college, university or other nonprofit art gallery, institution or organization within any city or county of this state for any cultural, educational, charitable or other purpose not conducted for profit to the exhibitor, nor shall such work of fine art be subject to attachment, seizure, levy or sale, for any cause whatever in the hands of the authorities of such exhibition or otherwise.

ARTICLE 13
EXPRESS WARRANTIES

§ 13.01. Express warranties. Notwithstanding any provision of any other law to the contrary:

1. Whenever an art merchant, in selling or exchanging a work of fine art, furnishes to a buyer of such work who is not an art merchant a certificate of authenticity or any similar written instrument it:

(a) Shall be presumed to be part of the basis of the bargain; and

(b) Shall create an express warranty for the material facts stated as of the date of such sale or exchange.

2. Except as provided in subdivision four of this section, such warranty shall not be negated or limited provided that in construing the degree of warranty, due regard shall be given the terminology used and the meaning accorded such terminology by the customs and usage of the trade at the time and in the locality where the sale or exchange took place.

3. Language used in a certificate of authenticity or similar written instrument, stating that:

(a) The work is by a named author or has a named authorship, without any limiting words, means unequivocally, that the work is by such named author or has such named authorship;

(b) The work is "attributed to a named author" means a work of the period of the author, attributed to him, but not with certainty by him; or

(c) The work is of the "school of a named author" means a work of the period of the author, by a pupil or close follower of the author, but not by the author.

4. (a) An express warranty and disclaimers intended to negate or limit such warranty shall be construed wherever reasonable as consistent with each other but subject to the provisions of section 2-202 of the uniform commercial code on parol or extrinsic evidence, negation or limitation is inoperative to the extent that such construction is unreasonable.

(b) Such negation or limitation shall be deemed unreasonable if:

(i) the disclaimer is not conspicuous, written and apart from the warranty, in words which clearly and specifically apprise the buyer that the seller assumes no risk, liability or responsibility for the material facts stated concerning such work of fine art. Words of general disclaimer are not sufficient to negate or limit an express warranty; or

(ii) the work of fine art is proved to be a counterfeit and this was not clearly indicated in the description of the work; or

(iii) the information provided is proved to be, as of the date of sale or exchange, false, mistaken or erroneous.

§ 13.03. Falsifying certificates of authenticity or any similar written instrument. A person who, with intent to defraud, deceive or injure another, makes, utters or issues a certificate of authenticity or any similar written instrument for a work of fine art attesting to material facts which the work does not in fact possess is guilty of a class A misdemeanor.

§ 13.05. Express warranties for multiples. 1. When an art merchant furnishes the name of the artist of a multiple, or otherwise furnishes information required by this title for any time period as to transactions including offers, sales or consignments, the provisions of section 13.01 of this article shall apply except that said section shall be deemed to include sales to art merchants. The existence of a reasonable basis in fact for information warranted shall not be a defense in an action to enforce such warranty, except in the case of photographs produced prior to nineteen hundred fifty, and multiples produced prior to nineteen hundred.

2. The provisions of subdivision four of section 13.01 of this article shall apply when an art merchant disclaims knowledge as to a multiple about which information is required by this title, provided that in addition, such disclaimer shall be ineffective unless clearly, specifically and categorically stated as to each item of information and contained in the physical context of other language setting forth the required information as to a specific multiple.

§ 13.07. Construction. 1. The rights and liabilities created by this article shall be construed to be in addition to and not in substitution, exclusion or displacement of other rights and liabilities provided by law, including the law of principal and agent, except where such construction would, as a matter of law, be unreasonable.

2. No art merchant who, as buyer, is excluded from obtaining the benefits of an express warranty under this article shall thereby be deprived of the benefits of any other provision of law.

ARTICLE 14
WORKS OF FINE ART; SCULPTURE AND MULTIPLES GENERALLY

§ 14.01. Right to reproduce works of fine art. 1. Whenever a work of fine art is sold or otherwise transferred by or on behalf of the artist who created it, or his heirs or personal representatives, the reproduction right thereto is reserved to the grantor until it passes into the public domain by act or operation of law unless such right is sooner expressly transferred by an instrument, note or memorandum in writing signed by the owner of the rights conveyed or his duly authorized agent.

2. Whenever an exclusive or non-exclusive conveyance of any reproduction right is made by the holder of such right, or his duly authorized agent, ownership of the physical work of fine art shall be presumed to remain with and be reserved to the grantor unless expressly transferred in writing by an instrument, note or memorandum or by other

written means, signed by the grantor or his duly authorized agent.

3. This article shall not apply to the sale, conveyance, donation or other transfer of the physical work of fine art which does not include a conveyance of a reproduction right in such work.

4. Nothing herein contained, however, shall be construed to prohibit the fair use of such work of fine art.

5. Nothing in this section shall operate or be construed to conflict with any rights or liabilities under federal copyright law.

§ 14.03. Artists authorship rights. 1. Except as limited by subdivision three of this section, on and after January first, nineteen hundred eighty-five, no person other than the artist or a person acting with the artist's consent shall knowingly display in a place accessible to the public or publish a work of fine art or limited edition multiple of not more than three hundred copies by that artist or a reproduction thereof in an altered, defaced, mutilated or modified form if the work is displayed, published or reproduced as being the work of the artist, or under circumstances under which it would reasonably be regarded as being the work of the artist, and damage to the artist's reputation is reasonably likely to result therefrom, except that this section shall not apply to sequential imagery such as that in motion pictures.

2. (a) Except as limited by subdivision three of this section, the artist shall retain at all times the right to claim authorship, or, for just and valid reason, to disclaim authorship of such work. The right to claim authorship shall include the right of the artist to have his or her name appear on or in connection with such work as the artist. The right to disclaim authorship shall include the right of the artist to prevent his or her name from appearing on or in connection with such work as the artist. Just and valid reason for disclaiming authorship shall include that the work has been altered, defaced, mutilated or modified other than by the artist, without the artist's consent, and damage to the artist's reputation is reasonably likely to result or has

resulted therefrom.

(b) The rights created by this subdivision shall exist in addition to any other rights and duties which may now or in the future be applicable.

3. (a) Alteration, defacement, mutilation or modification of such work resulting from the passage of time or the inherent nature of the materials will not by itself create a violation of subdivision one of this section or a right to disclaim authorship under subdivision two of this section; provided such alteration, defacement, mutilation or modification was not the result of gross negligence in maintaining or protecting the work of fine art.

(b) In the case of a reproduction, a change that is an ordinary result of the medium of reproduction does not by itself create a violation of subdivision one of this section or a right to disclaim authorship under subdivision two of this section.

(c) Conservation shall not constitute an alteration, defacement, mutilation or modification within the meaning of this section, unless the conservation work can be shown to be negligent.

(d) This section shall not apply to work prepared under contract for advertising or trade use unless the contract so provides.

(e) The provisions of this section shall apply only to works of fine art or limited edition multiples of not more than three hundred copies knowingly displayed in a place accessible to the public, published or reproduced in this state.

4. (a) An artist aggrieved under subdivision one or subdivision two of this section shall have a cause of action for legal and injunctive relief.

(b) No action may be maintained to enforce any liability under this section unless brought within three years of the act complained of or one year after the constructive discovery of such act, whichever is longer.

§ 14.05. Sculpture; identifying mark. 1. Every sculpture produced, fabricated or carved in or from this state after January first, nineteen hundred ninety-one shall contain thereon, in a clear and legible fashion and in an easily accessible location, a distinctive mark which identifies the foundry or other production facility at which such sculpture was made, and the year that such sculpture was made. This section shall also apply to unique works of sculpture produced, fabricated or carved in this state.

2. It shall be unlawful for a foundry or other production facility (a) to fail or refuse to affix an identifying mark and the year or (b) to affix a false identifying mark or incorrect year to any sculpture produced by it. Notwithstanding any other provision of law, violation of this subdivision shall be punishable by a civil penalty not to exceed five thousand dollars for each unlabeled or mislabeled sculpture.

3. It shall be unlawful for any person to deface, mark over or tamper with the identifying mark and date required by this section to be included on a sculpture. Notwithstanding any other provision of law, violation of this subdivision shall be punishable by a civil penalty not to exceed five thousand dollars for each instance of defacing, marking over or tampering with such identifying mark or date. Any violation of this subdivision shall be punishable in accordance with the penal law.

§ 14.06. Sculpture; written records. 1. Any foundry or person in this state producing one or more sculptures for any person subsequent to the effective date of this article shall prepare, and maintain for a period of not less than twenty-five years from the date of such production, records that shall contain all of the information required to be provided pursuant to subdivisions one and two of section 15.10 of this chapter. Such records shall be open for inspection by the attorney general during ordinary business hours upon notice of no less than three business days.

2. A duplicate of the written instrument provided to a purchaser by an art merchant or art merchant's agent supplying information pursuant to article fifteen of this chapter shall be retained by such art merchant and the art merchant's agent for a period of not less than ten years

from the date of sale of the work, and shall be similarly considered a certificate of authenticity subject to the provisions of section 13.03 of this chapter.

§ 14.07. Sculpture; unauthorized cast. 1. For purposes of this section an "unauthorized sculpture cast" shall mean any sculpture created by an artist which is produced, fabricated, or carved either before or following the death of such artist without the written permission of the artist or the estate, heirs, or other legal representative of the artist.

2. It shall be unlawful to produce, offer for sale, sell or consign an unauthorized sculpture cast, provided, however, that this prohibition shall not apply where the phrase "THIS IS A REPRODUCTION" is imprinted and appears in a clear and legible fashion on each such sculpture in the same location and with the same size lettering as the date and identifying mark as required by section 14.05 of this article.

§ 14.08. Violations. Any violation of the provisions of section 14.05, 14.06 or 14.07 of this article may be enforced by the attorney general in accordance with the provisions of section 15.17 of this chapter.

ARTICLE 15

SALE OF VISUAL ART OBJECTS AND SCULPTURES PRODUCED IN MULTIPLES

§ 15.01. Full disclosure in the sale of certain visual art objects produced in multiples. 1. An art merchant shall not sell or consign a multiple in, into or from this state unless a written instrument is furnished to the purchaser or consignee, at his request, or in any event prior to a sale or consignment, which sets forth as to each multiple the descriptive information required by this article for the appropriate time period. If a prospective purchaser so requests, the information shall be transmitted to him prior to the payment or placing of an order for a multiple. If payment is made by a purchaser prior to delivery of such an art multiple, this information shall be supplied at the time of or prior to delivery. With respect to auctions, this information may be furnished in catalogues or other written materials which are readily available for consultation and purchase prior to sale, provided that a bill of sale, receipt or invoice describing the transaction is then provided which makes reference to the catalogue and lot number in which such information is supplied. Information supplied pursuant to this subdivision shall be clearly, specifically and distinctly addressed to each item as required by this article for any time period unless the required data is not applicable. This section is applicable to transactions by and between merchants, non-merchants, and others considered art merchants for the purposes of this article.

2. An art merchant shall not cause a catalogue, prospectus, flyer or other written material or advertisement to be distributed in, into or from this state which solicits a direct sale, by inviting transmittal of payment for a specific multiple, unless it clearly sets forth, in close physical proximity to the place in such material where the multiple is described, the descriptive information required by this article for the appropriate time period. In lieu of this required information, such written material or advertising may set forth the material contained in the following quoted passage, or the passage itself, containing terms

the nonobservance of which shall constitute a violation of this article, if the art merchant then supplies the required information prior to or with delivery of the multiple:

"Article fifteen of the New York arts and cultural affairs law provides for disclosure in writing of certain information concerning multiples of prints and photographs when sold for more than one hundred dollars ($100) each, exclusive of any frame, and of sculpture when sold for more than fifteen hundred dollars, prior to effecting a sale of them. This law requires disclosure of such matters as the identity of the artist, the artist's signature, the medium, whether the multiple is a reproduction, the time when the multiple was produced, use of the master which produced the multiple, and the number of multiples in a 'limited edition'. If a prospective purchaser so requests, the information shall be transmitted to him prior to payment or the placing of an order for a multiple. If payment is made by a purchaser prior to delivery of such an art multiple, this information will be supplied at the time of or prior to delivery, in which case the purchaser is entitled to a refund if, for reasons related to matter contained in such information, he returns the multiple substantially in the condition in which received, within thirty days of receiving it. In addition, if after payment and delivery, it is ascertained that the information provided is incorrect the purchaser may be entitled to certain remedies."

This requirement is not applicable to general written material or advertising which does not constitute an offer to effect a specific sale.

3. In each place of business in the state where an art merchant is regularly engaged in sales of multiples, the art merchant shall post in a conspicuous place, a sign which, in a legible format, contains the information included in the following passage:

"Article fifteen of the New York arts and cultural affairs law provides for the disclosure in writing of certain information concerning prints, photographs and sculpture. This information is available to you in accordance with that law."

§ 15.03. Information required. The following information shall be supplied, as indicated, as to each multiple produced on or after January first, nineteen hundred eighty-two:

1. Artist. State the name of the artist.

2. Signature. If the artist's name appears on the multiple, state whether the multiple was signed by the artist. If not signed by the artist then state the source of the artist's name on the multiple, such as whether the artist placed his signature on the master, whether his name was stamped or estate stamped on the multiple, or was from some other source or in some other manner placed on the multiple.

3. Medium or process. (a) Describe the medium or process, and where pertinent to photographic processes the material, used in producing the multiple, such as whether the multiple was produced through etching, engraving, lithographic, serigraphic or a particular method and/or material used in the photographic developing processes. If an established term, in accordance with the usage of the trade, cannot be employed accurately to describe the medium or process, a brief, clear description shall be made.

(b) If the purported artist was deceased at the time the master was made which produced the multiple, this shall be stated.

(c) If the multiple or the image on or in the master constitutes a mechanical, photomechanical, hand-made or photographic type of reproduction, or is a reproduction, of an image produced in a different medium, for a purpose other than the creation of the multiple being described, this information and the respective mediums shall be stated.

(d) If paragraph (c) of this subdivision is applicable, and the multiple is not signed, state whether the artist authorized or approved in writing the multiple or the edition of which the multiple being described is one.

4. Use of master. (a) If the multiple is a "posthumous" multiple, that is, if the master was created during the life of the artist but the multiple was produced after the artist's death, this shall be stated.

(b) If the multiple was made from a master which produced a prior limited edition, or from a master which constitutes or was made from a reproduction of a prior multiple or of a master which produced prior multiples, this shall be stated.

5. Time produced. As to multiples produced after nineteen hundred forty-nine, state the year or approximate year the multiple was produced. As to multiples produced prior to nineteen hundred fifty, state the year, approximate year or period when the master was made which produced the multiple and/or when the particular multiple being described was produced. The requirements of this subdivision shall be satisfied when the year stated is approximately accurate.

6. Size of the edition. (a) If the multiple being described is offered as one of a limited edition, this shall be so stated, as well as the number of multiples in the edition, and whether and how the multiple is numbered.

(b) Unless otherwise disclosed, the number of multiples stated pursuant to paragraph (a) of this subdivision shall constitute an express warranty, as defined in section 13.01 of this title, that no additional numbered multiples of the same image, exclusive of proofs, have been produced.

(c) The number of multiples stated pursuant to paragraph (a) of this subdivision shall also constitute an express warranty, as defined in section 13.01 of this title, that no additional multiples of the same image, whether designated "proofs" other than trial proofs, numbered or otherwise, have been produced in an amount which exceeds the number in the limited edition by twenty or twenty percent, whichever is greater.

(d) If the number of multiples exceeds the number in the stated limited edition as provided in paragraph (c) of this subdivision, then state the number of proofs other than trial proofs, or other numbered or unnumbered multiples, in the same or other prior editions, produced from the same master as described in paragraph (b) of subdivision four of this section, and whether and how they are signed and numbered.

§ 15.05. Information required; nineteen hundred fifty to January

first, nineteen hundred eighty-two. The information which shall be supplied as to each multiple produced during the period from nineteen hundred fifty to January first, nineteen hundred eighty-two, shall consist of the information required by section 15.03 of this article except for paragraph (d) of subdivision three, paragraph (b) of subdivision four and paragraphs (c) and (d) of subdivision six of such section.

§ 15.07. Information required; nineteen hundred to nineteen hundred forty-nine. The information which shall be supplied as to each multiple produced during the period from nineteen hundred through nineteen hundred forty-nine shall consist of the information required by section 15.03 of this article except for paragraphs (b), (c) and (d) of subdivision three and subdivisions four and six of such section.

§ 15.09. Information required; pre-nineteen hundred. The information which shall be supplied as to each multiple produced prior to nineteen hundred shall consist of the information required by section 15.03 of this article except for subdivision two, paragraphs (b), (c) and (d) of subdivision three and subdivisions four and six of such section 15.03.

§ 15.10. Information required for sculptures. 1. The following information shall be supplied as indicated in a written instrument as to each multiple produced, fabricated or carved, on or after January first, nineteen hundred ninety-one:

(a) Artist. State the name of the artist.

(b) Title. State the title of the sculpture.

(c) Foundry. State the name, if known, of the foundry which or person who produced, fabricated or carved the sculpture.

(d) Medium. Describe the medium or process used in producing the multiple. If an established term, in accordance with the usage of the trade, cannot be employed accurately to describe the medium or process, a brief, clear description shall be made.

(e) Dimensions. State the dimensions of the sculpture.

(f) Time produced. State the year the sculpture was cast, fabricated or carved.

(g) Number cast. State the number of sculpture casts, according to the best information available, produced or fabricated or carved as of the date of the sale.

(h) If the purported artist was deceased at the time the sculpture was produced, this shall be stated.

(i) Use of master. State whether the sculpture is authorized by the artist or, if produced after the artist's death, whether it was authorized in writing by the artist or by the estate, heirs or other legal representatives of the artist. In the event of a sale after the initial sale, the art merchant may disclose in writing evidence of such reasonable inquiries as have been made pursuant to subdivision two of section 15.15 of this article and any information imparted as may be relevant in fulfilling the intent of this paragraph.

2. For limited edition sculpture produced on or after January first, nineteen hundred ninety-one, in addition to the information required to be provided pursuant to subdivision one of this section, the following items of information shall also be provided to the purchaser in a written instrument:

(a) whether and how the sculpture and the edition is numbered;

(b) the size of the edition or proposed edition and the size of any prior edition or editions of the same sculpture, regardless of the color or material used;

(c) whether additional sculpture casts have been produced in excess of the stated size of the edition or proposed edition and, if so, the total number of such excess casts produced or proposed to be produced and whether and how they are or will be numbered according to the stated intention of the artist or a statement that the artist has not disclosed his intention about the number of additional casts or their numbering. Additional sculpture casts shall include all casts from the same master regardless of their color, material or size; and

(d) whether the artist has stated in writing a limitation on the number of additional sculpture casts to be produced in excess of the stated size of the edition or proposed edition and, if so, the total number of such excess casts produced or proposed to be produced and whether and how they are or will be numbered according to the stated intention of the artist or the estate, heirs or other legal representatives of the artist or a statement that the artist has not disclosed his intention about the number of additional casts or their numbering. Additional sculpture casts shall include all casts from the same master regardless of their color, material or size.

3. For copies of sculpture not made from the master and produced after January first, nineteen hundred ninety-one, in addition to the information required to be provided pursuant to subdivisions one and two of this section, the following items of information shall also be provided to the purchaser in a written instrument:

(a) the means by which the copy was made;

(b) whether the copy was authorized by the artist or the estate, heirs or other legal representatives of the artist; and

(c) whether the copy is of the same material and size as the master.

§ 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.

§ 15.13. Construction. 1. The rights, liabilities and remedies created by this article shall be construed to be in addition to and not in substitution, exclusion or displacement of other rights, liabilities and remedies provided by law, except where such construction would, as a matter of law, be unreasonable.

2. Whenever an artist sells or consigns a multiple of his own creation, the artist shall incur the obligations prescribed by this article for an art merchant, but an artist shall not otherwise be regarded as an art merchant.

3. An artist or merchant who consigns a multiple to a merchant for the

purpose of effecting a sale of the multiple shall have no liability to a purchaser under this article if such consignor, as to the consignee, has complied with the provisions of this article.

4. When a merchant has agreed to sell a multiple on behalf of a consignor, who is not an art merchant, or when an artist has not consigned a multiple to a merchant, but the merchant has agreed to act as the agent for an artist for the purpose of supplying the information required by this article, such merchant shall incur liabilities of other merchants prescribed by this article as to a purchaser.

5. When an art merchant or merchant is liable to a purchaser pursuant to the provisions of this article, as a result of providing information in the situations referred to above in this section, as well as when such a merchant purchased such a multiple from another merchant, if the merchant or art merchant can establish that his liability results from incorrect information which was provided by the consignor, artist or merchant to him in writing, the merchant who is liable in good faith relied on such information, the consignor, artist or merchant shall similarly incur such liabilities as to the purchaser and such merchant.

§ 15.15. Remedies and enforcement. 1. An art merchant, including a merchant consignee, who offers or sells a multiple in, into or from this state without providing the information required by this article for the appropriate time period, or who provides required information which is mistaken, erroneous or untrue, except for harmless errors such as typographical errors, shall be liable to the purchaser to whom the multiple was sold. The merchant's liability shall consist of the consideration paid by the purchaser with interest from the time of payment at the rate prescribed by section five thousand four of the civil practice law and rules or any successor provisions thereto, upon the return of the multiple in substantially the same condition in which received by the purchaser. This remedy shall not bar or be deemed inconsistent with a claim for damages or with the exercise of additional remedies otherwise available to the purchaser.

2. In any proceeding in which an art merchant relies upon a disclaimer of knowledge as to any relevant information required by this article for the appropriate time period, such disclaimer shall be effective only if it complies with the provisions of section 13.05 of this title, unless the claimant is able to establish that the merchant failed to make reasonable inquiries, according to the custom and usage of the trade, to ascertain the relevant information or that such relevant information would have been ascertained as a result of such reasonable inquiries.

3. (a) The purchaser of such a multiple may recover from the art merchant an amount equal to three times the amount recoverable under subdivision one of this section if an art merchant offers, consigns or sells a multiple and:

(i) willfully fails to provide the information required by this article for the appropriate time period;

(ii) knowingly provides false information; or

(iii) the purchaser can establish that the merchant willfully and falsely disclaimed knowledge as to any required information.

(b) Pursuant to subparagraphs (i) and (iii) of paragraph (a) of this subdivision, a merchant may introduce evidence of the relevant usage and custom of the trade in any proceeding in which such treble damages are sought. This subdivision shall not be deemed to negate the applicability of article thirteen of this chapter as to authenticity and article thirteen is applicable, as to authenticity, to the multiples covered by the provisions of this article.

4. In any action to enforce any provision of this article, the court may allow the prevailing purchaser the costs of the action together with reasonable attorneys' and expert witnesses' fees. In the event, however, the court determines that an action to enforce was brought in bad faith it may allow such expenses to the art merchant as it deems appropriate.

5. An action to enforce any liability under this article shall be brought within the period prescribed for such actions by article two of the uniform commercial code.

§ 15.17. Enjoining violations. Any violation of this article or of section 14.05, 14.06 or 14.07 of this chapter shall be deemed to be unlawful for the purposes of invoking sections three hundred forty-nine and three hundred fifty of article twenty-two-A of the general business law, and any person who engages in repeated violations of this article shall be deemed to have demonstrated the persistent fraud or illegality necessary to invoke subdivision twelve of section sixty-three of the executive law. The attorney general may bring an action pursuant to article twenty-two-A of the general business law or a proceeding pursuant to subdivision twelve of section sixty-three of the executive law to enjoin violations of this article and seek restitution for any person entitled thereto. In any such action or proceeding, the attorney general may recover, in addition to any other relief provided in those statutes, a civil penalty of not more than five hundred dollars to be forfeited to the state, provided, however, that with respect to actions brought pursuant to this section to which article twenty-two-A of the general business law applies, the foregoing civil penalty shall be in lieu of any penalty set forth therein. In connection with any such proposed action or proceeding, the attorney general is authorized to take proof and make a determination of the relevant facts, and to issue subpoenas in accordance with the civil practice law and rules.

§ 15.19. Application of the article. This article shall apply to the visual art objects governed by this article which are sold, offered for sale, consigned or possessed with intent to sell in, into or from this state. With respect to such multiples compliance with this article shall commence six months after January first, nineteen hundred eighty-five.

ARTICLE 16

SEVERABILITY

§ 16.01. Severability. Effect of unconstitutionality in part. If any clause, sentence, paragraph, subdivision, section or part of this title shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

TITLE D

REGULATION OF PUBLIC ENTERTAINMENTS OR EXHIBITIONS BY CINEMATOGRAPH

ARTICLE 19

PUBLIC ENTERTAINMENTS OR EXHIBITIONS BY CINEMATOGRAPH OR ANY OTHER APPARATUS FOR PROJECTING MOVING PICTURES

§ 19.01. Fireproof booth for cinematograph or any other apparatus for projecting moving pictures. No cinematograph or any other apparatus for projecting moving pictures, save as excepted in sections 19.05 and 19.09 of this article, which apparatus uses combustible films of more than ten inches in length, shall be set up for use or used in any building, place of public assemblage or entertainment, unless such apparatus for the projecting of moving pictures shall be inclosed therein in a booth or inclosure constructed of concrete, brick, hollow tile or other approved fireproof material or any approved fireproof framework covered or lined with asbestos board, or with some other approved fire resisting material, and unless such booth shall have been constructed as provided in section 19.03 of this article and the certificate provided in section 19.07 of this article shall have been issued to the owner or lessee of the premises wherein such booth is situated.

§ 19.03. Construction of booth; approval of plans and specifications. The booths provided for in section 19.01 of this article shall be constructed according to plans and specifications which shall have been first approved, in a city, by the mayor or chief executive officer of the city department having supervision of the erection of buildings in such city; in a village, by the mayor of such village; in a town outside the boundaries of a city or village, by the supervisor of such town. Provided, however, that no plans and specifications for the construction of such booths shall be approved by any public official, unless the following requirements are substantially provided for in such plans and specifications:

1. Dimensions. Such booths shall be at least six feet in height. If one machine is to be operated in such booth the floor space shall be not less than forty-eight square feet. If more than one machine is to be operated therein, an additional twenty-four square feet shall be provided for each such additional machine.

2. General specifications. In case such booth is not constructed of concrete, brick, hollow tile or other approved fireproof material than asbestos, such booth shall be constructed with an angle framework of approved fireproof material, the angles to be not less than one and one-quarter inches by three-sixteenths of an inch thick, the adjacent members being joined firmly with angle plates of metal. The angle members of the framework shall be spaced not more than four feet apart on the sides and not more than three feet apart on the front and back and top of such booth. The sheets of asbestos board or other approved fire-resisting material shall be at least one-quarter of an inch in thickness and shall be securely attached to the framework by means of

metal bolts and rivets. The fire-resisting material shall completely cover the sides, top and all joints of such booth. The floor space occupied by the booth shall be covered with fire-resisting material not less than three-eighths of an inch in thickness. The booth shall be insulated so that it will not conduct electricity to any other portion of the building. There shall be provided for the booth a door not less than two feet wide and five feet ten inches high, consisting of an angle frame of approved fireproof material covered with sheets of approved fireproof material one-quarter of an inch thick, and attached to the framework of the booth by hinges, in such a manner that the door shall be kept closed at all times, when not used for ingress or egress.

The operating windows, one for each machine to be operated therein and one for the operator thereof, shall be no larger than reasonably necessary, to secure the desired service, and shutters of approved fireproof material shall be provided for each window. When the windows are open, the shutters shall be so suspended and arranged that they will automatically close the window openings, upon the operating of some suitable fusible or mechanical releasing device.

Where a booth is so built that it may be constructed to open directly on the outside of the building through a window, such window shall be permitted for the comfort of the operator, but such booth shall not be exempted from the requirement of the installation of a vent flue as hereinafter prescribed. Said booth shall contain an approved fireproof box for the storage of films not on the projecting machine. Films shall not be stored in any other place on the premises; they shall be rewound and repaired either in the booth or in some other fireproof inclosure. The booth in which the picture machine is operated shall be provided with an opening or vent flue in its roof or upper part of its side wall leading to the outdoor air. The vent flue shall have a minimum cross-sectional area of fifty square inches and shall be fireproof. When the booth is in use there shall be a constant current of air passing outward through said opening or vent flue at the rate of not less than thirty cubic feet per minute.

§ 19.05. This article not retroactive under certain conditions. Sections 19.01 and 19.03 of this article shall not be retroactive for any booth approved by the appropriate public authority or official prior to March third, nineteen hundred forty-one, provided such booth have or be so reconstructed of the same material as to have dimensions as specified in section 19.03 of this article; provided such booth conform to the specification of section 19.03 of this article as regards vent flue, box for storage of films, specifications for rewinding and repairing films and specifications for windows and doors, and provided such booth be of rigid fireproof material, and be insulated so as not to conduct electricity to any other part of the building and be so separated from any adjacent combustible material as not to communicate fire through intense heat in case of combustion within the booth.

§ 19.07. Inspection; certificate for permanent booths. After the construction of such booth shall have been completed, the public officer charged herein with the duty of passing upon the plans and specifications therefor shall within three days after receipt of notice in writing that such booth has been completed cause such booth to be inspected. If the provisions of sections 19.01 and 19.03 of this article have been complied with, such public officer shall issue to the owner or lessee of the premises wherein such booth is situated a certificate stating that the provisions of sections 19.01 and 19.03 of this article have been complied with.

§ 19.09. Portable booth for temporary exhibitions. Where motion pictures are exhibited daily for not more than one month, or not more often than three times a week, in educational or religious institutions or bona fide social, scientific, political or athletic clubs, a portable booth may be substituted for the booth required in sections 19.01 and 19.03 of this article. Such booth shall have a height of not less than six feet and an area of not less than twenty square feet and shall be constructed of asbestos board, sheet steel of no less gauge than twenty-four; or some other approved fireproof material. Such portable booth shall conform to the specifications of section 19.03 of this article with reference to windows and door, but not with reference to vent flues. The floor of such booth shall be elevated above the permanent support on which it is placed by a space of at least one-half inch, sufficient to allow the passage of air between the floor of the booth and the platform on which the booth rests, and the booth shall be insulated so that it will not conduct electricity to any other portion of the building.

§ 19.11. Exemption and requirements for miniature cinematograph machines. The above sections, 19.01, 19.03, 19.05, 19.07 and 19.09, referring to permanent and portable booths, shall not apply to:

1. Any miniature motion picture machine in which the maximum electric current used for the light shall be three hundred and fifty watts. Such miniature machine shall be operated in an approved box of fireproof material constructed with a fusible link or other approved releasing device to close instantaneously and completely in case of combustion within the box. The light in said miniature machine shall be completely inclosed in a metal lantern box covered with an unremovable roof;

2. The use or operation of any so-called miniature motion picture apparatus which uses only an enclosed incandescent electric lamp and approved acetate of cellulose or slow burning films, and is of such construction that films ordinarily used on full-size commercial picture apparatus cannot be used therewith.

§ 19.13. Inspection; certificate for portable booths and miniature cinematograph machines. Before moving pictures shall be exhibited with a portable booth, under section 19.09 of this article, and before a miniature machine without a booth shall be used as prescribed in section 19.11 of this article, there shall be obtained from the appropriate authority, as defined in section 19.03 of this article, a certificate of approval.

§ 19.15. Penalty for violating this article. The violation of any of the provisions of this article shall constitute a misdemeanor. This article shall not apply to cities which have local laws or ordinances now in force which provide for fireproof booths of any kind for moving picture machines or apparatus, nor to a place of public assembly as defined in subdivision twelve of section two of the labor law and subject to the requirements of the labor law and the rules adopted thereunder.

TITLE E

NEW YORK STATE CULTURAL RESOURCES ACT

ARTICLE 20

NEW YORK STATE CULTURAL RESOURCES ACT

§ 20.01. Short title. This act shall be known and may be cited as the "New York State Cultural Resources Act".

§ 20.03. General definitions. As used or referred to in this article and in any special law creating a trust for cultural resources, except as otherwise provided in such law, the following terms shall have the following meanings:

1. "Board" or "board of trustees" shall mean the board of trustees of a trust for cultural resources.

2. "Bonds and notes" shall mean the bonds and notes issued by a trust for cultural resources.

3. "Combined-use facility" shall mean any structure or improvement and any adjoining structures or improvements that are or are to be designed to be and upon completion are used or occupied in part by a participating cultural institution and in part by other persons who shall pay tax equivalency payments to the trust pursuant to section 20.13 of this article, any real property used or to be used in connection therewith, and any and all recreational, educational, cultural, office, living, rehearsal, parking, restaurant, retail, storage and other facilities necessary or desirable in connection with the activities of the participating cultural institution or such other person.

4. "Convey" shall mean to convey, grant, sell, license, lease, sublease, assign, transfer, or otherwise dispose of real property, and the term "conveyance" shall mean and include the equivalent noun form of each such verb included within the meaning of the verb "to convey." The

terms "to convey" or "conveyance" shall not include the creation of a mortgage or other lien on real property unless such mortgage or lien has been foreclosed or the mortgagee or lienholder of such mortgage or lien has taken possession of such real property.

5. "Cultural facility" shall mean any structure, improvement, furnishing, equipment or other real or personal property that is or is to be used, owned, or occupied in whole or in part by a participating cultural institution, including but not limited to museums, performing arts centers, public television and radio stations, theaters, auditoriums, libraries, exhibition, performance and rehearsal space, galleries, artists' and dancers' studios, recording studios, and any and all recreational, educational, cultural, office, living, rehearsal, parking, restaurant, retail, storage and other facilities necessary or desirable in connection with the activities of the participating cultural institution.

6. "Develop" shall mean to design, construct, acquire, reconstruct, rehabilitate, expand, modernize, repair or otherwise improve real property for use or conveyance, and the term "development" shall mean and include the equivalent noun form of each such verb included within the meaning of the verb "to develop."

7. "Developer" shall mean any person approved by a trust as being qualified and eligible to enter into an agreement with a trust for the development of a combined-use facility or any part or portion thereof or a cultural facility or any part or portion thereof.

8. "Exempt real property" shall mean real property exempt from real property taxation pursuant to section four hundred twenty-a or four hundred twenty-b of the real property tax law.

9. "Governing body" shall mean the board or body in which the general legislative powers of a municipality or county are vested.

10. "Governor" shall mean the governor of the state.

11. "Institutional portion" shall mean the part or portion of a combined-use facility that prior to completion is designed to be and upon completion is used or occupied by a participating cultural institution. The institutional portion shall include the real property used or to be used in connection therewith; any and all recreational, educational, cultural, office, living, rehearsal, parking, restaurant, retail, storage and other facilities necessary or desirable in connection with the activities of the participating cultural institution; and any interest in a combined-use facility which prior to completion is designed to be and upon completion is owned by, or conveyed to, a participating cultural institution jointly or in common with a trust, a developer, or an owner, to the extent of the interest of such participating cultural institution.

12. "Mayor" shall mean the mayor or highest elected official of a municipality.

13. "Municipality" shall mean any city in the state having a population of one million or more people.

14. "County" shall mean any county in the state except a county located wholly within a city.

15. "Non-institutional portion" shall mean the part or portion of a combined-use facility other than the institutional portion. If the non-institutional portion, or any part thereof, consists of a condominium, the consent of the trust which has developed or approved the developer of such condominium shall be required prior to any amendment of the declaration of such condominium pursuant to subdivision nine of section three hundred thirty-nine-n of the real property law and prior to any amendment of the by-laws of such condominium pursuant to paragraph (j) of subdivision one of section three hundred thirty-nine-v of the real property law, and whether or not such trust is a unit owner of such condominium, it may exercise the rights of the board of managers and an aggrieved unit owner under section three hundred thirty-nine-j of the real property law in the case of a failure of any unit owner of such condominium to comply with the by-laws of such condominium and with the

rules, regulations, and decisions adopted pursuant thereto.

16. "Owner" shall mean any person, other than a trust for cultural resources, to whom any real property, consisting of all or any part of the non-institutional portion of a combined-use facility, or in or on which all or any part of such portion prior to completion is designed to be and upon completion is developed, is conveyed.

17. "Participating cultural institution" shall mean a person described in the special law creating a trust.

18. "Not-for-profit cultural organization" shall mean a not-for-profit corporation described in the special law creating a trust in any county and which is able to demonstrate any one of the following three proofs of not-for-profit status: acceptance of non-profit status by the U. S. treasury department under section 501 (c) (3) of the U. S. internal revenue code; filing with the board of regents of the state of New York pursuant to section two hundred sixteen of the education law; or filing with the secretary of state under the registration of charitable organizations, pursuant to section one hundred seventy-two of the executive law; provided that such organization shall have been incorporated or shall have made the appropriate filing at least five years prior to the date on which the trust approves a loan for such organization.

19. "Person" shall mean an individual, a partnership, an association, a joint stock company, an unincorporated organization, a trust (as distinguished from a trust for cultural resources), a corporation, including any public corporation, any corporation formed other than for profit and any corporation formed for profit, all as classified and defined respectively in sections sixty-five and sixty-six of the general construction law, or a government or political subdivision or agency thereof.

20. "Real property" shall mean any land, water, structures, buildings, improvements or any rights or interest therein, including without limitation air, space or development rights, interests in such property

less than full title, such as permanent or temporary easements, rights-of-way, franchises, uses, leaseholds, licenses, and all other incorporeal hereditaments in every legal or equitable estate, interest or right, and any and all other things and rights usually included within the term "real property".

21. "Special law" shall mean an act of the legislature creating a trust for cultural resources pursuant to this article.

22. "State" shall mean the state of New York.

23. "Tax-equivalency payments" shall mean the payments required to be made pursuant to subdivision three of section 20.13 of this article.

24. "Trust for cultural resources" or "trust" shall mean a public benefit corporation created by special law.

25. "Trustee" shall mean a member of the board of trustees of a trust for cultural resources.

§ 20.05. Legislative findings and determinations, and statement of purposes. 1. The legislature hereby finds, determines and declares:

(a) that cultural institutions in the state promote public interest in and knowledge of the arts and other cultural activities; attract artists and others with creative talents who live in proximity to and perform work related to such institutions; and otherwise vitally contribute to educational, recreational and cultural activities and opportunities of benefit to the people of the state; and that such institutions provide a wealth of specialized educational and cultural activities designed for, among others, students, minority and ethnic populations, senior citizens, the unemployed, consumers and citizens interested in the performing arts; and that it is the sense of the legislature that the contributions of such institutions to the people of New York state have been exceptional;

(b) that such institutions are essential to the existence of cultural centers in the state, contribute to the continued existence and growth in the state of industries related to the arts and other cultural activities, attract residents of and visitors to the state, including patrons of the arts, generate substantial tax and other revenues in and for the state, and otherwise vitally contribute to the economy and tax base of the state;

(c) that recognizing the importance of and public purpose served by such institutions, the state has appropriated and expended substantial funds for and has otherwise supported and assisted such institutions;

(d) that there is a serious shortage of required space and facilities for the continued existence, proper operation and needed growth of such institutions and that there is a serious shortage of required modern equipment, furnishing and installations for the continued existence, proper operation and needed growth of such institutions;

(e) that owing to inflation, increases in the cost of energy and other economic forces, operating expenses of many such institutions exceed revenues from endowments and other sources; sufficient funds to pay operating expenses and the costs of needed expansion, improvement and rehabilitation of the space and facilities of such institutions are not available from the state, municipalities or counties in the state or other past sources of such funds; and unless corrective action is taken, the needed expansion, improvement, equipping, furnishing and rehabilitation of the space and facilities of such institutions will not be undertaken and such institutions will be required to invade their endowments and other capital assets to pay operating expenses, thereby endangering the continued existence and operation of such institutions;

(f) that a public purpose would be served and the interests of the people of the state would be promoted if the collections, endowments and other capital assets of such institutions were preserved and expanded; if continued operation in the state and needed expansion, improvement and rehabilitation of the space and facilities of such institutions were encouraged; and if action were taken to permit such operation and expansion, improvement and rehabilitation without additional funds from or adverse effects on the tax base of the state, counties or municipalities of the state;

(g) that many such institutions own or plan to acquire valuable real property or interests in real property which are unused or underutilized, and such institutions are unable properly to develop or otherwise fully to utilize and realize the value of such real property owing in part to lack of expertise and in part to risks to their endowment, collections and other capital assets;

(h) that appropriate development and utilization of such real property and interest in real property and the purchase of capital equipment and other personal property would foster continued operation in the state and needed expansion, improvement and rehabilitation of the space and facilities of such institutions without additional funds from or adverse effects on the tax base of the state, counties or municipalities of the state; would help provide suitable housing accommodations, commercial uses and related facilities in proximity to such institutions; and would otherwise promote the interest of the people of the state;

(i) that development of suitable housing accommodations, commercial uses, and related facilities compatible with and complementary to such institutions would help to maintain, strengthen and revitalize the areas in which such institutions are located, that such development would encourage such institutions to continue operation in such areas and permit needed expansion, improvement and rehabilitation of the space and facilities of such institutions, and that a public purpose would be served and the interests of the people of the state would be promoted by the development of such accommodations, uses and facilities in combination with the facilities of such institutions;

(j) that many not-for-profit cultural organizations are in need of development and/or rehabilitation of sufficient and appropriate space to assure their continued existence and benefit for the people of the state; and that sufficient funds to pay the costs of such needed space and facilities of such organizations are not currently available from the state, counties or municipalities; and that a program which would utilize current resources and bring to bear other possible additional resources for the development and rehabilitation of such space is essential to the continued existence and operation of such organizations and is therefore found by the legislature to be in the public interest; and

(k) that based on past experience, the private sector alone will continue to be unable properly to develop such real property and the requirements of such institutions will not be met unless corrective action is taken.

2. The legislature further finds, determines and declares that a public purpose would be served and the interests of the people of the state would be promoted by appropriate development of unused and underutilized real property and interests in real property of such institutions; that appropriate development of such real property includes construction of cultural facilities and of combined-use facilities consisting of institutional portions (including the expansion, improvement or rehabilitation of the space and facilities of such institutions) and non-institutional portions (including suitable housing accommodations, related facilities and other lawful uses compatible with uses of institutional portions of such facilities and embodying architectural and design characteristics acceptable to such institutions); and that construction of cultural facilities and of combined-use facilities often provides the only economically feasible method for utilizing such real property for needed expansion, improvement and rehabilitation of the space and facilities of such institutions.

3. The legislature further finds, determines and declares that a public purpose would be served and the interests of the people of the state would be promoted by the creation pursuant to this article of public benefit corporations, known as trusts for cultural resources, to provide for the appropriate development of unused and underutilized real property and interests in real property of such institutions and for the construction, equipping and furnishing of combined-use facilities, and of cultural facilities in accordance with this article; that it is necessary to grant to trusts for cultural resources the powers, rights and duties provided by this article which include the delegation of part of the sovereign power of the state; that the creation of trusts for cultural resources, the exercise of such powers and rights, the performance of such duties, and the carrying out of the purposes of trusts for cultural resources are in all respects for the benefit of the people of the state and are and will serve a public purpose; and that in the exercise of such powers and rights, the performance of such duties and the carrying out of such purposes, trusts for cultural resources created under this article will be performing an essential public and

governmental function.

§ 20.07. Creation and purposes of a trust. 1. A trust shall be created by a special law as a corporate governmental agency and a public benefit corporation, constituting a political subdivision of the state. A trust and its corporate existence shall continue until terminated by law; provided, however, that no such law shall take effect so long as the trust shall have bonds, notes or other obligations outstanding unless adequate provision has been made for the payment thereof. Upon termination of the existence of a trust, all its rights and properties not otherwise disposed of shall pass to and be vested in the state. Any net earnings of a trust, beyond that necessary to retire any indebtedness of a trust or to implement the purposes set forth in this article and in any special law, may not inure to the benefit of any person other than the state, county or the municipality in which the principal office of the trust is located.

2. A trust shall exercise the powers granted to it by this article and by special law in cooperation with participating cultural institutions solely and exclusively in furtherance of the purposes of this article and such special law. Before entering into any agreement for the construction of a combined-use facility, a facility for a not-for-profit cultural organization, or before making a loan to a not-for-profit cultural organization, the board of trustees shall hold a public hearing and thereafter shall determine that development of such facility or the making of such loan is the most feasible means by which such purposes may be effectuated and that the architectural and design characteristics of the non-institutional portion are compatible with those of the institutional portion of such combined-use facility. Notice of such public hearing shall be published at least once no less than twenty days prior to such hearing in a newspaper of general circulation in the municipality or county in which such facility is located. Notice of such public hearing shall be served by certified mail upon the chairman of the planning board of any county in which such combined-use facility is or is designed to be developed, except that in a municipality, such notice shall be so served upon the chairman of the local community board

in the area in which such facility is or is designed to be developed; and notice of such public hearing shall be served upon the chairman of the planning board, or equivalent board, of any county in which a facility for a not-for-profit cultural organization is, or is designed to be, developed, or in which, in the case of a loan, a not-for-profit cultural organization is located.

§ 20.09. Administration of a trust. 1. A trust shall be administered by a board of trustees, all of whom shall be appointed as provided by special law. The number of trustees, their qualifications, and the duration of their respective terms of office shall be set forth in the special law.

2. The special law creating a trust may provide for the appointment of a trustee as chairman of the board of trustees and for the appointment of a trustee as president and chief executive officer of the trust. The chairman of the board of trustees and the president and chief executive officer of the trust shall have such powers and duties as may be prescribed by special law.

3. No trustee other than the president and chief executive officer shall receive, directly or indirectly, any salary or other compensation from a trust, in any capacity. Each trustee shall be entitled to reimbursement for his actual and necessary expenses incurred in the performance of his duties as a trustee. Each trustee shall be deemed to be a state officer for purposes of sections seventy-three and seventy-four of the public officers law. Notwithstanding anything to the contrary contained in any general, special or local law concerning the holding of dual offices, an officer or employee of the state or any political subdivision of the state, or any agency or instrumentality of the state or any such political subdivision, or any public corporation, may be appointed as president and chief executive officer of a trust, and such officers and employees may be appointed as trustees. No such officer or employee shall forfeit his office or employment by reason of his acceptance or appointment as a trustee, officer, employee or agent of the trust. No more than one person serving on the board of trustees,

or equivalent body, of each participating cultural institution with which the trust has entered into a financing agreement shall serve concurrently on the board of trustees of a trust. Any trustee of a trust who is concurrently serving on the board of trustees, or equivalent body, of a participating cultural institution shall refrain from participating in discussions or voting on matters pertaining to such participating cultural institution. Each trustee may be removed for cause as provided by special law.

4. Except as otherwise provided in this article or by special law, (a) a majority of the trustees then in office shall constitute a quorum for the transaction of any business or the exercise of any power by a trust; and (b) the powers of the trust shall be vested in, and be exercised by the affirmative vote of, a majority of the members of the board of trustees present at a meeting at which a quorum is in attendance; provided, however, that any action required or permitted to be taken at a meeting of the board of trustees may be taken without a meeting if all the members of the board of trustees then in office consent thereto in writing and provided further that one or more trustees may participate in a meeting by means of conference telephone or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time and participation by such means shall constitute presence in person at a meeting. No trustee may vote by proxy. The trust may delegate to one or more of its trustees, officers, agents or employees such powers and duties as it may deem proper.

5. The trustees, officers and employees of a trust shall not be personally liable for any debt, obligation or liability incurred by or imposed upon the trust at any time.

6. A trust may make payments to or on behalf of its trustees, officers and employees in accordance with and to the same extent as authorized by the provisions of sections seven hundred twenty-one through seven hundred twenty-six of the business corporation law as amended from time to time with the same effect as though such sections applied to the trust, its trustees, officers and employees; provided, however, that a trust shall save harmless and indemnify its trustees, officers and

employees against any claim, demand, suit or judgment based on allegations that financial loss has been sustained by any person in connection with the acquisition, disposition or holding of bonds, notes, securities or other obligations of a trust, or those of any other public corporation if such loss allegedly resulted from dealings with the trust, unless such trustee, officer or employee is found by a final judicial determination not to have acted in good faith for a purpose which he reasonably believed to be in the best interests of the trust or not to have had reasonable cause to believe that his conduct was lawful; and provided further than no trustee, officer or employee of the trust shall be liable to any person other than the trust based solely on his or her conduct in the execution of such office, unless the conduct of such trustee, officer or employee with respect to the person asserting liability constituted gross negligence or was intended to cause the resulting harm to the person asserting such liability. A trust may procure insurance or be indemnified with respect to any payment permitted under this subdivision in such amounts and with such insurers or other persons as it deems desirable.

§ 20.11. General powers of a trust. In addition to the other powers conferred by this article and by special law, a trust shall have the following general powers:

1. to sue and be sued,

2. to have a seal and alter the same at pleasure,

3. to make and execute contracts and all other instruments, including without limitation instruments of guarantee and indemnification,

4. to incur liabilities, borrow money at such rates of interest as the trust may determine, issue its notes, bonds and other obligations, and notwithstanding subdivision three of section 20.33 of this article, if in its sole discretion the trust so determines and declares, to issue bonds and notes, the income from and interest on which may be taxed or taxable by the United States, by the state, and if applicable, by any

municipality or other political subdivision in the state, or by any of them, and to secure any of its obligations by mortgage or pledge of all or any of its real and personal property or any interest therein, wherever situated,

5. to invest and reinvest any funds held in reserve or sinking funds or any other funds not required for immediate use or disbursement, including proceeds from the sale of any bonds or notes and any revenues, receipts, borrowings and income, in obligations of or guaranteed by the United States, the state or any political subdivision of the state, or any agency or instrumentality of any of them, or certificates of deposit, savings accounts, time deposits or other obligations or accounts of banks or trust companies in the state, secured, if the trust shall so require, in such manner as the trust may so determine,

6. to adopt, amend or repeal by-laws for its organization and internal management, the power to amend, alter or repeal which shall not be abridged by any covenant with bondholders, and rules and regulations governing the exercise of its powers and the fulfillment of its purposes,

7. to acquire or contract to acquire by grant, purchase, or otherwise, any real, personal or mixed property or any interest therein; to own, hold, clear, improve, maintain, develop, operate, employ, use and otherwise deal in, and to sell, assign, exchange, transfer, convey, lease, mortgage, grant a security interest in or otherwise dispose of or encumber the same,

8. to appoint such officers and hire such employees as it may require, to fix and determine their qualifications, duties and compensation and to retain or employ other agents, including but not limited to architects, counsel, auditors, engineers and private consultants on a contract basis or otherwise for rendering professional or technical services and advice,

9. to make plans, surveys, and studies necessary, convenient or desirable to the effectuation of its purposes and powers and to prepare

recommendations in regard thereto,

10. to procure insurance against any loss in connection with its property, assets and operations in such amounts and from such insurers as it deems desirable,

11. to enter into agreements with the state, any county or municipality and the United States, or any agency or instrumentality of any of them, or any other person for any lawful purposes,

12. to accept grants, loans or contributions from the state, any county or municipality and the United States, or any agency or instrumentality of any of them, and from any other person or source and to expend the proceeds thereof,

13. to make loans to a participating cultural institution in accordance with an agreement between the trust and the participating cultural institution for the development of cultural facilities or the institutional portion of combined-use facilities, and

14. to do any and all things necessary, convenient or desirable to carry out its purposes and exercise its powers.

§ 20.13. Special powers of a trust. 1. A trust shall have such special powers with respect to assisting participating cultural institutions or other not-for-profit cultural organizations as are provided by special law; provided, that a trust may not develop or cause to be developed a combined-use facility for use or occupancy by a participating cultural institution unless (i) in a municipality such institution shall have had average annual admissions of at least five hundred thousand persons as shown on the records of such institution for a period of at least five years prior to either the effective date of this article or the date on which a trust first enters into an agreement for the development of a combined-use facility for the use or occupancy by such institution, (ii) in a city having a population of one hundred twenty-five thousand or more, such institution shall have had average annual admissions of at least fifty thousand persons as shown on the records of such institution for such period and (iii) in any other city, such institution shall have such minimum average annual admissions as are set forth in the special law creating a trust; provided, however, with respect to a participating cultural institution that is a public television station with respect to which a trust entered an agreement prior to January first, nineteen hundred ninety the foregoing shall not apply and provided further that the decision of the trust in determining such average annual admissions shall be final.

2. A trust may not acquire real property by condemnation, unless otherwise provided by special law.

3. For so long as any real property, consisting of all or any part of the non-institutional portion of a combined-use facility or in or on which all or any part of such portion prior to completion is designed to be and upon completion is developed shall be exempt from real property taxation pursuant to section 20.33 of this article, the owners from time to time of such real property shall pay to the trust which has developed or approved the developer of such facility, annual or other periodic amounts, as tax-equivalency payments, at least equal to the real property taxes that would have otherwise been paid or payable in respect of such real property; provided, however, that the special law creating a trust may provide a method for calculating such real property taxes for purposes of determining the amount of such tax-equivalency payments; and provided further that the special law creating a trust shall specify the purposes for which the trust shall use or expend such tax-equivalency payments, the means for enforcing such payments and the priorities in favor of a trust in connection with such enforcement.

4. A trust and the participating cultural institution with which the trust has entered into an agreement for the development of a combined-use facility, any facility for a not-for-profit cultural organization or a public television facility prior to January first, nineteen hundred ninety shall each have all rights provided by law, as if each were the owner of such facility and the real property in or on which such facility is or is designed to be developed, to contest in

whole or in part any assessment or revised assessment of the value of such facility and property, or any portion thereof, by appropriate legal proceedings, and for purposes of this subdivision four, each shall be deemed to be a person aggrieved. Each owner required to make tax-equivalency payments to a trust shall have all rights provided by law, as if he were the owner of the real property with respect to which he is required to make such payments, to contest in whole or in part any assessment or revised assessment of the value of such real property, and each such owner shall be deemed to be a person aggrieved for purposes of this subdivision.

5. Subject to any agreement with holders of its notes or bonds, a trust may enter into an agreement to pay or cause to be paid, by means which may include an agreement with a participating cultural institution in a municipality or a not-for-profit cultural institution in a county, a developer or an owner, annual sums in lieu of taxes to any municipality or political subdivision of the state, in respect of any real property which is exempt from taxation pursuant to section 20.33 of this article and is located in such municipality or political subdivision, or the special law creating a trust may provide for such payments in lieu of taxes.

§ 20.15. Resources of a trust. 1. A trust may receive, accept, invest, administer, expend and disburse for its corporate purposes, including without limitation the operation and administration of the trust, any revenues and monies made available or to be made available to it from any or all sources, including gifts, grants, loans and payments from the state, any county or municipality and the United States, and any agency or instrumentality of any of them, and from any other person.

2. A trust shall keep separate books and records of account in connection with each combined-use facility and each cultural facility and shall not spend or commingle any monies received by it in connection with such facility with any other monies received by it in connection with any other facility; provided, however, the trust may charge each such facility its costs of administration and operation allocable to

each such facility, and establish or maintain such reserves for the payment of such costs as the trust deems necessary.

3. The comptroller of the state or his legally authorized representative and the chief fiscal officer of the municipality or county in which a trust shall develop or cause to be developed any combined-use facility or a facility for a not-for-profit cultural organization or any cultural facility or his legally authorized representative shall be authorized from time to time to examine the books and accounts of the trust including its receipts, disbursements, contracts, reserves, investments, and any other matters relating to its financial standing. Such an examination shall be conducted by each such officer at least once in every three years; each such officer is authorized, however, to accept from the trust, in lieu of such an examination, an external examination of its books and accounts made by a certified public accountant acceptable to such officer.

§ 20.17. Bonds and notes of a trust. 1. A trust shall have the power and is hereby authorized to issue from time to time its bonds and notes in such principal amounts as the trust shall determine to be necessary for achieving any of its corporate purposes, including: (a) the payment of all or any part of the cost of developing cultural facilities or the institutional portion of combined-use facilities; (b) developing facilities for not-for-profit cultural organizations; (c) the making of loans pursuant to this article to not-for-profit cultural organizations and to participating cultural institutions; (d) the payment of interest on bonds and notes of the trust; (e) the establishment of reserves to secure such bonds and notes of the trust; (f) the payment of expenses incurred in connection with the issuance of the bonds and notes of the trust; and (g) during the period of development of a combined-use facility or a cultural facility or other facility authorized by this article, the payment of other expenses but, except in the case of a trust created prior to the effective date of this section, such expenses shall not include operating expenses of the participating cultural institution. All bonds or notes and the interest coupons applicable thereto whether or not in negotiable form are hereby made and shall be construed to be negotiable instruments and investment securities under article eight of the uniform commercial code.

2. A trust shall have the power to issue from time to time (a) notes to renew notes, (b) bonds to pay notes, including the interest thereon and redemption premium, if any, (c) bonds to refund any bonds of the trust then outstanding, including the payment of any redemption premium thereon and any interest accrued or to accrue to the earliest or subsequent date of redemption, purchase or maturity of such bonds. The refunding bonds may be exchanged for the bonds to be refunded or sold and the proceeds applied to the purchase, redemption or payment of such bonds, and pending such purchase, redemption or payment, such proceeds may be invested and reinvested in obligations of or guaranteed by the United States, the state, or any political subdivision of the state, or any agency or instrumentality of any of them, secured in such manner as the trust shall determine, maturing at such time or times as shall be appropriate to assure the prompt payment, as to the principal, interest and redemption premium, if any, on the outstanding bonds to be refunded. A trust shall have power out of any funds available therefor to purchase (as distinguished from the power of redemption herein provided) any bonds or notes of the trust, and all bonds so purchased shall be cancelled.

3. With respect to notes or bonds issued or renewed on and after the effective date of this title, no note or renewal thereof shall mature more than five years from and after the date of the original issue of such note, and no bond or bond issued to refund such bond shall mature more than thirty years from and after the date of the original issue of such bond, provided, however, no bond issued to refund bonds issued prior to the effective date of this section shall mature more than fifty years from and after the date of the original issue of any such bond. Notwithstanding the foregoing, notes issued by a trust for the purpose of repaying advances from a participating cultural institution which uses or occupies the institutional portion of a combined-use facility the cost of development of which was paid with the proceeds of bonds of the trust which were issued prior to September first, nineteen hundred ninety-one, shall mature no later than seven years from and after the

date of original issue of such note, and bonds issued by a trust for such purpose, including bonds issued to refund such notes, shall mature no later than fifty years from and after the date of original issue of such bonds.

4. The issuance of bonds and notes by a trust shall be authorized by resolution of the trust without further authorization or approval, which resolution shall be a part of the contract with the holders of the bonds or notes thereby authorized. Such resolution may provide that such bonds and notes may be registered or registrable as to principal and interest or as to interest alone and that such bonds and notes may be payable at such place or places, within or without the state, may bear interest at such rate or rates, may be payable and mature at such time or times, may be in such form and evidenced in such manner, may be in such denominations, and may contain such other provisions not inconsistent with this article, including provisions as to reserve or sinking funds, payment, redemption or refunding of bonds or notes, security therefor, events of default, remedies of bondholders or noteholders, appointment of trustees, as distinguished from members of the board of trustees of a trust for cultural resources, or fiscal agents, custody, collection, securing, investment and payment of any money and amendment or abrogation of such provisions, all as the trust may determine; provided that such resolution may provide for the manner of determining any or all of the foregoing provisions for such bonds and notes in lieu of determining such provisions.

5. Bonds may be issued in one or more series as serial bonds, or as term bonds, or as a combination thereof. Any signature, manual or facsimile, of an officer of the trust appearing on bonds or notes or coupons shall be valid and sufficient for all purposes whether or not such officer shall then be in office. The trust may also provide for the authentication of the bonds or notes by a trustee (as distinguished from a member of the board of trustees of a trust for cultural resources) or fiscal agent.

6. The bonds or notes of a trust may be sold at such prices at a public or private sale, in such manner and from time to time, as may be

determined by the trust, and the trust may pay all expenses, premiums and commissions which it may deem necessary or advantageous in connection with the issuance and sale thereof. No bonds or notes of a trust may be sold at a private sale unless such sale and the terms thereof have been approved in writing by the comptroller of the state and the chief fiscal officer of the municipality or county in which the combined-use facility or cultural facility for which such bonds or notes are issued is located.

7. Neither the trustees, officers or employees of a trust, nor any participating cultural institution or the members, directors, trustees, officers or employees of such institution, nor any person executing or authenticating the bonds or notes of the trust shall be liable on the bonds or notes or be subject to any personal or other liability or accountability by reason of the issuance thereof.

§ 20.19. Security for bonds or notes. 1. The principal of and interest on any bonds or notes issued by a trust may be secured by a pledge of any revenues and receipts of the trust, including without limitation the receipt of sums as tax-equivalency payments or loan repayments, and may be secured by a lease, loan agreement, mortgage, pledge, security interest or other instrument covering all or any part of a combined-use facility or cultural facility as authorized by this article, including any additions, improvements, extensions to or enlargements of such a facility thereafter made. Bonds or notes issued for a combined-use facility or cultural facility as authorized by this article may also be secured by an assignment of any lease of such combined-use facility or cultural facility as authorized by this article and by an assignment of the revenues and receipts of a trust from any such lease and by the assignment of any loan agreement with a participating cultural institution and by an assignment of the revenues and receipts of a trust from any such loan agreement and by the assignment of any mortgage, pledge, security interest or other instrument covering a combine-use facility or cultural facility.

2. A trust may provide in any proceedings under which bonds or notes

may be authorized for the time and manner of and the requisites for disbursements for the cost of a combined-use facility or cultural facility authorized by this article, and for all certificates and approvals of construction and disbursements as the trust shall deem necessary.

3. Any pledge by a trust of, or security interest granted in, earnings, revenues or other monies, including tax-equivalency payments, accounts, contract rights, general intangibles or other personal property shall be valid and binding from the time when the pledge is made; the earnings, revenues or other monies so pledged and thereafter received by the trust shall immediately be subject to the lien of such pledge or other security interest, without any physical delivery of the collateral thereof or further act, and the lien of any such pledge or other security interest shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the trust irrespective of whether such parties have notice thereof. No resolution or any other instrument by which a pledge or other security interest is created need be recorded, and no notice thereof need be filed in any public office.

4. In the discretion of a trust, the bonds may be secured by a trust indenture, which may contain any lawful provisions for protecting and enforcing the rights and remedies of the bondholders, by and between the trust and a corporate trustee, as distinguished from a member of the board of trustees of a trust, which may be any trust company or bank having the powers of a trust company in the state. A trust may provide by such trust indenture for the payment of the proceeds of the bonds and the revenues of a combined-use facility or cultural facility authorized by this article to the trustee under such trust indenture or other depository, and for the method of disbursement thereof, with such safeguards and restrictions as it may determine. If the bonds shall be secured by a trust indenture the bondholders shall have no authority to appoint a separate trustee to represent them.

§ 20.21. Reserve fund. A trust may create and establish a reserve fund to secure the bonds of a trust and may pay into such reserve fund any monies which may be made available to the trust for the purposes of such fund from any source, including without limitation tax-equivalency payments. The monies held in or credited to any such reserve fund shall be used only in accordance with the proceedings under which the bonds shall be issued or as provided by special law.

§ 20.23. State's right to require a redemption of bonds. Notwithstanding and in addition to any provisions for the redemption of bonds which may be contained in any contract with the holders of the bonds of a trust, the state may, upon furnishing sufficient funds therefor, require the trust to redeem, prior to maturity, as a whole, any issue of bonds on any interest payment date not less than twenty years after the date of the bonds of such issue at one hundred five per centum of their face value and accrued interest or at such lower redemption price as may be provided in the bonds in case of the redemption thereof as a whole on the redemption date. Notice of such redemption shall be published at least twice in at least two newspapers publishing and circulating respectively in the cities of Albany and New York, the first publication to be at least thirty days before the date of redemption.

§ 20.25. Remedies of bondholders and noteholders. 1. The supreme court shall have jurisdiction of any suit, action or proceeding by or on behalf of the holders of any bonds or notes issued by a trust. The venue of any such suit, action, or proceeding shall be laid in the county in which the principal office of the trust is located.

2. Before the principal of notes or bonds of a trust is declared due and payable by or on behalf of bondholders and noteholders thereof, thirty days notice shall first be given in writing to the governor, to the attorney general of the state, to the mayor of the municipality or chief executive officer of the county in which the principal office of the trust is located and to the trust.

§ 20.27. State and municipalities not liable on bonds and notes. The bonds, notes and other obligations of the trust shall not be a debt of the state or of any municipality or county in the state, and neither the state nor any municipality or county shall be liable thereon.

§ 20.29. Agreement of the state. The state does hereby pledge to and agree with the holders of any bonds or notes of a trust that the state will not limit or alter the rights vested in a trust by this article or by special law to fulfill the terms of any agreements made with the holders thereof, or in any way impair the rights and remedies of such holders until such bonds or notes together with the interest thereon, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceedings by or on behalf of such holders, are fully met and discharged. A trust is authorized to include this pledge and agreement of the state in any agreement with the holders of such bonds or notes.

§ 20.31. Bonds and notes as legal investments. The bonds and notes of a trust are hereby made securities in which all public officers and bodies of this state and all municipalities and political subdivisions, all insurance companies and associations and other persons carrying on an insurance business, all banks, bankers, trust companies, savings banks and savings associations, including savings and loan associations, building and loan associations, investment companies and other persons carrying on a banking business, all administrators, guardians, executors, trustees and other fiduciaries, and all other persons who are now or may hereafter be authorized to invest in bonds or other obligations of the state, may properly and legally invest funds including capital in their control or belonging to them. The bonds and notes are also hereby made securities which may be deposited with and may be received by all public officers and bodies of this state and all municipalities and political subdivisions for any purpose for which the deposit of bonds or other obligations of this state is now or may hereafter be authorized.

§ 20.33. Exemption from taxation. 1. It is hereby determined that the creation of a trust pursuant to this article and the carrying out of its corporate purposes are in all respects for the benefit of the people of the state, for the improvement of their health and welfare, and for the promotion of the economy; that said purposes are public purposes; and that a trust will perform an essential governmental function by exercising the powers conferred upon it by this article and by special law.

2. Notwithstanding any other provision of any other law to the contrary, the income, monies, operations and properties of a trust shall be exempt from taxation, including without limitation any and all state and local income, franchise, occupancy, transfer, recording, real property, sales and compensating use taxation. Any combined-use facility, including the non-institutional portion thereof, any facility for a not-for-profit cultural organization and any public television facility with respect to which a trust entered an agreement prior to January first, nineteen hundred ninety which has been developed by or on behalf of, or pursuant to an agreement with, or in whole or in part with the proceeds of a loan from a trust and any real property in or on which all or any part of any such facility prior to completion is designed to be and upon completion is developed shall be exempt from real property taxation from and after the date on which such real property has first been conveyed to the trust, or in the case of the development of a public television facility with respect to which a trust entered an agreement prior to January first, nineteen hundred ninety by a public television station or a facility for a not-for-profit cultural organization in whole or in part with proceeds of a loan from a trust, from and after the date on which such real property has first been conveyed to such station. In the case of a combined-use facility for a performing arts center with respect to which a trust entered an agreement prior to January first, nineteen hundred ninety, the non-institutional portion shall not be exempt from real property taxation from and after the date a trust conveys such non-institutional portion to any non-exempt third party.

3. The state covenants with all holders and transferees of bonds and notes issued by a trust, in consideration of the acceptance of and payment for the bonds and notes, that the bonds and notes of the trust, and the interest thereon and income therefrom and all its properties, income, fees, charges, gifts, grants, revenues, receipts, and other monies received or to be received, shall at all times be free from income and other taxation, except for estate or gift taxes on such bonds and notes and taxes on transfers.

§ 20.35. Actions by and against a trust. 1. The supreme court shall have exclusive jurisdiction of any action, suit or special proceeding brought by or against or involving a trust. The venue of any action, suit or special proceeding brought against a trust shall be laid in the city and county in which its principal office is located.

2. Any action or proceeding to which a trust or the people of the state, a county or a municipality may be parties, in which any question arises as to the validity of this article or the special law creating the trust, shall be preferred over all other civil causes except election causes in all courts of the state and shall be heard and determined in preference to all other civil business pending therein except election causes, irrespective of position on the calendar. The same preference shall be granted upon application of counsel to a trust in any action or proceeding in which the trust is a party or in which such counsel may be allowed to intervene.

3. Except as otherwise expressly provided by a lease, sublease, or other agreement to which it is a party, a participating cultural institution or not-for-profit cultural organization shall not be liable to any person for any claim, loss, cost or damage arising from or in connection with the development of a combined-use facility, a facility for a not-for-profit cultural organization or a public television facility with respect to which a trust entered an agreement prior to January first, nineteen hundred ninety, or any part or portion thereof.

§ 20.37. Cooperation with the state, counties and municipalities. Any agency or department of the state, of the county or of any municipality may render such services to a trust as may be requested by the trust. Upon request of a trust, any such agency or department is hereby authorized and empowered to transfer to the trust such officers and employees as the trust may deem necessary from time to time to assist the trust in carrying out its functions. Officers and employees so transferred shall not lose their civil service status or rights. A trust may enter into an agreement to pay, or cause to be paid by means which may include an agreement with a participating cultural institution or not-for-profit cultural organization, a developer or an owner, compensation to the state, a county or a municipality for services rendered to the trust.

§ 20.39. Annual and other reports. 1. A trust shall submit to the governor and to the mayor or chief executive officer and the governing body of the municipality or county in which its principal office is located, within ninety days after the end of each fiscal year, a complete and detailed report setting forth: (a) its operations and accomplishments; (b) its receipts and expenditures, in accordance with the categories or classifications established by the trust for its own operating and capital outlay purposes; (c) its assets and liabilities at the end of its fiscal year including the status of reserve, depreciation, special or other funds; and (d) a schedule of its bonds and other obligations outstanding at the end of its fiscal year, together with a statement of the amounts redeemed and incurred during such fiscal year.

2. A trust shall submit to the governor and to the mayor or chief executive officer and the governing body of the municipality or county in which its principal office is located, within thirty days after receipt thereof, a copy of the report of every external examination of the books and accounts of the trust, other than reports of examinations by any state, county or municipal official.

§ 20.41. Construction. This article and each special law enacted pursuant to this article, being necessary for the welfare of the state and its inhabitants, shall be liberally construed so as to effectuate its purposes.

§ 20.43. Inconsistent provisions of other laws superseded. Insofar as the provisions of this article and each special law enacted pursuant to this article are inconsistent with the provisions of any other law, general, special or local, the provisions of this article and each such special law shall be controlling.

§ 20.45. Separability. If any provision of any section of this article and each special law enacted pursuant to this article or the application thereof to any person or circumstance shall be judged invalid by a court of competent jurisdiction, such order or judgment shall be confined in its operation to the controversy in which it was rendered, and shall not affect or invalidate the remainder of any provision of any section of this article and each such special law or the application thereof to any other person or circumstances, and to this end each provision of this article and each such special law is hereby declared to be severable.

§ 20.47. Application of law. Any other provision of any other law to the contrary notwithstanding, all of the applicable provisions of the general municipal law, or of any other law, shall apply to the New York state cultural resources act herein continued in the same manner as if the language of such law had been incorporated in full into this article, except to the extent that such provisions are inconsistent with the provisions of this article. For the purposes of article fifteen-A of the executive law only, a trust shall be deemed a state agency as that term is used in such article, and its contracts for design, construction, services and materials shall be deemed state contracts within the meaning of that term as set forth in such article.

ARTICLE 21

TRUST FOR CULTURAL RESOURCES OF THE CITY OF NEW YORK

§ 21.01. Special definitions. As used or referred to in this article, all terms shall have the meanings set forth in section 20.03 of this chapter, except that the following terms shall have the following meanings:

1. "City" shall mean the city of New York.

2. "Mayor" shall mean the mayor of the city.

3. "Participating cultural institution" shall mean any person formed other than for profit which operates or makes available a cultural facility in the city, including but not limited to museums, performing arts centers, public television and radio stations, theaters, auditoriums, libraries, exhibition, performance and rehearsal space, galleries, artists' and dancers' studios, recording studios, and recreational, educational, office, living, parking, restaurant, retail or storage space related to any of the foregoing. The decision of the trust in determining that a person is a participating cultural institution shall be final and conclusive. The annual average admissions of each person which would itself qualify as a participating cultural

institution and which leases or licenses space in a performing arts center from another participating cultural institution (the "lessor") shall be attributed to the lessor for purposes of this article and article twenty of this chapter.

4. "Trust for cultural resources" or "trust" shall mean the trust for cultural resources of the city of New York created by this article.

§ 21.03. Legislative findings and statement of purposes. 1. The legislature hereby finds, determines and declares:

(a) that it is essential for the general and economic welfare of the people of the state for the city to remain a unique national and international center for cultural activities and affairs;

(b) that the city's position as such a unique national and international cultural center is essential to its position as a center for national and international finance, communications, publishing, entertainment, conventions, transportation, shipping and other enterprises, as well as philanthropic and educational activities and institutions;

(c) that certain areas of the city will be strengthened and revitalized by, and the city's reputation and position as a unique national and international center will be enhanced by, the development of combined-use facilities and cultural facilities in the city as provided by this article and by article twenty of this title;

(d) that certain cultural institutions located in the city are invaluable cultural, educational and recreational resources of the state and the continued operation of such institutions in the city is for the benefit of the people of the state;

(e) that by reason of the severe economic and fiscal problems facing both the state and city, neither the state nor the city is able adequately to support the cultural institutions of the city in their efforts both to provide cultural, recreational and educational opportunities to the people of the state and to maintain the position of the city as a unique national and international cultural center; and

(f) that it is in the interest of the people of the state and for their benefit and welfare to encourage the creative and innovative use of public and private resources in order to preserve and protect the cultural resources of the city and otherwise to effectuate the purposes of this article and article twenty of this chapter by the creation of the trust for cultural resources of the city of New York.

2. The legislature hereby further finds, determines and declares that the creation of the trust for cultural resources of the city of New York and the delegation to the trust of part of the sovereign power of the state are in all respects for the benefit of the people of the state and constitute a governmental, state, municipal and public purpose; and that the exercise by the trust of the functions and powers granted to it under this article constitutes the performance of an essential public and governmental function.

§ 21.05. Creation and administration of the trust. 1. There is hereby created the trust for cultural resources of the city of New York which shall have all the powers, rights, privileges and exemptions of a trust for cultural resources described in article twenty of this chapter and this article.

2. The board of trustees of the trust shall consist of nine trustees, as follows: the deputy mayor of finance and economic development of the city of New York, the chairperson of the New York city industrial development agency, the commissioner of cultural affairs of the city of New York and six trustees to be appointed by the mayor. The mayor shall designate one of the trustees appointed by the mayor as chairman of the board of trustees. The chairman shall preside over all meetings of the board of trustees, and after consultation with the mayor, the chairman may appoint a trustee who may be the chairman as president and chief executive officer of the trust. The chairman and the president and chief executive officer shall have such powers and duties as are set forth in the by-laws of the trust. Trustees appointed by the mayor shall be appointed for a term of six years from the effective dates of their appointments; provided, however, that the term of office of two trustees first appointed shall be five years, and the term of office of one trustee first appointed shall be four years. All trustees shall continue

to hold office until their successors have been appointed. If at any time there is a vacancy in the membership of the board of trustees, by reason of death, resignation, disqualification or otherwise, such vacancy shall be filled for the unexpired term in the same manner as the original appointment. The mayor may remove any trustee from office for cause.

3. The deputy mayor for economic development and rebuilding of the city of New York, the chairperson of the New York city industrial development agency and the commissioner of cultural affairs of the city of New York each may designate a person from his or her staff or agency to represent him or her at all meetings of the board of trustees of the trust for cultural resources for the city of New York from which such trustee may be absent. Any representatives so designated shall have the power to attend and to vote at any meeting of the board of trustees of said trust from which the trustee so designating him or her is absent, with the same force and effect as if the trustee designating such representative were present and voting. Such designation shall be by written notice signed by the trustee making the designation and delivered to the chairman of the board of trustees of the trust for cultural resources for the city of New York. The designation of each such person shall continue until revoked at any time by written notice signed by the trustee making the designation or his or her successor in office. Such designation shall not limit the power of the trustee making the designation to attend and vote in person at any meeting of the board of trustees of the trust for cultural resources for the city of New York.

4. Notwithstanding any other provision of law, any person serving as an ex officio member of the board of trustees of the trust for cultural resources for the city of New York, may also serve as an ex officio member of the board of trustees, or equivalent body, of any participating cultural institution. Notwithstanding any other provision of law, the trust for cultural resources for the city of New York may enter into a financing agreement with a participating cultural institution if more than one person serving on the board of trustees, or the equivalent body, of such participating cultural institution serves

concurrently on the board of trustees of the trust for cultural resources for the city of New York, provided, however, that no more than one such person serves other than in an ex officio capacity. Any trustee of the trust for cultural resources for the city of New York who is concurrently serving on the board of trustees, or equivalent body, of a participating cultural institution shall refrain from participating in discussions or voting on matters pertaining to such participating cultural institution, except that any such trustee of the trust for cultural resources for the city of New York who is serving concurrently as an ex officio member of the board of trustees of such trust and as an ex officio member of the board of trustees, or the equivalent body, of such participating cultural institution may participate in discussions and voting on matters pertaining to such participating cultural institutions while attending any regularly scheduled meeting or duly called special meeting of the board of directors for the trust for cultural resources for the city of New York.

§ 21.07. Special powers of the trust relating to assisting participating cultural institutions. In addition to such powers as are conferred elsewhere in article twenty of this chapter and this article, the trust shall have the following powers which may be exercised, at the discretion of the board of trustees, solely and exclusively in furtherance of its corporate purposes with or without public auction or bidding:

1. to undertake surveys of the present and anticipated needs of cultural institutions in the city, including without limitation the need for development of the facilities of such institutions, in order to determine whether or not the trust may effectively exercise its powers and fulfill its purposes in cooperation with any such institution;

2. to acquire, construct, install, equip, furnish, renovate, modernize, and otherwise develop combined-use facilities and cultural facilities or cause such combined-use facilities and cultural facilities to be so developed, in accordance with this article and article twenty of this title, to acquire in connection therewith real property or

interests in real property of a participating cultural institution or of the city, or of the developer or other persons whose participation the trust deems necessary for the development of any such combined-use facility or cultural facility, subject (if applicable) to the retention or creation by any such parties of any future or remainder interests in such property, all of which shall be valid notwithstanding any rule against perpetuities, and in connection therewith, to install or cause to be installed water, fuel, gas, electrical, telephone, heating, air-conditioning and other utility services, including appropriate connections;

3. to maintain, repair, keep up, manage and operate its real property and any combined-use facility or part thereof or any cultural facility or part thereof developed by or pursuant to an agreement with it, by means which may include the enforcement of its rules and regulations in the manner described in subdivision d of section two hundred two of the not-for-profit corporation law with the same effect as though such subdivision applied to the trust and to such property and combined-use facility or cultural facility;

4. to offer to convey and to convey all or any part of the non-institutional portion of a combined-use facility or any interest therein, and to take any and all actions deemed necessary or appropriate by the trust to advertise, promote, encourage, and effect such conveyances, all future or remainder interests created or retained by the trust in connection therewith which shall be valid notwithstanding any rule against perpetuities;

5. to convey with or without consideration, to a participating cultural institution the institutional portion of a combined-use facility or a cultural facility developed in cooperation with such institution and any real property held by the trust in connection with such development;

6. to enter into a partnership, joint venture or other enterprise in any capacity deemed by it to be appropriate, for the purpose of developing and operating a combined-use facility or any part thereof or

a cultural facility or any part thereof;

7. to convey, without public auction or bidding, any real property to a developer for the purpose of developing therein or thereon a combined-use facility, or a part or portion thereof, or a cultural facility, or any part or portion thereof, subject to the creation or retention by the trust and/or a participating cultural institution of such future or remainder interests in such property as it deems appropriate, all of which shall be valid notwithstanding any rule against perpetuities;

8. to purchase or lease the institutional portion of a combined-use facility or all or any portion of a cultural facility from the developer thereof for use and occupancy by a participating cultural institution;

9. to furnish cultural institutions with advice and with technical and other assistance; to act as liaison with federal, state and municipal and other local authorities and with users and occupants of combined-use facilities and cultural facilities with respect to the cultural, recreational and educational activities provided by cultural institutions; and otherwise to foster and encourage greater public knowledge of, and participation in, the cultural, recreational and educational activities of such institutions;

10. to organize one or more wholly-owned subsidiary corporations under any applicable provision of law and to perform through such subsidiaries or cause such subsidiaries to perform all or any part of its powers and functions;

11. to establish and promulgate such rules and regulations as the trust may deem necessary, convenient or desirable for the use and operation of any combined-use facility, or part thereof, or cultural facility, or part thereof, and for the use of any real property developed or to be developed by or pursuant to an agreement with it, including but not limited to rules and regulations governing the conduct and safety of the public on such premises;

12. to make and execute such agreements, including without limitation, instruments of conveyance and agreements with participating cultural institutions with respect to the architectural and design characteristics of any combined-use facility or cultural facility, as are necessary or convenient for the exercise of its corporate powers and the fulfillment of its purposes; and

13. to make loans in accordance with article twenty of this chapter.

§ 21.09. Special provisions relating to the acquisition of real property. 1. Subject to subdivision two of this section, the trust may acquire real property by condemnation pursuant to the provisions of the eminent domain procedure law where not inconsistent with this article. Prior to the commencement of any condemnation proceedings pursuant to this section, the trust shall cause a survey and map of the property to be condemned to be made and filed in its office and to be annexed thereto a certificate, executed by such officer or employee as the trust may designate, stating that the acquisition of the property described in such survey and map has been determined by the unanimous vote of its board of trustees to be necessary for the fulfillment of its corporate purposes. All condemnation proceedings brought by the trust pursuant to this section shall be brought in supreme court, New York county, and the compensation to be paid shall be determined by the court without a jury and without the appointment of commissioners. The court shall decree that title to any real property subject to condemnation proceedings brought pursuant to this section shall vest in the trust upon the entry and filing of an order of immediate possession, granted pursuant to the provisions of the eminent domain procedure law and providing for the deposit required by such section; provided that the trust shall have first complied with chapter one thousand one hundred sixty-one of the laws of nineteen hundred seventy-one and the deposit or payment made thereunder shall be credited against the deposit required under eminent domain procedure law. No award of compensation shall be increased by reason of any increase in the value of real property caused by the actual or proposed acquisition, use, development or disposition by the trust of any other real property.

2. The trust shall have the power to acquire by condemnation only the real property described as follows:

Any real property situate, lying and being in the Borough of Manhattan, City, County and State of New York, bounded and described as follows:

BEGINNING at a point on the northerly side of 53rd Street distant 306 feet 9 inches easterly from the corner formed by the intersection of the northerly side of 53rd Street and the easterly side of Avenue of the Americas (formerly Sixth Avenue); running thence northerly, parallel with Avenue of the Americas, 100 feet 5 inches to the center line of the block between 53rd and 54th Streets;
thence easterly, along said center line of the block, 78 feet 3 inches;
thence southerly, again parallel with Avenue of the Americas, 100 feet 5 inches to the northerly side of 53rd Street; and
thence westerly along the northerly side of 53rd Street, 78 feet 3 inches to the point or place of Beginning.

3. All real property, other than the real property described in subdivision two of this section, in or on which all or any part of a combined-use facility is or is designed to be developed (i) shall have been owned in fee by a participating cultural institution for a period of at least five years prior to the date on which the trust first enters into an agreement for the development of such facility; or (ii) shall have been owned by the city prior to the date on which the trust or a participating cultural institution first enters into an agreement for the development of such facility; or (iii) the proposed use of such real property for all or any part of the combined use facility developed or designed to be developed on such real property shall have been approved by the mayor by written instrument delivered to the trust and the participating cultural institution; or (iv) with respect to a public television station with respect to which a trust entered an agreement prior to January first, nineteen hundred ninety such real property shall exceed one hundred thousand square feet in area, and shall have been owned or leased by such public television station for a period of at

least five years prior to the date on which the trust first enters into an agreement for the development of a combined-use facility or such public television facility or makes a loan to such station.

§ 21.11. Special provisions relating to tax-equivalency payments. 1. The trust shall use and apply in the following order the tax-equivalency payments it receives in respect of each combined-use facility:

(a) the trust shall first pay the costs of administration of the trust allocable to such combined-use facility in accordance with generally accepted accounting principles consistently applied, including without limitation, the costs of collecting such tax-equivalency payments, and establish or maintain such reserves for the payment of such costs as the trust deems necessary;

(b) the trust shall then pay to the city, from and after the date on which the trust acquires any real property described in subdivision two of section 21.09 of this article or any other real property in or on which all or any part of a combined use facility is or is designed to be developed after January first, nineteen hundred ninety-seven, as nearly as practicable in accordance with the applicable schedule for making real property tax payments to the city with respect to such property, annual amounts equal to the total assessed valuation, for the fiscal year of such acquisition, of any such acquired real property with respect to which real property taxes were paid to the city during the fiscal year immediately preceding such acquisition, multiplied by the real property tax rate applicable to such acquired property during each fiscal year in which such amounts are required to be paid; provided that the amount paid by the trust pursuant to this paragraph during any fiscal year shall not be less than the amount paid by the trust pursuant to this paragraph during the immediately preceding fiscal year;

(c) if, for any fiscal year of the city up to and including the fiscal year ending ten years after the taxable status date next following the completion of construction of the non-institutional portion of such facility, the amount required to be paid by the trust pursuant to paragraph (b) of this subdivision is less than ten per centum of the aggregate amount of tax-equivalency payments received by the trust in respect of such portion during the same fiscal year, then the trust shall pay to the city, in lieu of the amount required to be paid by the trust pursuant to paragraph (b) of this subdivision, an amount equal to ten per centum of the aggregate amount of such tax-equivalency payments;

(d) the trust shall then pay to the city an amount equal to fifty per centum of the increase in the amount of tax-equivalency payments received by the trust in respect of the non-institutional portion of such facility, during each fiscal year of the city following the fiscal year beginning ten years after the taxable status date next following the completion of construction of such portion, above the amount of the tax-equivalency payments received by it during the fiscal year beginning ten years after such taxable status date, such payments to be made by the trust at the end of each fiscal year of the city for which they are required to be made; to the extent that such increase has resulted from a change in the assessed valuation or the real property tax rate applied to such portion;

(e) with remaining amounts, to pay principal and interest on bonds, notes and other obligations of the trust issued to finance development of all or any part of the institutional portion of such combined-use facility, and establish or maintain reserves to pay or secure such bonds, notes or other obligations equal to no more than the sum required to be paid to such reserves so that the moneys then held in such reserves equal the aggregate amount of the then outstanding principal of such bonds plus any redemption premium thereon and any interest to accrue thereon to the earliest or subsequent date of payment or redemption thereof;

(f) unless otherwise provided by a resolution of the board of estimate of the city, or successor body, beginning with the fiscal year of the trust in which the trust has paid, redeemed or otherwise retired or provided a reserve to redeem or otherwise retire all bonds, notes and obligations of the trust issued to finance development of all or any part of the institutional portion of such combined-use facility, the trust shall then pay from time to time the costs of operating and maintaining the institutional portion, developed by or on behalf of the trust, of such combined-use facility, including without limitation, the costs of lighting, heating, cooling, security, maintenance, repairs and necessary replacements; provided that at the end of each fiscal year of the city after commencement of payment of such costs, the trust shall have sufficient funds to make the payments then required under paragraphs (b), (c) and (d) of this subdivision; and

(g) the trust shall then pay to the city the entire remaining balance at the end of each fiscal year of the trust.

The provisions of paragraphs (b), (c) and (d) of this subdivision shall be subject to any agreement under subdivision five of section 20.13 of article twenty of this chapter.

2. Solely for purposes of determining the amount of the tax-equivalency payments required to be paid in respect of the real property, consisting of the non-institutional portion, or any part thereof, of a combined-use facility or in or on which all or any part of such portion prior to completion is designed to be and upon completion is developed for residential use, such real property shall be deemed to be exempt from real property taxation as follows: during the period of construction of such portion, such exemption shall consist of full exemption, and for a period not to exceed ten years in the aggregate after the taxable status date in the city next following the completion of such construction, such exemption shall consist of two years of full exemption, followed by two years of exemption from eighty percent of such taxation, followed by two years of exemption from sixty percent of such taxation, followed by two years of exemption from forty percent of such taxation, followed by two years of exemption from twenty percent of such taxation; provided that during such period of construction and such ten-year period tax-equivalency payments shall be made with respect to such real property at least equal to the amount computed by multiplying (a) the amount which bears the same ratio to the assessed valuation, for the fiscal year of the city prior to the commencement of such construction, of the land comprising the zoning lot or lots, exclusive of the real property described in subdivision two of section 21.09 of this article on which all or any part of such combined-use facility is or is designed to be developed as the floor area used or designed to be used in the non-institutional portion of such facility for residential use bears to the aggregate floor area permitted to be constructed on such lot or lots under applicable zoning regulations in effect at the time of commencement of such construction by (b) the real property tax

rate in the city for such fiscal year.

3. The exercise of the power granted to the trust by this article and article twenty of this chapter to collect tax-equivalency payments from owners is in all respects for the general welfare and benefit of the people of the state, and with respect to such owners, has the same effect as though such tax-equivalency payments were taxes as defined in the real property tax law which had been duly levied and imposed upon such owners by the city.

4. If any owner shall fail to make tax-equivalency payments as required by this article and article twenty of this chapter, the trust shall have a lien on the real property in respect of which such payments were required to be made as if the tax-equivalency payments were real property taxes and the trust were a tax district within the meaning of the real property tax law. Such lien shall have all the priorities of a lien for taxes of such real property in favor of the city and shall be enforceable by the trust in the manner provided for the collection of tax liens in title two of such article eleven; provided that in place of any period of redemption provided by law no judgment of foreclosure shall be entered until three years after the date on which such owner first failed to make such payments; and provided further that from such date interest shall accrue on such lien at the rate for late payment of real property taxes in the city.

§ 21.13. Special provisions relating to the financing and development of combined-use facilities or public television facilities. 1. Notwithstanding any of the powers granted to the trust by this article or by article twenty of this title, the trust shall neither convey nor cause to be conveyed any real property that is part of a combined-use facility unless the instrument of such conveyance, or an agreement relating thereto, contains a provision that no person other than the trust or a participating cultural institution may acquire, directly or indirectly, an interest in the institutional portion of a combined-use facility developed or designed to be developed for use or occupancy by such institution, at any time prior to the date on which all bonds and notes of the trust issued to finance construction of such portion have been fully paid, which interest would entitle such person to a deduction for depreciation with respect to such interest under the provisions of the United States internal revenue code of 1986, as amended, or any successor federal tax or revenue act, if the development of any part of such portion has been financed in whole or in part by bonds or notes issued by the trust.

2. No individual who serves on the board of trustees, or equivalent body, of a participating cultural institution shall be a developer of, or share in any profits arising from the development of, the non-institutional portion of a combined-use facility developed or designed to be developed for use or occupancy by such institution; provided that: (a) a person in which such individual has a financial interest not exceeding five per centum of the equity of such person may be a developer of, and may share in any profits arising from the development of, such non-institutional portion, if such individual refrains from voting at any meeting of the board of trustees, or equivalent body, of such institution on any matter relating to the approval by the trust of such person as a developer of such portion and the terms and conditions of any agreement relating thereto; (b) a person in which such individual has a financial interest may make a loan to the trust, to a developer or to any other person in the ordinary course of business in connection with such development; and (c) any such individual may purchase or rent an apartment, or any interest therein, in such portion, for fair market value.

3. No trustee of the trust and no person in which such trustee has a financial interest shall be a developer of the non-institutional portion of any combined-use facility.

§ 21.15. Application of law. Any other provision of any other law to the contrary notwithstanding:

1. All of the applicable provisions of the general municipal law or of any other law shall apply to the trust herein continued in the same

manner as if the language of such law had been incorporated in full into this article, except to the extent that such provisions are inconsistent with the provisions of this article.

2. The repeal of article thirteen-F of the general municipal law, and the enactment of this article with modifications as to the general reference of sections within this article, shall not be construed to take away, impair, or affect any right, remedy, responsibility or authority acquired or given by the provisions so repealed, including any covenants with bondholders or any legal contracts or agreements with any person or political subdivision of this state; and all existing suits or proceedings may be continued and completed; and all offenses committed or penalties or forfeitures incurred shall continue and remain in force with the same effect as if this article had not become law.

ARTICLE 22

TRUST FOR CULTURAL RESOURCES OF THE COUNTY OF ONONDAGA

§ 22.01. Special definitions. As used or referred to in this article, all terms shall have the meanings set forth in section 20.03 of this chapter, except that the following terms shall have the following meanings:

1. "County" shall mean the county of Onondaga.

2. "County executive" shall mean the county executive of the county of Onondaga.

3. "Not-for-profit cultural organization" shall mean a not-for-profit cultural organization as defined in section 20.03 of this chapter which is located in the county of Onondaga.

4. "Facility" shall mean a facility for a not-for-profit cultural organization.

5. "Trust for cultural resources" or "trust" shall mean the trust for cultural resources of the county of Onondaga created by this article.

§ 22.03. Legislative findings and statement of purposes. 1. The legislature hereby finds, determines and declares:

(a) that certain major cultural institutions located in the county are invaluable cultural, educational and recreational resources of the state and the continued operation of such institutions in the county is for the benefit of the people of the state and the county;

(b) that by reason of the severe economic and fiscal problems facing both the state and county, neither the state nor the county is able adequately to support the cultural institutions of the county in their efforts both to provide cultural, recreational and educational opportunities to the people of the state and to improve the viability and growth of cultural organizations in the county; and

(c) that it is in the interest of the people of the state and for their benefit and welfare to encourage the creative and innovative use of public and private resources in order to preserve and protect the cultural resources of the county and otherwise to effectuate the purposes of this article and article twenty of this chapter by the creation of the trust for cultural resources of the county of Onondaga.

2. The legislature hereby further finds, determines and declares that the creation of the trust for cultural resources of the county of Onondaga and the delegation to the trust of part of the sovereign power of the state are in all respects for the benefit of the people of the state and constitute a governmental, state, municipal and public purpose; and that the exercise by the trust of the functions and powers granted to it under this article constitutes the performance of an

essential public and governmental function.

§ 22.05. Creation and administration of the trust. 1. There is hereby created the trust for cultural resources of the county of Onondaga which shall have all the powers, rights, privileges and exemptions of a trust for cultural resources described in article twenty of this chapter and this article.

2. The board of trustees of the trust shall consist of five trustees, all of whom shall be appointed by the county executive with the approval of the county legislature after consultation with persons designated by participating cultural institutions. The county executive, after consultation with such persons, shall appoint a trustee as chairman of the board of trustees. The chairman shall preside over all meetings of the board of trustees, and after consultation with the county executive, the chairman shall appoint a trustee as president and chief executive officer of the trust. The chairman and the president and chief executive officer shall have such powers and duties as are set forth in the by-laws of the trust. Trustees shall be appointed for a term of six years from the effective dates of their appointments; provided, however, that the term of office of two trustees first appointed, other than the chairman and the president, shall be five years, and the term of office of one trustee first appointed, other than the chairman and the president, shall be four years. All trustees shall continue to hold office until their successors have been appointed. If at any time there is a vacancy in the membership of the board of trustees, by reason of death, resignation, disqualification or otherwise, such vacancy shall be filled for the unexpired term in the same manner as the original appointment. The county executive may remove any trustee from office for cause.

§ 22.07. Special powers of the trust relating to assisting participating cultural institutions. In addition to such powers as are conferred elsewhere in article twenty of this chapter and this article, the trust shall have the following powers which may be exercised, at the discretion of the board of trustees, solely and exclusively in furtherance of its corporate purposes with or without public auction or bidding:

1. to undertake surveys of the present and anticipated needs of not-for-profit cultural organizations in the county, including without limitation the need for development of the facilities of such organizations, in order to determine whether or not the trust may effectively exercise its powers and fulfill its purposes in cooperation with any such organizations;

2. to develop facilities for not-for-profit cultural organizations or cause such facilities to be developed, in accordance with this article and article twenty of this chapter, to acquire in connection therewith real property of a not-for-profit cultural organization, subject to the retention or creation by such organization of any future or remainder interests in such property, all of which shall be valid notwithstanding any rule against perpetuities, and in connection therewith, to install or cause to be installed water, fuel, gas, electrical, telephone, heating, air-conditioning and other utility services, including appropriate connections;

3. to maintain, repair, keep up, manage and operate its real property and any facility for a not-for-profit cultural organization or part thereof developed by or pursuant to an agreement with it, by means which may include the enforcement of its rules and regulations in the manner described in subdivision d of section two hundred two of the not-for-profit corporation law with the same effect as though such subdivision applied to the trust and to such property and facility;

4. to offer to convey and to convey all or any part of the non-institutional portion of a facility or any interest therein, and to take any and all actions deemed necessary or appropriate by the trust to advertise, promote, encourage, and effect such conveyances, all future or remainder interests created or retained by the trust in connection therewith which shall be valid notwithstanding any rule against perpetuities;

5. to convey with or without consideration, to a not-for-profit cultural organization the institutional portion of a facility developed in cooperation with such organization and any real property held by the trust in connection with such development;

6. to enter into a partnership, joint venture or other enterprise in any capacity deemed by it to be appropriate, for the purpose of developing and operating a facility for a not-for-profit cultural organization or any part thereof;

7. to convey, without public auction or bidding, any real property to a developer for the purpose of developing therein or thereon a facility, or a part or portion thereof, subject to the creation or retention by the trust of such future or remainder interests in such property as it deems appropriate, all of which shall be valid notwithstanding any rule against perpetuities;

8. to purchase or lease the institutional portion of a facility from the developer thereof for use and occupancy by a not-for-profit cultural organization;

9. to furnish not-for-profit cultural organizations with advice and with technical and other assistance; to act as liaison with federal, state and municipal and other local authorities and with users and occupants of facilities with respect to the cultural, recreational and educational activities provided by not-for-profit cultural organizations; and otherwise to foster and encourage greater public knowledge of, and participation in, the cultural, recreational and educational activities of such organizations;

10. to organize one or more wholly-owned subsidiary corporations under any applicable provision of law and to perform through such subsidiaries or cause such subsidiaries to perform all or any part of its powers and functions;

11. to establish and promulgate such rules and regulations as the

trust may deem necessary, convenient or desirable for the use and operation of any facility, or part thereof, and for the use of any real property developed or to be developed by or pursuant to an agreement with it, including but not limited to rules and regulations governing the conduct and safety of the public on such premises;

12. to make and execute such agreements, including without limitation, instruments of conveyance and agreements with not-for-profit cultural organizations with respect to the architectural and design characteristics of any facility, as are necessary or convenient for the exercise of its corporate powers and the fulfillment of its purposes; and

13. to make loans in accordance with article twenty of this chapter.

§ 22.09. Special provisions relating to the financing and development of facilities in the county of Onondaga. 1. No individual who serves on the board of trustees, or equivalent body, of a not-for-profit cultural organization shall be a developer of, or share in any profits arising from the development of, the non-institutional portion of a facility developed or designed to be developed for use or occupancy by such organization; provided that: (a) a person in which such individual has a financial interest not exceeding five per centum of the equity of such person may be a developer of, and may share in any profits arising from the development of, such non-institutional portion, if such individual refrains from voting at any meeting of the board of trustees, or equivalent body, of such institution on any matter relating to the approval by the trust of such person as a developer of such portion and the terms and conditions of any agreement relating thereto; (b) a person in which such individual has a financial interest may make a loan to the trust, to a developer or to any other person in the ordinary course of business in connection with such development; and (c) any such individual may purchase or rent an apartment, or any interest therein, in such portion, for fair market value.

2. No trustee of the trust and no person in which such trustee has a

financial interest shall be a developer of the non-institutional portion of any facility.

3. In any case in which real property, consisting of all or any part of the non-institutional portion of a combined-use facility or in or on which all or any part of such portion prior to completion is designed to be and upon completion is developed, is exempt from real property taxation pursuant to section 20.33 of this title, and subject to any agreements with the holders of its bonds or notes, the trust shall pay or cause to be paid by means which may include an agreement with a participating not-for-profit cultural organization, a developer or an owner, annual sums in lieu of taxes to any municipality or political subdivision of the state to which such taxes would otherwise be owed, provided that such payments in lieu of taxes shall be for the full amount of any such tax payments due and owing, unless such municipality or other political subdivision shall agree to a lesser payment for a length of time to be specified in an agreement between the trust and such municipality or political subdivision; and provided further that the trust shall not be empowered to receive tax equivalency payments; and further provided, that the non-institutional portion shall not be exempt from real property taxation from and after the date a trust conveys such non-institutional portion to any non-exempt third party.

TITLE F
THEATRICAL SYNDICATION FINANCING

ARTICLE 23
REGULATION OF THEATRICAL SYNDICATION FINANCING

§ 23.01. Legislative findings and declaration of policy. The legislature hereby finds and declares that:

1. The maintenance and well-being of the legitimate theatre in this state is essential to the cultural, moral and artistic well-being of the people of the state.

2. It is hereby determined and declared that the promotion and financing of theatrical productions, as defined in this article, are matters affected with a public interest and subject to the supervision of the state for the purpose of safeguarding investors and other members of the public against fraud, fraudulent accountings, financial misconduct, exorbitant rates and similar abuses.

3. It is further determined and declared that the integrity of box office operations as they relate to the allocation, distribution and advance sale of tickets to the public for theatrical productions, concerts, sporting events or other events, as defined herein, is a matter affected with a public interest and subject to the supervision of the state for the purpose of safeguarding ticket purchasers against practices which lead to charges beyond the premium permitted by law for tickets to such events, to the inability of such purchasers to obtain an exchange of tickets or refund following the nonperformance of the event for which tickets were purchased in advance, and to other similar abuses.

§ 23.03. Definitions. 1. The following terms, whenever used or referred to in this article, shall have the following meanings, unless the context clearly requires otherwise:

(a) A "theatrical production" shall mean those live-staged dramatic productions, dramatic-musical productions and concerts, as defined in this subdivision, which hereafter are shown to the public for profit and which are financed wholly or in part by the offering or sale in or from this state, directly, or through agents or distributors, of investment agreements, evidences of interest, limited partnerships, producer shares, equity or debt securities, pre-organization subscriptions or any other syndication participation, when any persons are offered, solicited to purchase or sell, directly or indirectly, such syndication interests for moneys or services within or from the state of New York; provided, however, that for purposes of paragraphs (h) and (i) of this subdivision a "theatrical production" shall mean any live-staged dramatic production, dramatic-musical production or concert which is presented to the public in a place of entertainment as defined in this subdivision.

(b) "Fraud", "deceit", and "defraud", as such terms are used in this article, are not limited to common-law deceit.

(c) "Syndication" shall mean all forms, methods and devices for pooling of investment funds for the chief purpose of participating in a theatrical production company, as defined herein.

(d) A "principal" shall mean and include every person or firm directly or indirectly controlling the business affairs or operations of a theatrical production company or of a ticket distributor, as defined herein.

(e) A "person" shall mean an individual, firm, company, partnership, corporation, trust or association.

(f) A "concert" shall mean any live performance whether musical or spoken, dramatic or nondramatic, by one or more performers, which is presented to the public in a place of entertainment, as defined in this subdivision.

(g) A "sporting event" shall have the same meaning as set forth in subdivision three of section 23.23 of this article.

(h) The term "event" shall mean a theatrical production or sporting event, as those terms are defined in this subdivision, or any other public exhibition, game, show, contest or performance which is presented to the public in a place of entertainment as defined in this subdivision.

(i) A "place of entertainment" shall mean a theatre, dinner theatre, hall, coliseum, convention center, arena, auditorium, stadium, concert hall, garden, outdoor space or other place of amusement operated as a for profit entity and located in this state in which theatrical productions, sporting events or other events are presented.

(j) A "theatrical production company" shall mean any entity formed to (i) develop, produce, invest in or otherwise exploit, or any combination thereof, one or more specified or nonspecified theatrical productions, and (ii) conduct all activities related thereto.

(k) The term "advance ticket" shall mean a ticket of admission sold more than twelve hours in advance of the time of performance of the event for which the ticket is purchased.

(l) The term "ticket distributor" shall have the same meaning as set forth in subdivision one of section 23.23 of this article.

(m) The term "accredited investor" shall mean (i) a natural person whose individual net worth (or joint net worth with his or her spouse) will exceed one million dollars at the time of purchase, or (ii) a natural person who has an individual income (exclusive of any income attributable to a spouse) of more than two hundred thousand dollars for the past two years or joint income with a spouse of more than three hundred thousand dollars in each of those years and has a reasonable expectation of reaching the same income level in the current year, or (iii) an entity in which each equity owner is an accredited investor under subparagraph (i) or (ii) of this paragraph, or (iv) either an organization described in section 501 (C)(3) of the Internal Revenue Code of 1986, as amended, a corporation, a Massachusetts or similar business trust, or a partnership, in each case not formed for the specific purpose of acquiring the securities being offered, and with total assets in excess of five million dollars, or (v) a trust, with total assets in excess of five million dollars, not formed for the specific purpose of acquiring the securities, whose purchase of the securities is directed by a person who has such knowledge and experience in business and financial matters that he or she is capable, as defined by the Securities Act of 1933, as amended, of evaluating the merits and risks of the prospective investment, or a bank, as defined in section 3(a)(2) of the Securities Act of 1933, as amended, (A) acting in its fiduciary capacity as trustee, or (B) subscribing for the purchase of securities being offered on its own behalf.

2. Accurate books and records of account shall be maintained by each theatrical production company. Every producer of a theatrical production shall at least once for each twelve month fiscal period beginning with the initial expenditure of investors' funds (other than those of any principal), within four months after the end of such period or the last public performance of the original production in New York state, whichever is sooner, furnish to all investors and to the department of law a written balance sheet and statement of profit and loss which shall be prepared by an independent public accountant and contain an express opinion by such accountant that such statements fairly present the financial position and results of operations of the theatrical production company, hereinafter referred to as "certified statement". Notwithstanding the aforesaid, in no event shall a producer be required by this subdivision to submit certified statements to investors for any period less than twelve months following the period covered by a prior certified statement. Irrespective of the aforesaid, and in addition thereto, every such producer shall also furnish each investor and the department of law with an accurate and truthful itemized statement of income and expenditure for every six month period not covered by a previously issued certified statement or a certified statement required to be issued hereunder for a period ending at such time, which additional statement shall be subscribed to by the producer as accurate, and may be submitted within three months after the close of such six month period. Following the last public performance in New York state of the original production, the producer shall accurately report to the investors and the department of law, at least once within four months after the end of each year thereafter, with respect to any subsequent earnings or expenditures by the theatrical production, which shall be truthful and accurate and which shall be subscribed to by the producer as accurate. The attorney general may adopt, promulgate, amend and rescind rules and regulations setting forth other accounting requirements than set forth above, which may be selected by a producer in lieu of the accounting requirements set forth above. Upon conditions set forth by the attorney general, such rules and regulations may

further provide for the issuance of an exemption from the requirements herein (i) for offerings of less than two hundred fifty thousand dollars, (ii) for offerings made to less than thirty-six persons in or from this state, or (iii) for such other offerings and upon such other grounds as may be determined by the attorney general.

This subdivision shall not apply to any production whose first performance in New York state preceded June first, nineteen hundred sixty-four.

3. (a) Except as otherwise provided herein, no offering of syndication interests in a theatrical production company, as defined herein, shall be made within or from this state without the use of a prospectus or offering circular making full and fair disclosure of material facts pertaining to the particular venture. The attorney general may also issue rules and regulations requiring the submission to prospective investors in such offerings an offering circular and amendments thereto containing a concise and accurate description of the nature of the offering, profits to promoters and others, the background of the producers, a description of subsidiary rights and other pertinent information as will afford potential investors or purchasers and participants an adequate basis upon which to found their judgment, but the attorney general shall accept offering literature filed with the Securities and Exchange Commission and authorized for use by such agency as complying therewith as of the date of receipt of a true copy by the department of law of such literature and proof of authorization by the Securities and Exchange Commission by affidavit or otherwise. The attorney general may also provide for the method of filing of offering literature other than that filed with the Securities and Exchange Commission, as well as underlying documents, with the department of law at its office in the city of New York, prior to the offering of the syndication interest involved; however, any such regulation also shall provide that all funds derived from the sale of such theatrical syndication interests shall be held in trust in a special bank account until the attorney general has issued to the issuer or other offeror a letter stating that the offering has been permitted to be filed; but in that event such regulation promulgated by the attorney general shall

also provide that the attorney general, not later than fifteen days after such submission, shall issue such a letter or, in the alternative, a notification in writing indicating deficiencies therein.

(b) Where not more than one million dollars is the total amount of the theatrical offering, including the right to an involuntary overcall, the provisions of this subdivision shall be deemed to be satisfied by the use of an investment agreement clearly setting forth in easily readable print all of the terms of the offering. A copy of such document may be filed with the department of law in lieu of a prospectus or offering circular in the manner set forth in this article and shall be deemed to be offering literature.

(c) The provisions of this subdivision shall not apply to offerings to fewer than thirty-six persons (plus an unlimited number of accredited investors) where express waivers in writing to the filing and offering circular requirements of this subdivision are filed with the department of law by or on behalf of all investors.

4. A limited partnership that is a theatrical production company is exempt from the requirement for publishing its certificate or notice under sections ninety-one, 121-201 and 121-902 of the partnership law so long as the words "limited partnership" appear in its name. A limited liability company that is a theatrical production company is exempt from the requirement for publishing its articles of organization, application for authority or a notice containing the substance thereof under sections two hundred six and eight hundred two of the limited liability company law so long as the words "limited liability company" appear in its name.

5. It shall be unlawful for any person, in connection with the offer, sale, or purchase of any syndication interest in any theatrical production company, as defined herein, directly or indirectly:

(a) To employ any device, scheme, or artifice to defraud;

(b) To willfully make any untrue statement of a material fact or to omit to state a material fact necessary in order to make such statement made, not misleading; or

(c) To engage in any act, practice, or course of business which he knows or reasonably should have known operates or would operate as a fraud or deceit upon any person.

6. Any person, partnership, corporation, company, trust or association or any agent or employee thereof, who (or which), having engaged in any act or practice constituting a violation of subdivision five of this section, commits additional acts under such circumstances as to constitute a felony, the crime of conspiracy, petit larceny, or more than one of the aforesaid, shall be punishable therefor, as well as for the violation of subdivision five of this section, and may be prosecuted for each crime, separately or in the same information or indictment, notwithstanding any other provision of law.

§ 23.05. Investigations. 1. Whenever it shall appear to the attorney general either upon complaint or otherwise that any person has violated or is about to violate any provision of this article, or that he believes it necessary to aid in the enforcement of this article or in the prescribing of rules or regulations hereunder, the attorney general:

(a) May make such public or private investigations within or outside of this state as he deems necessary to determine whether any person has violated or is about to violate any provision of this article or any rule or regulation hereunder, or to aid in the enforcement of this article or in the prescribing of rules and forms hereunder; and

(b) May require or permit any person to file a statement in writing, under oath or otherwise as the attorney general determines, as to all the facts and circumstances concerning the matter to be investigated.

2. The attorney general, or any officer designated by him, is empowered to subpoena witnesses, compel their attendance, examine them under oath before him or a court of record or a judge or justice thereof, and require the production of any books or papers which he deems relevant or material to the inquiry. Such power of subpoena and examination shall not abate or terminate by reason of any action or proceeding brought by the attorney general under this article.

3. No person shall be excused from attending such inquiry in pursuance to the mandate of a subpoena, or from producing a paper or book, or from

being examined or required to answer a question on the ground of failure of tender or payment of a witness fee and/or mileage, unless at the time of such appearance or production, as the case may be, such witness makes demand for such payment as a condition precedent to the offering of testimony or production required by the subpoena and unless such payment is not thereupon made. The provision for payment of witness fee and/or mileage shall not apply to any officer, director or person in the employ of any person, partnership, corporation, company, trust or association whose conduct or practices are being investigated.

4. If a person subpoenaed to attend such inquiry fails to obey the command of a subpoena without reasonable cause, or if a person in attendance upon such inquiry shall without reasonable cause refuse to be sworn or to be examined or to answer a question or to produce and permit reasonable examination of a book or paper when ordered so to do by the officer conducting such inquiry, or if a person, partnership, corporation, company, trust or association fails to perform any act required hereunder to be performed, he shall be guilty of a misdemeanor.

5. It shall be the duty of all public officers, their deputies, assistants, subordinates, clerks or employees and all other persons to render and furnish to the attorney general or other designated officer when requested all information and assistance in their possession or within their power with respect to all matters being investigated by the attorney general under this article. Any officer participating in such inquiry and any person examined as a witness upon such inquiry who shall disclose to any person other than his attorney or the attorney general the name of any witness examined or any other information obtained upon such inquiry except as directed by the attorney general shall be guilty of a misdemeanor.

§ 23.07. Records; bank accounts. All moneys raised from the offer and sale of syndication interests in a theatrical production company, as defined herein, shall be held in a special bank account in trust until actually employed for pre-production or production purposes of the particular theatrical production company or returned to the investor or investors thereof. All the records of such bank account and bank transactions shall be preserved for at least two years. It shall be clearly set forth in writing in an investment agreement and any prospectus or circular distributed to each investor in a theatrical production company, as defined herein, that all moneys raised from the offer and sale of syndication interests in a theatrical production company, as defined herein, shall be held in a special bank account in trust until actually employed for pre-production or production purposes of the particular theatrical production company or returned to the investor or investors thereof. Any provision of any contract or agreement or understanding, whether oral or in writing, whereby a person who so purchases an interest in any theatrical production company syndication, as defined herein, waives any provision of this section is absolutely void.

§ 23.08. Proceeds from advance ticket sales; refunds. 1. Any ticket distributor who offers or sells to the public in or from the state of New York, advance tickets of admission to events to be held in places of entertainment, or who contracts for the sale of such advance tickets of admission, and accepts in advance partial or full payment of the purchase price therefor, shall, no later than the next business day after receipt thereof, deposit all such advance payments in an escrow account in a bank, trust company, savings bank, or state or federal savings and loan association, located in this state. A separate escrow account shall be established for each place of entertainment. Monies deposited in escrow shall be released upon performance of each event for which such monies have been deposited to the extent that such monies represent payment for advance tickets sold for the performed event. The person who offers or sells advance tickets shall not be required to keep in separate depository accounts the funds of the separate ticket purchasers from whom payments have been received, provided his books of account shall clearly show the number of tickets sold at each price for each theatrical production, concert or sporting event for which a separate escrow account has been established, and the total amount of advance ticket revenues. Each advance ticket purchaser shall, until the performance of the event for which the advance ticket has been purchased, retain a property interest in that portion of the deposit which equals the amount he has paid for such advance ticket, and shall be entitled to a refund for such amount if the performance of the event for which such ticket has been purchased in advance has been cancelled or rescheduled, except as provided for by subdivision three of this section.

2. In lieu of the deposit of all such advance payments in an escrow account as provided in subdivision one of this section, any ticket distributor who offers or sells advance tickets may post with the secretary of state in a form, substance and amount satisfactory to the attorney general, a letter of credit drawn on a bank, trust company, savings bank, or state or federal savings and loan association, located in this state, or a bond or contract of indemnity, issued by a surety company licensed to execute such an instrument in this state, such letter of credit, bond or contract of indemnity to be in favor of the state for the benefit of any person who has purchased an advance ticket if performance of the event for which such ticket has been purchased has been cancelled or rescheduled, except as provided for by subdivision three of this section. The amount of the escrow account required to be established under subdivision one of this section may be reduced by the amount of the letter of credit, bond or contract of indemnity provided for in this subdivision provided that the combined amount of money held in such escrow account and the value of such letter of credit, bond or contract of indemnity shall at all times at least be equal to the amount of money collected from advance ticket sales for all events to be held at each place of entertainment.

3. The refund provisions of subdivisions one and two of this section shall not apply where (i) there was no material change in the time of the performance of the event or in the location at which the event was held; (ii) the performance of such event was rescheduled due to an Act of God, war, riot or other catastrophe as to which negligence or willful misconduct on the part of the ticket distributor who offered or sold such advance tickets was not the proximate cause and where the advance ticket purchaser was given the right to use his or her ticket for such rescheduled performance or the right to exchange such ticket for a

ticket comparable in price and location to another, similar event; or (iii) the back of the ticket conspicuously states that if the performance is cancelled or rescheduled, the ticket distributor shall not be required to refund the ticket price if the ticket purchaser is given the right, within twelve months of the originally scheduled date of the performance, to attend a rescheduled performance of the same event or to exchange such ticket for a ticket comparable in price and location to another, similar event.

§ 23.09. Application of article; exemptions. 1. The provisions of article twenty-three-A of the general business law shall not be applicable to offerings subject to the requirements of this article, or with respect to such offerings, to producers or principals thereof.

2. The provisions of subdivisions one and two of section 23.08 of this article shall not apply to any ticket distributor who offers or sells advance tickets of admission, as set forth in such subdivisions, if such ticket distributor or a principal thereof which owns or controls a fifty percent or greater interest in such ticket distributor or which owns or controls less than a fifty percent interest but at least a twenty-five percent interest in such ticket distributor and actively participates in the day-to-day management of such ticket distributor or otherwise exercises managerial control:

(a) has, for a period in excess of ten years, produced or presented events at the same place of entertainment or produced or presented events under the same corporate or organizational name; or

(b) controls, is controlled by or under common control with any ticket distributor which has, for a period in excess of ten years, produced or presented events at the same place of entertainment or produced or presented events under the same corporate or organizational name; or

(c) maintains minimum net capital of one hundred thousand dollars or minimum net worth or, if a corporation, shareholder's equity of two hundred thousand dollars; or

(d) offers or sells advance tickets of admission to a theatre or other place of entertainment as defined in section 23.03 of this article (i) which contains no more than ninety-nine seats for paying customers, or

(ii) for which the average ticket sale revenues, as measured over the preceding fifty-two week period, does not exceed two thousand five hundred dollars per week for each week for which tickets are sold; or

(e) is a not-for-profit, educational, charitable, or tax-exempt organization which sells tickets to an event produced or presented by the organization.

The attorney general may from time to time make, amend and rescind such rules and regulations as are necessary to carry out the provisions of this article, notwithstanding any other provision of this section, providing for exemptions therefrom when he finds such action is not inconsistent with the public interest and defining any terms, whether or not used in this article, insofar as the definitions are not inconsistent with the provisions of such article.

§ 23.11. Injunctions; modification or dissolution. 1. Whenever the attorney general shall believe from evidence satisfactory to him that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this article or any rule or regulation hereunder, he may in his discretion bring an action in the supreme court of the state of New York to enjoin the acts or practices and to enforce compliance with this article or any rule or regulation hereunder. Upon a proper showing a permanent or temporary injunction or restraining order shall be granted, which may include the appointment of a temporary or permanent receiver of all of the assets and affairs of a theatrical production, as defined herein, for the purpose of transacting the affairs or liquidating such production, upon conditions set by the court, whenever such relief is deemed by such court in the interest of the investor and the public generally. Upon a showing by the attorney general that a violation of this article or any rule or regulation thereunder has occurred, he may include in an action under this article an application to direct restitution of any moneys or property obtained directly or indirectly by such violation. Whenever the court shall determine that a violation of this article has occurred, the court may impose a civil penalty of not more than one thousand dollars for each such violation.

2. Any person against whom an injunction has been granted under the provisions of this article may apply to the supreme court at any time after five years from the date such permanent injunction became effective, upon at least sixty days' notice to the attorney general, for an order dissolving such injunction or modifying the same upon such terms and conditions as the court deems necessary or desirable. Such application for dissolution or modification of such injunction shall contain a recitation of the facts and circumstances which caused the granting of the injunction; the occupation and employment of the person making the application and his financial remuneration therefrom since the time the injunction was granted; his net worth at the time of the application and the sources thereof, together with any other facts bearing upon the reasonableness of the application and the character of the applicant, as may enable the court to issue an order that will properly dispose of such application in the interests of justice. A copy of such application, together with copies of any other papers in support thereof, shall be served upon the attorney general at least sixty days prior to the return date thereof. In addition thereto the applicant shall file with the court a good and sufficient surety bond in the sum of one thousand dollars guaranteeing that he will pay all costs and expenses of an investigation by the attorney general of such applicant and the statements and claims alleged in the application together with any further investigation which the attorney general may deem necessary or desirable to determine whether he should consent to the application, oppose the same or make such other recommendations to the court as in his opinion are desirable to be included in any modification of such injunction. Should it appear in the course of such investigation by the attorney general that said sum is not sufficient, the attorney general may apply to the court by usual notice of motion or order to show cause for an increase in the amount of security or further surety bond necessary to fully pay all of the costs of the investigation and the court may require such further bond as the situation requires to fully pay such costs and expenses. Upon the completion of such investigation, the attorney general may file an answer to such application setting forth such facts as are pertinent to the determination by the court of the matter before it and whether said injunction should be dissolved,

modified or continued in whole or in part and what conditions, if any, shall be attached to any dissolution or modification of said injunction. After a hearing upon such application and after any further investigation, proof or testimony which the court may order, it may make a final order dissolving the permanent injunction or modifying the same upon such terms and conditions as in its opinion are just and desirable, or in its discretion, may deny the application. Such order shall contain a direction that the applicant pay to the attorney general the costs and expenses of the investigation in connection with the proceeding, and any judgment entered thereon may be enforced directly against the surety on the bond. The court shall grant no temporary or other relief from the injunction in force pending a final determination of such application. No application under this subdivision shall be entertained: (a) where the injunction was granted as an incident to a crime of which the applicant has been convicted, nor (b) in any case where the applicant has been convicted of a felony or a crime that would be a felony if committed in the state of New York since the issuance of the injunction, nor (c) convicted at any time of any crime involving stocks, bonds, investments, securities, or like instruments, nor (d) convicted at any time of any crime involving theatrical syndication interests, which are the subject matter of this article. Nor shall anything contained in this subdivision be construed to deny to or interfere with the power of the attorney general to bring any other action or proceeding, civil or criminal, against the applicant at any time.

§ 23.13. Application of the provisions of civil practice law and rules. The provisions of the civil practice law and rules shall apply to all actions and proceedings brought under this article except as herein otherwise provided.

§ 23.15. Immunity. Upon any investigation or proceeding before the attorney general or other officer designated by him, or in any criminal proceeding before any court, pursuant to or for a violation of any of the provisions of this article, the attorney general or other officer designated by him or the court, may confer immunity in accordance with the provisions of section 50.20 of the criminal procedure law.

§ 23.17. Enforcement by attorney general. The attorney general may prosecute every person charged with a criminal offense in violation of this article and regulations issued thereunder, or any violation of any other law of this state applicable to or in respect to fraudulent practices in connection with the offer, sale, negotiation or advertising of syndication interests in theatrical productions, as defined herein. In all such proceedings, the attorney general may appear in person or by his deputy before any court of record or any grand jury and exercise all the powers and perform all the duties in respect of such actions or proceedings which the district attorney would otherwise be authorized or required to exercise or perform; or the attorney general may in his discretion transmit evidence, proof and information as to such offense to the district attorney of the county or counties in which the alleged violation has occurred, and every district attorney to whom such evidence, proof and information is so transmitted may proceed to investigate and prosecute any corporation, company, association, or officer, manager or agent thereof, or any firm or person charged with such violation. In any such proceeding, wherein the attorney general has appeared either in person or by deputy, the district attorney shall only exercise such powers and perform such duties as are required of him by the attorney general or the deputy attorney general so appearing.

§ 23.19. Unlawful retention of payments. Any producer, promoter, principal, employee, general manager, company manager or agent of a theatrical production company, as defined herein, who knowingly receives, directly or indirectly, from any supplier, advertising agency, publication, theatre owner, theatre treasurer, ticket agent, ticket broker, or other firm or person having dealings with, or applicable to, the theatrical production company, or from any employees or agents thereof, any cash, checks, rebates, commissions, gifts, gratuities or other payments or consideration for reason of the business operations, management, bidding, negotiation or other operation of such theatrical production company or arising out of the business of such theatrical production company, and who does not pay such amounts or consideration into such theatrical production company within a period of seventy-two hours thereafter, except where such retention is expressly permitted by the theatrical production company and where a written investor agreement signed by all investors represented that such retention would be permitted by the theatrical production company, shall be guilty of a misdemeanor, punishable by a fine of not more than five hundred dollars or imprisonment for not more than one year, or both.

§ 23.21. Violations and penalties. Any person, partnership, corporation, company, trust or association willfully violating any of the provisions of this article or any rule or regulation issued thereunder shall be guilty of a misdemeanor punishable by a fine of not more than five hundred dollars, or imprisonment for not more than one year, or both.

§ 23.23. Prohibited activities of ticket distributors. 1. The term "ticket distributor" shall mean all owners, operators or operating lessees whether an individual, firm, company, partnership, corporation, trust or association who control the operation of a place of entertainment, as that term is defined in this article, including the allocation or distribution of tickets to any event, as that term is defined in this article, and all controlling partners, and controlling stockholders and controlling officers of the aforesaid; and all agents, representatives, employees and licensees of any of the aforementioned, including without limitation box office treasurers and assistant treasurers of places of entertainment, who for any period of time have control of the allocation or distribution by designation or authority of the aforementioned, of tickets in connection with the showing of events, but shall not include subordinate personnel performing non-discretionary or ministerial functions in connection with the allocation or distribution of tickets for events.

2. A "theatrical production" as used in this section shall mean those live-staged dramatic productions, dramatic-musical productions and

concerts as defined in section 23.03 of this chapter which hereafter are shown to the public in a place of entertainment.

3. A "sporting event" as used in this section shall mean those contests, games, or other events involving athletic or physical skills which are shown to the public in a place of entertainment and whose participants are paid for the exhibition of their athletic or physical skills, but not exhibitions under the jurisdiction of the state racing or state harness racing commissions.

4. It shall be illegal and prohibited for any owner, lessee or operator or manager or treasurer or assistant treasurer or any other ticket distributor of a place of entertainment, as defined in this article, to sell tickets to any event to be held in this state directly or indirectly, through agents, employees or otherwise, unless and until there is filed with the department of law of the state of New York by the ticket distributor, directly or indirectly, controlling the distribution of tickets a registration known as a "ticket distributor registration" on which shall be contained the names, addresses and connection with the distribution of tickets of all ticket distributors, as defined herein, on forms issued by the attorney general of the state of New York, as applicable to such registration and amendments thereto. It shall be illegal for any ticket distributor to sell tickets, or control the sale thereof, unless named on such registration. The attorney general may issue an order cancelling or suspending the name of a particular individual or individuals from such registration or issue an order barring such person from selling any tickets to any event to be held in this state as aforesaid whether or not the person's name appears on any particular registration after a hearing, conducted by him or a designated officer, when, based upon substantial evidence on the entire record, it is determined that: such ticket distributor or any person who resells tickets to any event to be held in this state subsequent to October first, nineteen hundred sixty-five, directly or indirectly, has willfully aided, abetted or participated in exacting, demanding, accepting or receiving, directly or indirectly, any premium or price in excess of the regular or established price or charge, plus lawful taxes, as printed upon the face of each ticket or other evidence of the right

of entry thereto, for tickets to any event to be held in this state from members of the public or ticket brokers or agents, whether designated as price, gratuity or otherwise; or whenever such ticket distributor has been convicted of any crime relating to the sale of tickets to any event, or violations of this article; or whenever such ticket distributor shall have engaged in any practice in connection with the sale of tickets to any event which operates as a fraud upon the public or amounts to financial misconduct, or the exacting of exorbitant rates or other similar abuses; or whenever any ticket distributor has willfully violated any provision of this article or any rule or regulation issued thereunder. The attorney general may also issue rules and regulations relating to the maintenance of box office records of places of entertainment and with respect to the filing and content of ticket distributor registrations, including exemptions relating to educational institutions which the attorney general may determine to be in the public interest.

5. All ticket distributors as defined in this section shall keep or cause to be kept books, records, memoranda or correspondence containing the following information in connection with the sale or distribution of tickets:

(a) The number of tickets sold, allocated or distributed to ticket brokers licensed pursuant to article twenty-five of this chapter or other known brokers, specifying the price and location of each ticket sold, allocated or distributed to each broker and the date and time of performance of each such ticket.

(b) The number of tickets among those allocated and distributed to brokers by ticket distributors, returned by each broker to ticket distributors specifying the price of each such returned ticket and the date and time of performance of each such ticket.

(c) The number of tickets sold or distributed as house seats with recipients thereof; or to duly licensed theatre party agents representing charitable or eleemosynary organizations, specifying the price and location of each ticket sold, allocated or distributed and the date and time of performance of each such ticket.

(d) All mail order correspondence, including disposition thereof.

All records required to be kept pursuant to this section shall be preserved for a period of not less than one year subsequent to the date of performance to which such record relates.

6. Any person aggrieved by an order of the attorney general hereunder may obtain a review of such order in the appellate division of the supreme court pursuant to article seventy-eight of the civil practice law and rules by filing in such court within ten days after the entry of such order, a notice of petition, petition and suitable affidavits as provided in subdivision (c) of section seven thousand eight hundred four of the civil practice law and rules, praying that the order of the attorney general be modified or set aside in whole or in part upon any of the grounds set forth in section seven thousand eight hundred three of the civil practice law and rules.

7. If any provision of this section is in conflict with any provision of any law of the state of New York or any municipality or subdivision thereof or any rule or regulation thereof in force on October first, nineteen hundred sixty-five, the provisions of this section shall prevail.

TITLE G
REGULATION OF SALE OF THEATRE TICKETS

* ARTICLE 25
TICKETS TO PLACES OF ENTERTAINMENT

* NB Effective until July 1, 2027

* ARTICLE 25

THEATRE TICKETS

* NB Effective July 1, 2027

*** § 25.01. Legislative findings.** The legislature finds and declares that transactions involving tickets for admission to places of entertainment are a matter of public interest and subject to the supervision of New York and the appropriate political subdivisions of the state for the purpose of safeguarding the public against fraud, extortion, and similar abuses.

The legislature further finds that many ticket resellers advertise and sell tickets to places of entertainment within the boundaries of New York state often from locations outside the state, without adhering to the provisions of this article. The legislature objects to any claim that businesses domiciled outside New York state are exempted from this statute when selling tickets to events occurring in New York state, regardless of the territories of origin of both the buyer and seller. It is the legislature's intent that all governmental bodies charged with enforcement of this article, including the attorney general of New York state have the authority to regulate the activities of all persons reselling tickets to venues located within this state to the full extent of the state's powers under the federal and state constitutions and that this article be construed in light of this purpose.

* NB Effective until July 1, 2027

* § 25.01. Matters of public interest. It is hereby determined and declared that the price of or charge for admission to theatres, places of amusement or entertainment, or other places where public exhibitions, games, contests or performances are held is a matter affected with a public interest and subject to the supervision of the appropriate political subdivisions of the state for the purpose of safeguarding the public against fraud, extortion, exorbitant rates and similar abuses.

* NB Effective July 1, 2027

*** § 25.03. Definitions.** As used in this article the term: 1. "Entertainment" means all forms of entertainment including, but not limited to, theatrical or operatic performances, concerts, motion pictures, all forms of entertainment at fair grounds, amusement parks and all types of athletic competitions including football, basketball, baseball, boxing, tennis, hockey, and any other sport, and all other forms of diversion, recreation or show.

2. "Established price" means the price fixed at the time of sale by the operator of any place of entertainment for admission thereto, which must be printed or endorsed on each ticket of admission.

3. "Final auction price" shall mean the price paid for a single ticket by a winning bidder. In the case of a single action price for a ticket package, including packages containing tickets to multiple events, the final auction price per ticket shall be established by evenly dividing a prorated share of the winning bid, which shall be determined by the seller, by the number of tickets to such event.

4. "Not-for-profit organization" means a domestic corporation incorporated pursuant to or otherwise subject to the not-for-profit corporation law, a charitable organization registered with the department of law, a religious corporation as defined in section sixty-six of the general construction law, a trustee as defined in section 8-1.4 of the estates, powers and trusts law, an institution or corporation formed pursuant to the education law, a special act corporation created pursuant to chapter four hundred sixty-eight of the laws of eighteen hundred ninety-nine, as amended, a special act corporation formed pursuant to chapter two hundred fifty-six of the laws of nineteen hundred seventeen, as amended, a corporation authorized pursuant to an act of congress approved January fifth, nineteen hundred five, (33 stat. 599), as amended, a corporation established by merger of charitable organizations pursuant to an order of the supreme court, New York county dated July twenty-first, nineteen hundred eighty-six and filed in the department of state on July twenty-ninth, nineteen hundred eighty-six, or a corporation having tax exempt status under section 501 (c) (3) of the United States Internal Revenue Code, and shall further be deemed to mean and include any federation of charitable organizations.

5. "Operator" means any person who owns, operates, or controls a place of entertainment or who promotes or produces an entertainment.

6. "Place of entertainment" means any privately or publicly owned and operated entertainment facility such as a theatre, stadium, arena,

racetrack, museum, amusement park, or other place where performances, concerts, exhibits, athletic games or contests are held for which an entry fee is charged.

7. "Physical structure" means the place of entertainment, or in the case where a structure either partially or wholly surrounds the place of entertainment, such surrounding structure.

8. "Resale" means any sale of a ticket for entrance to a place of entertainment located within the boundaries of the state of New York other than a sale by the operator or the operator's agent who is expressly authorized to make first sales of such tickets. Resale shall include sales by any means, including in person, or by means of telephone, mail, delivery service, facsimile, internet, email or other electronic means, where the venue for which the ticket grants admission is located in New York state. Except as provided in sections 25.11 and 25.27 of this article, the term "resale" shall not apply to any person, firm or corporation which purchases any tickets solely for their own use or the use of their invitees, employees and agents or which purchases tickets on behalf of others and resells such tickets to such invitees, employees and agents or others at or less than the established price. Similarly, the term "resale" shall not apply to any not-for-profit organization, or person acting on behalf of such not-for-profit organization, as long as any profit realized from ticket reselling is wholly dedicated to the purposes of such not-for-profit organization.

9. "Ticket" means any evidence of the right of entry to any place of entertainment.

10. "Ticket office" means a building or other structure located other than at the place of entertainment, at which the operator or the operator's agent offers tickets for first sale to the public.

* NB Effective until July 1, 2027

* § 25.03. Reselling of tickets of admission; licenses; fees. 1. No person, firm or corporation shall resell or engage in the business of reselling any tickets of admission or any other evidence of the right of entry to a theatre, place of amusement or entertainment, or other places

where public exhibitions, games, contests or performances are held, or own, conduct or maintain any office, branch office, bureau, agency or sub-agency for such business without having first procured a license or certificate therefor from the commissioner of licenses of the political subdivision in which such person intends to conduct such business and if there be no such commissioner, then the chief executive officer thereof shall be deemed to be the commissioner for the purposes of this article. A license for the principal office shall be granted upon the payment by or on behalf of the applicant of a fee of two hundred dollars and shall be renewed upon the payment of a like fee annually; and a certificate shall be granted for each branch office, bureau, agency or sub-agency, upon payment by or on behalf of an applicant of a fee of fifty dollars and shall be renewed upon the payment of a like fee annually. Such license or certificate shall not be transferred or assigned, except by permission of such commissioner. No change in the location of the premises covered by such license or certificate shall be made, except by permission of such commissioner, and upon the payment of a fee of ten dollars. Such license or certificate shall run to the first day of January next ensuing the date thereof, unless sooner revoked by such commissioner. Such license or certificate shall be granted upon a written application setting forth such information as such commissioner may require in order to enable him to carry into effect the provisions of this article and shall be accompanied by proof satisfactory to such commissioner of the moral character of the applicant. No license or certificate shall be issued for any office or branch office, bureau, agency or sub-agency unless such office or branch office, bureau, agency or sub-agency shall be a suitable place for the conduct of said business and shall meet with the approval of such commissioner.

2. This section shall not apply to any person, firm or corporation which purchases any tickets as defined in this section with the intent of using the tickets solely for their own use or the use of their invitees, employees and agents and resells them at a price not in excess of that permitted by section 25.13 of this article should they no longer be able to use them.

* NB Effective July 1, 2027

* **§ 25.05. Ticket speculators.** Any person who:

1. Conducts on or in any street in a city or in the county of Nassau the business of selling or offering for sale any ticket of admission or any other evidence of the right of entry to any performance or exhibition in or about the premises of any theatre or concert hall, place of public amusement, circus or common show; or

2. Solicits on or in any street in a city or in the county of Nassau by words, signs, circulars or other means any person to purchase any such ticket or other evidence of the right of entry; or

3. In or from any building, store, shop, booth, yard, garden or in or from any opening, window, door, hallway, corridor or in or from any place of ingress or egress to or from any building, place of business, store, shop, booth, yard or garden in a city or in the county of Nassau indicates, holds out or offers for sale to any person or persons on or in the street by word of mouth, crying, calling, shouting or other means that such ticket or other evidence of the right of entry may be purchased in such building, store, shop, booth, yard, garden or any other place; or

4. In or from any such place or places in a city or in the county of Nassau solicits by word of mouth, crying, calling, shouting or other means any person on or in the street to purchase any such ticket or other evidence of the right of entry, is guilty of a misdemeanor.
* NB Effective July 1, 2027

* **§ 25.06. Resale of tickets issued at no charge.** Notwithstanding an individual's ability to transfer a ticket to another party, it shall be unlawful for any person, firm or corporation to resell or offer to resell any ticket or other evidence of right of entry to any place of entertainment if such ticket was initially offered to the public at no charge and access to such tickets is not contingent upon providing any form of monetary consideration.

* NB Repealed July 1, 2027

*** § 25.07. Ticket prices.** 1. Every operator of a place of entertainment shall, if a price be charged for admission thereto, print or endorse on the face of each such ticket the established price, or the final auction price if such ticket was sold or resold by auction through the operator or its agent.

2. Notwithstanding any other provision of law, any person, firm or corporation, regardless of whether or not licensed under this article, that resells tickets or facilitates the resale or resale auction of tickets between independent parties by any means, must guarantee to each purchaser of such resold tickets that the person, firm or corporation will provide a full refund of the amount paid by the purchaser (including, but not limited to, all fees, regardless of how characterized) if any of the following occurs: (a) the event for which such ticket has been resold is cancelled, provided that if the event is cancelled then actual handling and delivery fees need not be refunded as long as such previously disclosed guarantee specifies that such fees will not be refunded; (b) the ticket received by the purchaser does not grant the purchaser admission to the event described on the ticket, for reasons that may include, without limitation, that the ticket is counterfeit or that the ticket has been cancelled by the issuer due to non-payment, or that the event described on the ticket was cancelled for any reason prior to purchase of the resold ticket, unless the ticket is cancelled due to an act or omission by such purchaser; or (c) the ticket fails to conform to its description as advertised unless the buyer has pre-approved a substitution of tickets.

3. Prior to the payment of a refund it shall be the obligation of the seller and purchaser to first make a good faith effort to remedy any disputes where the seller and purchaser have agreed to terms established by the licensee or website manager for the disposition of disputes as a condition to facilitate the transaction.

4. Every operator or operator's agent of a place of entertainment, any

licensee or other ticket reseller, or platform that facilitates the sale or resale of tickets shall disclose the total cost of the ticket, inclusive of all ancillary fees that must be paid in order to purchase the ticket, and disclose in a clear and conspicuous manner the portion of the ticket price stated in dollars that represents a service charge, or any other fee or surcharge to the purchaser. Such disclosure of the total cost and fees shall be displayed in the ticket listing prior to the ticket being selected for purchase. Disclosures of subtotals, fees, charges, and any other component of the total price shall not be false or misleading, and may not be presented more prominently or in the same or larger size as the total price. The price of the ticket shall not increase during the purchase process, excluding reasonable fees for the delivery of non-electronic tickets based on the delivery method selected by the purchaser, which shall be disclosed prior to accepting payment therefor. Nothing in this subdivision shall be construed to nullify, expand, restrict, or otherwise amend or modify now existing laws or regulations outside of this article, and nothing in this subdivision shall be construed as making lawful any fraudulent, deceptive, or illegal act or practice that is unlawful pursuant to now existing laws or regulations.

* NB Effective until July 1, 2027

* § 25.07. Bond. The commissioner shall require the applicant for a license to file with the application therefor a bond in due form to the people of the political subdivision in which such license is issued in the penal sum of one thousand dollars, with two or more sufficient sureties or a duly authorized surety company, which bond shall be approved by such commissioner. Each such bond shall be conditioned that the obligor will not be guilty of any fraud or extortion, will not violate directly or indirectly any of the provisions of this article or any of the provisions of the license or certificate provided for in this article, will comply with the provisions of this article and will pay all damages occasioned to any person by reason of any misstatement, misrepresentation, fraud or deceit or any unlawful act or omission of such obligor, his agents or employees, while acting within the scope of their employment, made, committed or omitted in connection with the provisions of this article in the business conducted under such license or caused by any other violation of this article in carrying on the

business for which such license is granted. Such commissioner shall keep books wherein shall be entered in alphabetical order all licenses granted and all bonds received by him as provided for in this article, the date of the issuance of such license and the filing of such bonds, which record shall be open to public inspection. A suit to recover on the bond required to be filed by the provisions of this article may be brought in the name of the person damaged, upon the bond deposited with the political subdivision by such licensed person, in a court of competent jurisdiction. The amount of damages claimed by the plaintiff and not the penalty named in the bond shall determine the jurisdiction of the court in which the action is brought. One or more recoveries or payments upon such bond shall not vitiate the same but such bond shall remain in full force and effect, provided, however, that the aggregate amount of all such recoveries or payments shall not exceed the penal sum thereof. Upon the commencement of any action or actions against the surety upon any such bond for a sum or sums aggregating or exceeding the amount of such bond the commissioner shall require a new and additional bond in like amount as the original one, which shall be filed with the commissioner within thirty days after the demand therefor. Failure to file such bond within such period shall constitute cause for the revocation of the license theretofore issued to the licensee upon whom such demand shall have been made. Any suit or action against the surety on any bond required by the provisions of this section shall be commenced within one year after the cause of action shall have accrued.

* NB Effective July 1, 2027

*** § 25.08. Additional printing on tickets.** Every operator of a place of entertainment having a permanent seating capacity in excess of five thousand persons shall, if a price be charged for admission thereto, print or endorse in a clear and legible manner on each ticket, "This ticket may not be resold within one thousand five hundred feet from the physical structure of this place of entertainment under penalty of law".

* NB Repealed July 1, 2027

*** § 25.09. Ticket speculators.** 1. Any person who in violation of section 25.13 of this article unlawfully resells or offers to resell or solicits the purchase of any ticket to any place of entertainment shall be guilty of ticket speculation.

2. Any person, firm or corporation which in violation of section 25.13 of this article unlawfully resells, offers to resell, or purchases with the intent to resell five or more tickets to any place of entertainment shall be guilty of aggravated ticket speculation.

* NB Effective until July 1, 2027

* § 25.09. Suspension or revocation of licenses. In the event that any licensee shall be guilty of any fraud or misrepresentation or otherwise violate any of the provisions of this article or any other law or local ordinance, such commissioner shall be empowered, on giving five days' notice by mail to such licensee, and on affording such licensee an opportunity to answer the charges made against him, to suspend or revoke the license issued to him.

* NB Effective July 1, 2027

*** § 25.10. Ticket resale requirements.** 1. It shall be unlawful for a licensee or other ticket reseller to contract for the sale of tickets, contract to obtain tickets for another, or accept consideration for payment in full or for a deposit for the sale of tickets unless such licensee or other ticket reseller meets one or more of the following requirements:

(a) such licensee or other ticket reseller has the offered ticket in its possession;

(b) such licensee or other ticket reseller has a written contract to obtain the offered ticket at a certain price from a person in possession of the ticket or from a person who has a contractual right to obtain such ticket; or

(c) such licensee or other ticket reseller informs the purchaser in a clear and conspicuous manner and in plain language at the time of offering such ticket for sale and in a written notice prior to the completion of the transaction that such licensee or other ticket reseller does not have possession of the ticket, has no contract to obtain the offered ticket at a certain price from a person in possession of the ticket or from a person who has a contractual right to obtain such ticket, may not be able to supply the ticket at the contracted price or range of prices, and requires such purchaser to expressly confirm prior to completing the transaction that the purchaser has read such notice.

2. Nothing in this section shall prohibit a licensee or other ticket reseller from accepting a deposit from a prospective purchaser for a resale pursuant to paragraph (c) of subdivision one of this section, provided that such licensee or other ticket reseller informs the purchaser in writing prior to receipt of consideration of the terms of the deposit agreement, and includes in the written notice the disclosures otherwise required by this section. If a licensee or ticket reseller has entered into a contract with or received consideration from a prospective purchaser for the sale of a ticket or tickets and cannot supply such ticket or tickets at the contracted price or price range, such licensee or ticket reseller shall refund any monies paid by such prospective purchaser within ten business days of receipt of a request for a refund from such purchaser.

3. Nothing in this section shall be construed to nullify, expand, restrict, or otherwise amend or modify now existing laws or regulations outside of this article, and nothing in this section shall be construed as making lawful any fraudulent, deceptive, or illegal act or practice that is unlawful pursuant to now existing laws or regulations.

4. The attorney general shall have jurisdiction to enforce the provisions of this section in accordance with the powers granted to him or her by section sixty-three of the executive law.

* NB Repealed July 1, 2027

§ 25.11. Resales of tickets within buffer zone. 1. No person, firm, corporation or not-for-profit organization, whether or not domiciled, licensed or registered within the state, shall resell, offer to resell or solicit the resale of any ticket to any place of entertainment having a permanent seating capacity in excess of five thousand persons within one thousand five hundred feet from the physical structure of such place of entertainment, or a ticket office.

2. No person, firm, corporation or not-for-profit organization, whether or not domiciled, licensed or registered within the state, shall resell, offer to resell or solicit the resale of any ticket to any place of entertainment having a permanent seating capacity of five thousand or fewer persons within five hundred feet from the physical structure or ticket office of such place of entertainment, provided however that current licensees and those seeking a license under this article are exempt from such buffer zone when operating out of a permanent physical structure.

3. Notwithstanding subdivisions one and two of this section, an operator may designate an area within the property line of such place of entertainment for the lawful resale of tickets only to events at such place of entertainment by any person, firm, corporation or not-for-profit organization, whether or not domiciled, licensed or registered within the state.

4. For purposes of this section, "ticket office" means a building or other structure located other than at the place of entertainment, at which the operator or the operator's agent offers tickets for first sale to the public.

*** § 25.12. Professional sports organization membership pass.** Notwithstanding section 25.30 of this article, an operator of a place of entertainment or such operator's agent may offer paperless tickets which do not allow for independent transferability provided that such tickets are included in a membership pass at a discounted price offered by a professional sports organization for seating in venues or stadiums with a fixed capacity of over thirty thousand seats that guarantees entry to a specified number of events in a specified time period with seat assignments assigned no more than four hours prior to the commencement of the event and such seat assignment must be variable from game to game and not intended for season ticket holders. Tickets provided under such membership pass may be restricted from being transferred or resold, including through the operator or operators' agents, and must be clearly marked as such prior to initial offering or sale. Such membership pass shall not mean a subscription or season ticket package offered for sale and shall not result in the sale of more than five percent of the maximum amount of all seats that will be made available at a venue for a particular event to be sold under this section.

* NB Repealed July 1, 2027

*** § 25.13. Licensing of ticket resellers.** 1. No person, firm or corporation shall resell or engage in the business of reselling any tickets to a place of entertainment or operate an internet website or any other electronic service that provides a mechanism for two or more parties to participate in a resale transaction or that facilitates resale transactions by the means of an auction, or own, conduct or maintain any office, branch office, bureau, agency or sub-agency for such business without having first procured a license or certificate for each location at which business will be conducted from the secretary of state. Any operator or manager of a website that serves as a platform to facilitate resale, or resale by way of a competitive bidding process, solely between third parties and does not in any other manner engage in resales of tickets to places of entertainment shall be exempt from the licensing requirements of this section. The department of state shall issue and deliver to such applicant a certificate or license to conduct such business and to own, conduct or maintain a bureau, agency, sub-agency, office or branch office for the conduct of such business on the premises stated in such application upon the payment by or on behalf of the applicant of a fee of five thousand dollars and shall be renewed upon the payment of a like fee annually. Such license or certificate shall not be transferred or assigned, except by permission of the secretary of state. Such license or certificate shall run to the first day of January next ensuing the date thereof, unless sooner revoked by the secretary of state. Such license or certificate shall be granted upon a written application setting forth such information as the secretary of state may require in order to enable him or her to carry into effect the provisions of this article and shall be accompanied by proof satisfactory to the secretary of state of the moral character of the applicant.

2. No operator's agent shall sell or convey tickets to any secondary ticket reseller owned or controlled by the operator's agent.

3. The operator or the promoter shall determine whether a seat for which a ticket is for sale has an obstructed view, and shall disclose such obstruction. Every sale or resale of such ticket shall include a disclosure of such obstructed view.

4. If any licensee under this section demonstrates that their business provides a service to facilitate ticket transactions without charging any fees, surcharges or service charges above the established price, on every transaction, except a reasonable and actual charge for the delivery of tickets, then the fees for licensing under this section shall be waived.

* NB Effective until July 1, 2027

* § 25.13. Printing price on ticket. Every person, firm or corporation who owns, operates or controls a theatre, place of amusement or entertainment, or other place where public exhibitions, games, contests or performances are held shall, if a price be charged for admission thereto, print on the face of each such ticket or other evidence of the right of entry the price charged therefor by such person, firm or corporation. Such person, firm or corporation shall likewise be required to print or endorse thereon the maximum premium (not to exceed two dollars, plus lawful taxes), at which such ticket or other evidence of the right of entry may be resold or offered for resale. It shall be unlawful for any person, firm or corporation to resell or offer to resell such ticket or other evidence of the right of entry at any premium or price in excess of such maximum premium printed or endorsed thereon, plus lawful taxes, or so that the ultimate price to the purchaser of such ticket shall exceed a sum in excess of two dollars over and above the original price charged for admission as printed on the face of each such ticket or other evidence of the right of entry, plus lawful taxes.

* NB Effective July 1, 2027

* **§ 25.15. Bond.** The secretary of state shall require the applicant for a license to file with the application therefor a bond in due form to the people of New York in the penal sum of twenty-five thousand dollars, with two or more sufficient sureties or a duly authorized surety company, which bond shall be approved by the secretary of state. Each such bond shall be conditioned that the obligor will not be guilty of any fraud or extortion, will not violate directly or indirectly any of the provisions of this article or any of the provisions of the license or certificate provided for in this article, will comply with the provisions of this article and will pay all damages occasioned to any person by reason of any misstatement, misrepresentation, fraud or deceit or any unlawful act or omission of such obligor, his or her agents or employees, while acting within the scope of their employment, made, committed or omitted in connection with the provisions of this article in the business conducted under such license or caused by any other violation of this article in carrying on the business for which such license is granted. One or more recoveries or payments upon such bond shall not vitiate the same but such bond shall remain in full force and effect, provided, however, that the aggregate amount of all such recoveries or payments shall not exceed the penal sum thereof. Before the secretary shall draw upon such bond, the secretary shall issue a determination in writing which shall include the basis of such action. The secretary shall notify in writing the licensee of any such determination and shall afford the licensee an opportunity to respond within twenty days of the receipt of such determination. In no event may the bond be drawn upon in less than twenty-five days after the service of a determination to the licensee. Such written notice may be served by delivery thereof personally to the licensee, or by certified mail to the last known business address of such licensee. Only upon such determination of the secretary shall moneys be withdrawn from the bond. Upon the commencement of any action or actions against the surety upon any such bond for a sum or sums aggregating or exceeding the amount of such bond the secretary of state shall require a new and additional bond in like amount as the original one, which shall be filed with the department of state within thirty days after the demand therefor.

Failure to file such bond within such period shall constitute cause for the revocation of the license pursuant to section 25.31 of this article theretofore issued to the licensee upon whom such demand shall have been made. Any suit or action against the surety on any bond required by the provisions of this section shall be commenced within one year after the cause of action shall have accrued.

* NB Effective until July 1, 2027

* § 25.15. Posting of license or certificate. Immediately upon the receipt of the license or certificate issued pursuant to this article by such commissioner, the licensee named therein shall cause such license to be posted and at all times displayed in a conspicuous place in the principal office of such business for which it is issued, and shall cause the certificate for each branch office, bureau, agency or sub-agency to be posted and at all times displayed in a conspicuous place in such branch office, bureau, agency or sub-agency for which it is issued, so that all persons visiting such principal office, branch office, bureau, agency or sub-agency may readily see the same. Such license or certificate shall at all reasonable times be subject to inspection by such commissioner or his authorized inspectors. It shall be unlawful for any person, firm, partnership or corporation holding such license or certificate to post such license or certificate or to permit such certificate to be posted upon premises other than those described therein or to which it has been transferred pursuant to the provisions of this article or unlawfully to alter, deface or destroy any such license or certificate.

* NB Effective July 1, 2027

*** § 25.17. Supervision and regulation.** The secretary of state shall have power, upon complaint of any person or on his or her own initiative, to investigate the business, business practices and business methods of any such licensee which relates to this state's or any other state's ticket resale law, or in regards to ticket resale practices generally. Each such licensee shall be obliged, on the reasonable request of the secretary of state, to supply such information as may be required concerning his or her business, business practices or business methods provided that the information requested is related to the complaint which forms the basis of such investigation. Each operator of any place of entertainment shall also be obliged, on request of the secretary of state, to supply such information as may be required concerning the business, business practices or business methods of any licensee provided that the information requested is related to the complaint which forms the basis of such investigation. The secretary of state shall have the power to promulgate such rules and regulations as may be deemed necessary for the enforcement of this article.

* NB Effective until July 1, 2027

* § 25.17. Removal of office. If the holder of an unexpired license or certificate issued pursuant to this article shall remove the office, branch office, bureau, agency or sub-agency to a place other than that described in the license or certificate, he shall within the twenty-four hours immediately following such removal, give written notice of such removal to such commissioner, which notice shall describe the premises to which such removal is made and the date on which it was made, and send such license or certificate to such commissioner, at his office in the political subdivision, and such commissioner shall cause to be written or stamped across the face of such license or certificate a statement to the effect that the holder of such license has removed on the date stated in such written notice such principal office, branch office, bureau, agency or sub-agency from the place originally described in such license or certificate to the place described in such written notice, and such license or certificate with the endorsement thereon shall be returned to the licensee named therein. No tickets, or evidence or tokens thereof, shall be sold at any place other than places for which a license or certificate provided for by this article has been issued and posted.

* NB Effective July 1, 2027

*** § 25.19. Posting of license or certificate.** Immediately upon the receipt of the license or certificate issued pursuant to this article by the secretary of state, the licensee named therein shall cause such license to be posted and at all times displayed in a conspicuous place in the principal office of such business for which it is issued, and shall cause the certificate for each branch office, bureau, agency or sub-agency to be posted and at all times displayed in a conspicuous place in such branch office, bureau, agency or sub-agency for which it is issued, so that all persons visiting such principal office, branch office, bureau, agency or sub-agency may readily see the same, and if such licensee does business on the internet, including via a retail ticket purchasing platform, to provide a license number displayed in a conspicuous manner or a hyperlink displayed in a conspicuous manner to a scanned copy of such license. Such license or certificate shall at all reasonable times be subject to inspection by the secretary of state or his or her authorized inspectors. It shall be unlawful for any person, firm, partnership or corporation holding such license or certificate to post such license or certificate or to permit such certificate to be posted upon premises other than those described therein or to which it has been transferred pursuant to the provisions of this article or unlawfully to alter, deface or destroy any such license or certificate. For purposes of this section, the term "retail ticket purchasing platform" shall mean a retail ticket purchasing website, application, phone system, or other technology platform used to sell tickets.

* NB Effective until July 1, 2027

* § 25.19. Posting of price lists; information to purchaser. In every principal office or branch office, bureau, agency or sub-agency of any licensee under this article, there shall be conspicuously posted and at all times displayed a price list showing the price charged by the person, firm or corporation owning, operating or controlling the theatre, place of amusement or entertainment, or the place where the public exhibition, game, contest or performance for which a ticket is being sold by such licensee, together with the price being charged by such licensee for the resale of such ticket, so that all persons visiting such place may readily see the same. The licensee shall also on request furnish each purchaser of a ticket with a receipt showing the same information.

* NB Effective July 1, 2027

*** § 25.21. Change of office location.** In the event of a change in the location of the premises covered by license or certificate issued under this article, the department of state shall be duly notified in writing of such change within twenty-four hours thereafter. The secretary of state shall cause to be written or stamped across the face of such license or certificate a statement to the effect that the holder of such license has removed on the date stated in such written notice such principal office, branch office, bureau, agency or sub-agency from the place originally described in such license or certificate to the place described in such written notice, and such license or certificate with the endorsement thereon shall be returned to the licensee named therein. No tickets shall be sold at any place other than places for which a license or certificate provided for by this article has been issued and posted.

* NB Effective until July 1, 2027

* § 25.21. Records of purchases and sales. Every licensee shall at all times keep full and accurate sets of records showing the prices at which all tickets have been bought and sold by such licensee and the names and addresses of the person, firm or corporation from whom they were bought.

* NB Effective July 1, 2027

*** § 25.23. Posting of price lists; information to purchaser.** 1. In every principal office or branch office, bureau, agency or sub-agency of any licensee under this article, there shall be conspicuously posted and at all times displayed a price list showing the established price charged by the operator of the place of entertainment for which a ticket is being sold by such licensee, together with the price being charged by such licensee for the resale of such ticket, so that all persons visiting such place may readily see the same. The licensee shall also on request furnish each purchaser of a ticket with a receipt showing the same information. Further, if the licensee conducts business through the use of the internet, the same price list, or hyperlink to the same, shall be conspicuously displayed on the internet page on which tickets are accessed. In addition the licensee shall publish in a conspicuous place, or hyperlink to on the internet a statement clearly detailing the required guarantees required by section 25.07 of this article.

2. An online resale marketplace shall post a clear and conspicuous notice on the website that the website is for the secondary sale of a

ticket, that the price of such ticket offered for sale may exceed the established price and shall also state the refund policy of the platform in connection with the cancellation or postponement of an event. An online resale marketplace shall be required to clearly and conspicuously disclose the established price charged by the operator of a place of entertainment that is printed or endorsed on the face of each ticket in accordance with section 25.07 of this article prior to the user completing any transaction. An online resale marketplace shall require that the user confirm having read such notices before completing any transaction. For the purposes of this section, an "online resale marketplace" means any operator or manager of a website or other electronic service that resells tickets or serves as a platform to facilitate resale, or resale by way of a competitive bidding process.

* NB Effective until July 1, 2027

* § 25.23. Commissions to employees of theatres. No licensee shall pay to any officer or employee of any theatre or place of amusement or entertainment or other place where public exhibitions, games, contests or performances are held, or to any producer or manager or employee of any theatrical or other exhibition or theatrical company, any commission, gratuity or bonus in connection with the sale, delivery or payment of tickets or in connection with the business being done by such licensee in tickets of admission to such places.

* NB Effective July 1, 2027

§ 25.24. Ticket purchasing software. 1. The term " ticket purchasing software" shall mean, any machine, device, computer program or computer software that, on its own or with human assistance, bypasses security measures or access control systems on a retail ticket purchasing platform, or other controls or measures on a retail ticket purchasing platform that assist in implementing a limit on the number of tickets that can be purchased, to purchase tickets. For purposes of this section, the term "retail ticket purchasing platform" shall mean a retail ticket purchasing website, application, phone system, or other technology platform used to sell tickets.

2. (a) It shall be unlawful for any person, firm, corporation or other

entity to utilize ticket purchasing software to purchase tickets.

(b) It shall be unlawful for any person, firm, corporation or other entity to knowingly resell or offer to resell a ticket that such person, firm, corporation or other entity knows was obtained using ticket purchasing software and was not obtained for their own use or the use of their invitees, employees, or agents.

3. (a) Any person, firm, corporation or other entity who knowingly utilizes ticket purchasing software in order to purchase tickets shall be subject to a civil penalty in an amount of no less than one thousand dollars and no more than two thousand five hundred dollars for each such violation and shall forfeit all profits made from the sale of any such unlawfully obtained tickets.

4. Any person, firm, corporation or other entity who intentionally maintains any interest in or maintains any control of the operation of ticket purchasing software to purchase tickets shall be subject to a civil penalty in an amount of no less than one thousand dollars and no more than two thousand five hundred dollars for each such violation and shall forfeit all profits made from the sale of any such unlawfully obtained tickets.

5. Any person, firm, corporation or other entity who knowingly resells or offers to resell a ticket that such person, firm, corporation or other entity knows was obtained using ticket purchasing software and was not obtained for their own use or the use of their invitees, employees, or agents shall be subject to a civil penalty in an amount of no less than one thousand dollars and no more than two thousand five hundred dollars for each such violation and shall forfeit all profits made from the sale of any such unlawfully obtained ticket.

6. Any person who is subject to a civil penalty under this section and has been assessed a penalty under this section in the previous three years shall be guilty of a violation and may be fined no less than two thousand dollars and no more than ten thousand dollars for each such violation and shall forfeit all profits from the sale of any such unlawfully obtained tickets. In addition, a person convicted of a

violation under this section may be required to forfeit any and all equipment used in the unlawful purchasing of tickets.

7. The attorney general shall have jurisdiction to enforce the provisions of this section in accordance with the powers granted to him or her by section sixty-three of the executive law.

8. In addition to the power given to the attorney general to enforce the provisions of this section, any place of entertainment, as defined by section 23.03 of this chapter, or any aggrieved party that has been injured by wrongful conduct prescribed by this section may bring an action to recover all actual damages suffered as a result of any of such wrongful conduct. The court in its discretion may award damages up to three times the amount of actual damages. The court may enjoin the respondent from any and all activity prohibited under this section. The court may also award reasonable attorney's fees and costs.

9. Any person, firm, corporation or other entity who for the purpose of selling or offering to sell tickets in order to derive a profit therefrom (i) intentionally utilizes ticket purchasing software to purchase such tickets, (ii) intentionally maintains any interest in or maintains any control of the operation of ticket purchasing software which is used to purchase such tickets, or (iii) knowingly resells or offers to resell a ticket that such person, firm, corporation or other entity knows was obtained using ticket purchasing software and was not obtained for their own use or the use of their invitees, employees, or agents, shall be guilty of a class A misdemeanor.

10. Any person, firm, corporation or other entity who is a licensee under this article who is adjudicated guilty of the following acts may lose their license and may be barred from licensure under this article for a period not to exceed three years to be determined by the department of state pursuant to section 25.31 of this article if such licensee: (a) knowingly utilized ticket purchasing software in order to purchase tickets; (b) knowingly resold or offered to resell a ticket that such licensee knew was obtained using ticket purchasing software; or (c) intentionally maintained any interest in or maintained any

control of the operation of ticket purchasing software to purchase tickets.

*** § 25.25. Records of purchases and sales.** 1. Every licensee shall at all times keep full and accurate sets of records showing: (a) the prices at which all tickets have been bought and sold by such licensee; and (b) the names and addresses of the person, firm or corporation from whom they were bought. Operators offering for initial sale tickets by means of an auction shall maintain a record of the price when known and the number of tickets and types of seats offered through auction. These records shall be made available upon request to the state attorney general, the secretary of state, or other governmental body with the express authority to enforce any section of this article; provided, however, that the records required to be maintained by this section shall be considered proprietary in nature and shall be governed by the protections set forth in subdivision five of section eighty-nine of the public officers law. These records shall be retained for a period of not less than ten years.

2. Twice annually, on June thirtieth and December thirty-first, every licensee that resells tickets or facilitates the resale or resale auction of tickets between independent parties by any and all means shall report to the department of state the total number of, and average resale or average final resale auction price of, all tickets to each ticketed event, provided, however, that repeat performances of a single event, and multiple events that are part of a season-long performance shall be treated as a single event for the purposes of the reporting requirement of this subdivision. The information required to be reported by this section shall be considered proprietary in nature and shall be governed by the protections set forth in subdivision five of section eighty-nine of the public officers law, and shall be used exclusively for analytical purposes by the department of state.

* NB Effective until July 1, 2027

* § 25.25. Violations; penalties. 1. Every person, firm or corporation who resells any such ticket or other evidence of right of entry or engages in the business of reselling any such ticket or other evidence

of the right of entry, without first having procured the license prescribed and filing of a bond required by this article shall be guilty of a misdemeanor. Every person, firm or corporation who violates any provision of this article shall be guilty of a misdemeanor. A conviction for any violation hereof shall be punishable by a fine not to exceed two hundred fifty dollars for the first violation, five hundred dollars for the second violation and one thousand dollars for any subsequent violation or by imprisonment for a period not to exceed one year, or both such fine and imprisonment as herein provided.

2. Notwithstanding the provisions of subdivision one of this section, any person who has not previously been convicted of violating this section and who sells less than six tickets shall be guilty of a violation, and upon conviction shall be punishable by a fine not to exceed one hundred dollars.

* NB Effective July 1, 2027

*** § 25.27. Commissions to employees of places of entertainment.** No licensee, other person or entity, whether or not domiciled, licensed or registered within the state, shall pay to any officer or employee of any place of entertainment, any commission, gratuity or bonus in connection with the sale, delivery or payment of tickets or in connection with the business being done by such licensee, other person or entity, whether or not domiciled, licensed or registered within the state, in tickets of admission to such place.

* NB Effective until July 1, 2027

* § 25.27. Unlawful charges in connection with theatre tickets. 1. Any owner, operating lessee, operator, manager, treasurer or assistant treasurer of any theatre wherein public performances are held, or of any stadium, arena, garden or other place of amusement showing sporting events, or his agent, representative, employee or licensee who, if a price be charged for admission thereto, exacts, demands, accepts or receives, directly or indirectly, any premium or price in excess of the regular or established price or charge, plus lawful taxes, as printed upon the face of each ticket or other evidence of the right of entry thereto, whether designated as price, gratuity or otherwise, shall be

guilty of a misdemeanor. A conviction for each violation hereof shall be punishable by a fine not to exceed five hundred dollars or by imprisonment for a period not to exceed one year, or both.

2. The provisions of this section shall also apply to the sale of theatre tickets and tickets for sporting events to persons licensed to resell theatre tickets and tickets for sporting events, pursuant to the provisions of this article.

3. In any prosecution under this section the attorney general shall have concurrent jurisdiction with any district attorney and in any such prosecution he or his deputy shall exercise all the powers and perform all the duties which the district attorney would otherwise be authorized to exercise or perform therein.

* NB Effective July 1, 2027

*** § 25.29. Unlawful charges in connection with tickets.** 1. No operator of any place of entertainment, or his or her agent, representative, employee or licensee shall, if a price be charged for admission thereto, exact, demand, accept or receive, directly or indirectly, any premium or price in excess of the established price plus lawful taxes whether designated as price, gratuity or otherwise; provided, however: (a) nothing in this article shall be construed to prohibit a reasonable service charge by the operator or agents of the operator for special services, including but not limited to, sales away from the box office, credit card sales or delivery; and (b) nothing in this article shall be construed to prohibit an operator or its agent from offering for initial sale tickets by means of an auction.

2. A reasonable and actual cost for the physical delivery of tickets may be charged by a seller or reseller based on the method of delivery selected by the purchaser; provided, however, that no delivery fee shall be charged by a seller or reseller for tickets delivered electronically or tickets that may be printed independently by the purchaser.

3. In any prosecution under this section the attorney general shall

have concurrent jurisdiction with any district attorney and in any such prosecution he or she or his or her deputy shall exercise all the powers and perform all the duties which the district attorney would otherwise be authorized to exercise or perform therein.

* NB Repealed July 1, 2027

*** § 25.30. Operator prohibitions.** 1. A ticket is a license, issued by the operator of a place of entertainment, for admission to the place of entertainment at the date and time specified on the ticket, subject to the terms and conditions as specified by the operator. Notwithstanding any other provision of law to the contrary, it shall be prohibited for any operator of a place of entertainment, or operator's agent, to:

(a) restrict by any means the resale of any tickets included in a subscription or season ticket package as a condition of purchase, as a condition to retain such tickets for the duration of the subscription or season ticket package agreement, or as a condition to retain any contractually agreed upon rights to purchase future subscription or season ticket packages that are otherwise conferred in the subscription or season ticket agreement;

(b) deny access to a ticket holder who possesses a resold subscription or season ticket to a performance based solely on the grounds that such ticket has been resold; or

(c) employ a paperless ticketing system unless the consumer is given an option to purchase paperless tickets that the consumer can transfer at any price, and at any time, and without additional fees, independent of the operator or operator's agent. Notwithstanding the foregoing, an operator or operator's agent may employ a paperless ticketing system that does not allow for independent transferability of paperless tickets only if the consumer is offered an option at the time of initial sale to purchase the same tickets in some other form that is transferrable independent of the operator or operator's agent including, but not limited to, paper tickets or e-tickets. The established price for any given ticket shall be the same regardless of the form or transferability of such ticket. The ability for a ticket to be transferred independent of the operator or operator's agent shall not constitute a special service for the purpose of imposing a service charge pursuant to section

25.29 of this article.

2. Additionally, nothing in this article shall be construed to prohibit an operator of a place of entertainment from maintaining and enforcing any policies regarding conduct or behavior at or in connection with their venue. Further, nothing in this article shall be construed to prohibit an operator of a place of entertainment or such operator's agent, from restricting the resale of tickets that are offered as part of a targeted promotion, at a discounted price, or for free, to specific individuals or groups of individuals because of their status as, or membership in, a specific community or group, including, but not limited to, persons with disabilities, students, religious or civic organizations, or persons demonstrating economic hardship; provided, however that tickets offered promotionally to the general public shall not be considered as tickets offered to specific individuals or groups of individuals. Any promotional discounted or free tickets for which the operator or operator's agent restricts resale must be clearly marked as such. An operator shall be permitted to revoke or restrict season tickets for reasons relating to violations of venue policies, including but not limited to, attempts by two or more persons to gain admission to a single event with both the cancelled tickets originally issued to a season ticket holder and those tickets re-issued as part of a resale transaction, and to the extent the operator may deem necessary for the protection of the safety of patrons or to address fraud or misconduct.

3. No operator or operator's agent shall sell or convey tickets to any secondary ticket reseller owned or controlled by the operator or operator's agent.

4. The operator or the promoter shall determine whether a seat for which a ticket is for sale has an obstructed view, and shall disclose such obstruction. If the operator or promoter discloses that a seat for which a ticket is for sale has an obstructed view, it shall be the responsibility of the secondary ticket reseller to disclose such obstruction upon the resale of such ticket. Such obstruction shall not include an obstruction of view caused by a person, or persons, seated in an adjacent seat, or seats, or occupying an aisle; or an obstruction of

view caused by an object or objects placed upon an adjacent seat or seats, or in an aisle; or an obstruction of view that is de minimus or transitory in nature.

5. No operator or its agent shall transfer a prospective ticket purchaser through any means to a licensee or secondary ticket reseller without providing a clear and conspicuous disclosure that informs the prospective purchaser that the ticket is not being offered by the operator or its agent, but rather by a licensee or other ticket reseller in the secondary market.

* NB Repealed July 1, 2027

*** § 25.31. Suspension or revocation of licenses.** 1. Powers of department of state. The department of state may deny an application or may revoke or suspend a license issued pursuant to this article, impose a fine not exceeding one thousand dollars per violation payable to the department of state, issue a reprimand and order restitution upon proof to the satisfaction of the secretary of state that the holder thereof has: (a) violated any provision of this article or any rule or regulation adopted hereunder; (b) made a material misstatement in the application for such license; (c) engaged in fraud or fraudulent practices; (d) demonstrated untrustworthiness or incompetency; or (e) been convicted of serious offense or misdemeanor which, in the discretion of the secretary, bears such a relationship to licensure as to constitute a bar to licensure or renewal.

2. Determination of department of state. In the event that the department of state shall revoke or suspend any such license, or impose any fine or reprimand on the holder thereof, its determination shall be in writing and officially signed. The original of such determination, when so signed, shall be filed with the department of state and copies thereof shall be served personally or by certified mail upon the licensee or applicant and addressed to the principal place of business of such licensee.

3. No license shall be suspended or revoked nor shall any fine or

reprimand be imposed, nor shall any application be denied, until after an opportunity for a hearing had before an officer or employee of the department of state designated for such purpose by the secretary of state upon notice to the licensee or applicant of at least ten days. The notice shall be served by certified mail and shall state the date and place of hearing and set forth the ground or grounds constituting the charges against the licensee or the reasons for the proposed denial of the application. The licensee or applicant shall have the opportunity to be heard in his or her defense either in person or by counsel and may produce witnesses and testify on his or her behalf. A stenographic record of the hearing shall be taken and preserved. The hearing may be adjourned from time to time. The person conducting the hearing shall make a written report of his or her findings and a recommendation to the secretary of state for decision. The secretary of state shall review such findings and the recommendation and, after due deliberation, shall issue an order accepting, modifying or rejecting such recommendation and dismissing the charges or suspending or revoking the license or imposing a fine or reprimand upon the licensee. For the purpose of this article, the secretary of state or any officer or employee of the department of state designated by him or her, may administer oaths, take testimony, subpoena witnesses and compel the production of books, papers, records and documents deemed pertinent to the subject of investigation.

* NB Repealed July 1, 2027

*** § 25.33. Private right of action.** Notwithstanding any right of action granted to any governmental body pursuant to this chapter, any person who has been injured by reason of a violation of this article may bring an action in his or her own name to enjoin such unlawful act, an action to recover his or her actual damages or fifty dollars, whichever is greater, or both such actions. The court may award reasonable attorney's fees to a prevailing plaintiff.

* NB Repealed July 1, 2027

*** § 25.34. Ticket websites.** 1. As used in this section:

(a) "Ticket website" means an internet website advertising the sale of tickets, offering the sale of such tickets, or facilitating a secondary ticket exchange.

(b) "URL" means the uniform resource locator for a website on the internet.

2. (a) It shall be unlawful for any person or other entity to, with intent to mislead or deceive, own, operate, or control a ticket website for an event scheduled at a place of entertainment to use a subdomain or domain name in a ticket website's URL that contains:

(i) the name of the place of entertainment, provided that this paragraph shall not preclude the use of general terms to depict a geographical location or venue category;

(ii) the name of the specific event, including the name of a person or entity scheduled to perform or appear at the event; or

(iii) a name substantially similar to those in subparagraph (i) or (ii) of this paragraph.

(b) Paragraph (a) of this subdivision shall not apply if the person is acting on behalf of, and with the consent of, the place of entertainment, event, artist or sports team for which the website is being created.

3. Any person, firm, corporation or other entity who intentionally owns, operates, or controls such ticket website shall be subject to a civil penalty in an amount of no more than one thousand five hundred dollars for each such violation.

4. Any person who is subject to a civil penalty under this section and has been assessed a penalty under this section in the previous three years shall be assessed a civil penalty of no more than five thousand dollars for each such violation.

5. The attorney general shall have jurisdiction to enforce the provisions of this section in accordance with the powers granted to him or her by section sixty-three of the executive law.

* NB Repealed July 1, 2027

* **§ 25.35. Criminal penalties.** 1. (a) Any person, firm, corporation or other entity, whether or not domiciled, licensed or registered within the state, which is convicted of violating section 25.27 or 25.29 of this article shall be guilty of a class A misdemeanor punishable by a fine not to exceed one thousand dollars or two times the amount of the defendant's gain, to be determined pursuant to the procedures set forth in section 400.30 of the criminal procedure law, whichever is greater, or by a term of imprisonment not to exceed one year, or by both such fine and imprisonment.

(b) Any person, firm, corporation or other entity, whether or not domiciled, licensed, or registered within the state, which is convicted of violating section 25.27 or 25.29 of this article, when the value of the commission, gratuity, bonus, premium or price unlawfully paid or accepted exceeds one thousand dollars for an event as defined in section 23.03 of this chapter, whether or not such payment is for tickets to a single performance of that event, shall be guilty of a class E felony, punishable by a term of imprisonment in accordance with the penal law, or by a fine of five thousand dollars or two times the amount of the defendant's gain, to be determined pursuant to the procedures set forth in section 400.30 of the criminal procedure law, whichever is greater, or by both such fine and imprisonment.

2. Any person, firm or corporation which is convicted of violating subdivision two of section 25.09 of this article shall be guilty of a misdemeanor punishable by a term of imprisonment not to exceed one year or by a fine not to exceed seven hundred fifty dollars on the first conviction; one thousand five hundred dollars on the second conviction; and two thousand dollars, on each subsequent conviction or by both such fine and imprisonment.

3. Any person, firm or corporation which is convicted of knowingly violating subdivision one of section 25.07 or section 25.13 or section 25.15 of this article shall be guilty of a misdemeanor punishable by a term of imprisonment not to exceed one hundred eighty days or by a fine not to exceed five hundred dollars on the first conviction; one thousand dollars on the second conviction; and two thousand dollars on each subsequent conviction or by both such fine and imprisonment.

4. Notwithstanding any other penalty which may be imposed for any other violation of this article, any person, firm or corporation which is convicted of violating section 25.11 of this article shall be guilty of a violation punishable by a fine not to exceed two hundred dollars on the first conviction; five hundred dollars on the second conviction; and one thousand dollars on each subsequent conviction.

5. Any person, firm or corporation which is convicted of violating subdivision one of section 25.09 of this article shall be guilty of a violation punishable by a fine not to exceed five hundred dollars.

6. Any person, firm or corporation which is convicted of violating any other section of this article shall be guilty of a violation punishable by a fine not to exceed two hundred fifty dollars.

7. Notwithstanding any other provision to the contrary, when the fines included in this section are imposed on a firm, corporation or other entity that is not a single person, such fines may be imposed at up to two times the amount otherwise allowed, or, where applicable, three times the amount of the defendant's gain.

* NB Repealed July 1, 2027

TITLE J
OFFENSES RELATING TO UNAUTHORIZED PHOTOGRAPHS AND CERTAIN COPYRIGHTED MATERIALS

ARTICLE 31
OFFENSES RELATING TO UNAUTHORIZED PHOTOGRAPHS AND CERTAIN COPYRIGHTED MATERIALS

31.05. Printing, publishing or selling copyrighted musical composition without consent of owner.

§ 31.01. Unauthorized photographs and sound recordings of performances. 1. Definitions. The following words as used in this section shall have the following meanings:

(a) "Performance" shall mean any presentation consisting in whole or in part of a musical, dramatic, dance or other stage rendition by living persons who appear in the immediate presence of their audience.

(b) "Theatre" shall mean a concert hall, recital hall, theatre or other auditorium in which a performance is rendered and admission to which is limited by its management to persons holding admission tickets or other written evidence of permission to enter.

(c) "Management" shall mean: (i) the operator of a theatre; and (ii) with respect to a particular performance, the person hiring the theatre to present such performance unless such person shall have agreed in writing with such operator not to photograph or make sound recordings of such performance.

2. No person shall take any photograph or make any sound recording of any performance presented in a theatre without having first obtained the written consent of the management to do so. The management of any theatre may maintain an action for an injunction, an accounting, or for damages resulting from or in respect of any photographs or sound recordings of any performance made without the consent required by this section having been obtained, or resulting from or in respect of any distribution or attempted distribution of any such photographs or sound recordings or reproductions thereof.

3. If any person admitted or seeking admission to a theatre in which a performance is to be or is being presented, attempts to bring into, or brings into such theatre any photographic or sound recording device without having first obtained the written consent of the management to do so, such management shall have the right to request and obtain possession of such photographic or sound recording device until the conclusion of such performance. The management shall give a receipt for

such device, and shall be liable for any damage to such device or loss or theft of such device while in their care.

4. If any person admitted or seeking admission to a theatre in which a performance is to be or is being presented, refuses or fails to give or surrender possession of any photographic or sound recording device which such person has brought into or attempts to bring into such theatre without having first obtained the written consent of the management to do so, then the management shall have the right to remove such person therefrom or refuse admission thereto to such person, and shall thereupon offer to refund and, unless such offer is refused, refund to such person the price paid by such person for admission to such theatre. If such person refuses to leave such theatre after having been informed by the management thereof that possession of any photographic or sound recording device in such theatre without the written consent of the management is prohibited, then such person shall be deemed to be remaining in the theatre unlawfully within the meaning of subdivision five of section 140.00 and section 140.05 of the penal law, and in addition, the management shall have the right to maintain an action in trespass and for punitive damages against such person.

5. The criminal penalties and civil remedies provided by this section shall be without force or effect unless the management of the theatre shall have posted signs at the box office and at or near the audience entrance to the portion of the theatre wherein the performance is to be presented and printed in any program which may be furnished to the audience for such performance, stating in substance as follows:

WARNING

The photographing or sound recording of any performance or the possession of any device for such photographing or sound recording inside this theatre, without the written permission of the management is prohibited by law. Offenders may be ejected and liable for damages and other lawful remedies.

§ 31.03. Producing unpublished, undedicated or copyrighted opera or

dramatic composition, without consent of owner. Any person who causes to be publicly performed or represented for profit any unpublished, undedicated or copyrighted dramatic composition, or musical composition known as an opera, without the consent of its owner or proprietor, or who, knowing that such dramatic or musical composition is unpublished, undedicated or copyrighted and without the consent of its owner or proprietor, permits, aids or takes part in such a performance or representation, shall be guilty of a misdemeanor.

§ 31.04. Copyrights. 1. As used in this section:

(a) "Copyright owner" means the owner of a copyright of a nondramatic musical work recognized and enforceable under the copyright laws of the United States pursuant to Title 17 of the United States Code, Pub. L. 94-553 (17 U.S.C. § 101 et seq.). "Copyright owner" shall not include the owner of a copyright in a motion picture or audiovisual work, or in part of a motion picture or audiovisual work.

(b) "Performing rights society" means an association or corporation that licenses the public performance of nondramatic musical works on behalf of copyright owners, such as the American Society of Composers, Authors and Publishers (ASCAP), Broadcast Music, Inc. (BMI), and SESAC, Inc.

(c) "Proprietor" means the owner of a retail establishment, restaurant, inn, bar, tavern, or any other similar place of business or professional office located in this state in which the public may assemble and in which nondramatic musical works may be performed, broadcast, or otherwise transmitted.

(d) "Royalty" or "royalties" means the fees payable to a performing rights society for public performance rights.

2. No performing rights society shall enter into, or offer to enter into, a contract for the payment of royalties by a proprietor unless at the time of the offer, or any time thereafter, but no later than seventy-two hours prior to the execution of that contract, it provides to the proprietor in writing, the following:

(a) a schedule of the rates and terms of royalties under the contract;

(b) upon the request of the proprietor, the opportunity to review the most current available list of the members or affiliates represented by the society;

(c) notice that it will make available, upon written request of any proprietor or bona fide trade associations representing groups of proprietors, at the sole expense of the proprietor or bona fide trade associations representing groups of proprietors by electronic means or otherwise, the most current available listing of the copyrighted musical works in such performing rights society's repertory, provided that such notice shall specify the mean by which such information can be secured;

(d) notice that the performing rights society has a toll free telephone number which can be used to answer inquiries of a proprietor regarding specific musical works and the copyright owners represented by that performing rights society; and

(e) notice that it complies with federal law and orders of courts having appropriate jurisdiction regarding the rates and terms of royalties and the circumstances under which licenses for rights for public performances are offered to any proprietor.

3. Every contract between a performing rights society and proprietor for the payment of the royalties executed issued or renewed in this state on or after the effective date of this section shall:

(a) be in writing;

(b) be signed by the parties; and

(c) include at least the following information:

(1) the proprietor's name and business address and the name and location of each place of business to which the contract applies;

(2) the name and address of the performing rights society;

(3) the duration of the contract; and

(4) the schedule of rates and terms of the royalties to be collected under the contract, including any sliding scale or schedule for any increase or decrease of those rates for the duration of that contract.

4. No performing rights society, or any agent or employee thereof shall:

(a) with respect to contracts executed, issued or renewed on or after the effective date of this section, collect or attempt to collect from a proprietor licensed by that performing rights society a royalty payment except as provided in a contract executed pursuant to the provisions of this section;

(b) enter onto the premises of a proprietor's business for the purpose of discussing a contract for payment of royalties for the use of copyrighted works by that proprietor without first identifying himself or herself to the proprietor or his or her employees and disclosing that the agent is acting on behalf of such performing rights society and disclosing the purpose of the discussion; and

(c) fail to provide written notice to a proprietor or his or her employees within seventy-two hours after entering the proprietor's business for the purpose of investigating the possible performance, broadcasting or transmission of non-dramatic musical works, and disclosing that such agent or employee was investigating on behalf of such performing rights society and disclosing:

(1) the name of the performing rights society;

(2) the date on which such agent or employee conducted the investigation; and

(3) the copyrighted works in such performing rights society's repertory performed at the business during the investigation.

5. Any person who suffers a violation of this section may bring an action to recover actual damages and reasonable attorney's fees and seek an injunction or any other remedy available at law or in equity. This section shall not apply to contracts between performing rights societies and broadcasters licensed by the federal communications commission or to contracts with cable operators, programmers or other transmission services. This section shall also not apply to investigations conducted by law enforcement agencies or other persons with respect to a suspected violation of article two hundred seventy-five of the penal law.

§ 31.05. Printing, publishing or selling copyrighted musical composition without consent of owner. Whoever prints, publishes, sells, distributes or circulates, or causes to be printed, published, sold, distributed or circulated for profit any circular, pamphlet, card, handbill, advertisement, printed paper, book, newspaper or other document containing the words or musical score of any musical composition which or any part of which is copyrighted under the laws of the United States, without first having obtained the consent of the owner or proprietor of such copyrighted musical composition, is guilty of a misdemeanor.

TITLE K

TRADE-MARKS

ARTICLE 33

OFFENSES AGAINST TRADE-MARKS

§ 33.01. Trade-mark defined. A "trade-mark" is a mark used to indicate the maker, owner or seller of an article of merchandise, and includes, among other things, any name of a person, or corporation, or any letter, word, device, emblem, figure, seal, stamp, diagram, brand, wrapper, ticket, stopper, label, or other mark, lawfully adopted by him, and usually affixed to an article of merchandise to denote that the same was imported, manufactured, produced, sold, compounded, bottled, packed or otherwise prepared by him; and also a signature or mark, used or commonly placed by a painter, sculptor or other artist, upon a painting, drawing, engraving, statue or other work of art, to indicate that the same was designed or executed by him.

§ 33.03. Affixing defined. A trade-mark is deemed to be affixed to an article of merchandise, when it is placed in any manner in or upon:

1. The article itself; or

2. A box, bale, barrel, bottle, case, cask, platter, or other vessel or package, or a cover, wrapper, stopper, brand, label, or other thing in, by or with which the goods are packed, inclosed or otherwise prepared for sale or disposition.

§ 33.05. Article of merchandise defined. The expression "article of merchandise," as used in the preceding two sections, signifies any goods, wares, work of art, commodity, compound, mixture or other preparation or thing, which may be lawfully kept or offered for sale.

§ 33.07. Imitation of a trade-mark defined. An "imitation of a trade-mark" is that which so far resembles a genuine trade-mark as to be likely to induce the belief that it is genuine, whether by the use of words or letters, similar in appearance or in sound, or by any sign, device or other means whatsoever.

§ 33.09. Offenses against trade-marks. A person who:

1. Falsely makes or counterfeits a trade-mark; or

2. Affixes to any article of merchandise, a false or counterfeit trade-mark, knowing the same to be false or counterfeit, or the genuine trade-mark, or an imitation of the trade-mark of another, without the latter's consent; or

3. Knowingly sells, or keeps or offers for sale, an article of merchandise to which is affixed a false or counterfeit trade-mark, or the genuine trade-mark, or an imitation of the trade-mark of another, without the latter's consent; or

4. Has in his possession a counterfeit trade-mark, knowing it to be counterfeit, or a die, plate, brand or other thing for the purpose of falsely making or counterfeiting a trade-mark; or

5. Makes or sells, or offers to sell or dispose of, or has in his possession with intent to sell or dispose of, an article of merchandise with such a trade-mark or label as to appear to indicate the quantity, quality, character, place of manufacture or production, or persons manufacturing, packing, bottling, boxing or producing the article, but not indicating it truly; or

6. Knowingly sells, offers or exposes for sale, any goods which are represented in any manner, by word or deed, to be the manufacture, packing, bottling, boxing or product of any person, firm or corporation, other than himself, unless such goods are contained in the original package, box or bottle and under the labels, marks or names placed thereon by the manufacturer who is entitled to use such marks, names, brands or trade-marks; or

7. Shall sell or shall expose for sale any goods in bulk, to which no label or trade-mark shall be attached, and shall by representation, name or mark written or printed thereon, represent that such goods are the production or manufacture of a person who is not the manufacturer; or

8. Shall knowingly sell, offer or expose for sale any article of merchandise, and shall orally or by representation, name or mark written or printed thereon or attached thereto used in connection therewith, or by advertisement, or otherwise, in any manner whatsoever make any false representation as to the person by whom such article of merchandise or the material thereof was made, or was in whole or in part produced, manufactured, finished, processed, treated, marketed, packed, bottled or boxed, or falsely represent that such article of merchandise or the material or any part thereof has or may properly have any trade-mark attached to it or used in connection with it, or is or may properly be indicated or identified by any trade-mark, is guilty of a misdemeanor.

§ 33.11. Refilling or selling trade-mark bottles and vessels. Any person engaged in making, bottling, packing, selling or disposing of milk, ale, beer, cider, mineral water or other beverage, or in making, selling or disposing of articles of pastry, may register his title as owner of a trade-mark by filing with the secretary of state and the clerk of the county where the principal place of business of such person is situated, a description of the marks and devices used by him in his business, and in case the same has not been heretofore published according to the laws existing at the time of publication, causing the same to be published in a newspaper of the county, three weeks daily, if in the city of New York or Brooklyn, and weekly if in any other part of the state; but no trade-mark shall be filed which is not and can not become a lawful trade-mark, or which is merely the name of a person, firm or corporation unaccompanied by a mark sufficient to distinguish it from the same name when used by another person. After such registration, the use without the consent of the owner of the trade-mark so described, or the filling of any bottle, siphon, barrel, platter, vessel, or thing for the purpose of sale, or for the sale, therein, of any article of the same general nature and quality which said bottle, siphon, barrel, platter, vessel or other thing before contained, without the obliteration or defacement of the trade-mark upon it, when such trade-mark can be obliterated or defaced without substantial injury to the bottle, siphon, barrel, platter, vessel or other thing so as to prevent its wrongful use, shall be deemed a misdemeanor.

§ 33.13. Keeping trade-mark bottles and vessels with intent to refill or sell them. Any person engaged in the business of buying and selling bottles, siphons, barrels, platters, or other vessels or things, who shall with intent to defraud the registered owner of the trade-mark, knowingly sell or offer for sale any bottle, siphon, barrel, platter, vessel, or other things, to any person, who he has reason to believe wrongfully intends to use the trade-mark upon it, or to fill such bottle, siphon, barrel, platter, vessel or other thing in violation of the preceding section, shall be deemed guilty of a misdemeanor.

§ 33.15. Search for trade-mark bottles and vessels kept in violation of law authorized. Whenever a registered owner of a trade-mark, or his agent, makes oath before a magistrate that he has a reason to believe and does believe, stating the grounds of his belief, that a bottle, siphon, barrel, platter, vessel or other thing to which is affixed a trade-mark belonging to him is being used or filled, or has been sold or offered for sale, by any person whomsoever in violation of the preceding section, then the magistrate may issue a search warrant to discover the thing and cause the person having it in possession to be brought before him and may thereupon inquire into the circumstances, and if on examination, he finds that such person has been guilty of the offense charged, he may hold the offender to bail to await the action of the grand jury, and the offender shall also be liable to an action on the case for damages, for such wrongful use of such trade-mark at the suit of the owner thereof, and the party aggrieved, shall also have his remedy according to the course of equity to enjoin the wrongful use of his trade-mark, and to recover compensation therefor in any court having jurisdiction over the person guilty of such wrongful use.

ARTICLE 34

LIVE MUSICAL PERFORMANCE AND PRODUCTIONS

§ 34.01. Short title. This article shall be known and may be cited as the "truth in music advertising act".

§ 34.03. Definitions. The following terms as used in this article shall have the following meanings:

1. "Performing group" means any vocal or instrumental group seeking to use, using, advertising the use of, or promoting the name of a recording group that has previously released a commercial sound recording under the name of such recording group.

2. "Recording group" means any vocal or instrumental group at least one of whose members has previously released a commercial sound recording under that group's name and in which such member or members have a legal right by virtue of use or operation under the group name without having abandoned the name or affiliation with the group.

3. "Sound recording" means any work that results from the fixation on a material object of a series of musical, spoken or other sounds regardless of the nature of the material object, including, but not limited to, a disk, tape, computerized file or other phono-record, in which the sounds are embodied.

§ 34.05. Production. 1. No performing group shall use, advertise or promote a live musical performance or production through the use of a false, deceptive or misleading affiliation, connection or association between a recording group and a performing group where such performing group is seeking to use the same or a substantially similar name as such recording group.

2. The provisions of subdivision one of this section shall not apply if:

(a) the performing group is the authorized registrant and owner of a federal service mark for that recording group registered in the United States Patent and Trademark Office;

(b) at least one member of the performing group was a member of the recording group and has a legal right by virtue of use or operation under the group name without having abandoned the name or affiliation with the group;

(c) the live musical performance or production is identified in all advertising and promotion as a salute or tribute;

(d) the advertising does not relate to a live musical performance or production taking place in this state; or

(e) the performance or production by the performing group with the same or substantially similar name of a specific recording group is expressly authorized by that recording group.

§ 34.07. Restraining prohibited acts. 1. Whenever the attorney general has reason to believe that any person is advertising, using, advertising the use of or promoting, a live musical performance or production in violation of section 34.05 of this article, and that it would be in the public interest, the attorney general may bring an action in the name of the people of the state of New York against the person to restrain by preliminary or permanent injunction such promotion, advertising or use of the same or substantially similar name of such recording group, live musical performance or production.

2. In addition to any injunctive relief granted pursuant to subdivision one of this section, the court may direct the defendant to disgorge to the recording group or its authorized representative any moneys which may have been acquired by means of any violation of section 34.05 of this article subject to such terms and conditions as the court shall determine to be just.

§ 34.09. Penalty. Any person who violates the provisions of section 34.05 of this article shall be liable to the state for a civil penalty of up to five thousand dollars for a first violation, but not more than fifteen thousand dollars for subsequent violations.

TITLE L
PROTECTION OF CHILD PERFORMERS AND MODELS

ARTICLE 35
CHILD PERFORMERS AND MODELS

§ 35.01. Child performers. 1. It shall be unlawful, except as otherwise provided by section one hundred fifty-one of the labor law, to employ, or to exhibit or cause to be exhibited, or to use, or have custody of, for the purpose of exhibition, use or employment, any child under the age of sixteen years, or for one who has the care, custody or control of such child as a parent, relative, guardian, employer or otherwise, to exhibit, use or to procure or consent to the use or exhibition of such child, or to neglect or to refuse to restrain such child from engaging or acting in a public or private place, except as hereinafter provided, whether or not an admission fee is charged and whether or not such child or any other person is to be compensated for the use of such child therein, in the following activities:

(a) In singing; or dancing; or modeling; or playing upon a musical instrument; or acting, or in rehearsing for, or performing in a theatrical performance or appearing in a pageant; or as a subject for use, in or for, or in connection with the making of a motion picture film; or

(b) In rehearsing for or performing in a radio or television broadcast or program.

2. The provisions of subdivision one of this section shall not apply to the participation or employment, use or exhibition of any child in a church, academy or school, including a dancing or dramatic school, as part of the regular services or activities thereof respectively; or in the annual graduation exercises of any such academy or school; or in a private home; or in any place where such performance is under the direction, control or supervision of a department of education; or in the performance of radio or television programs in cases where the child or children broadcasting do so from a school, church, academy, museum, library or other religious, civic or educational institution, or for not more than two hours a week from the studios of a regularly licensed

broadcasting company, where the performance of the child or children is of a nonprofessional character and occurs during hours when attendance for instruction is not required in accordance with the education law.

3. A child performer permit shall be issued by the state department of labor pursuant to section one hundred fifty-one of the labor law.

4. The mayor or other chief executive officer of the city, town or village where the exhibition, rehearsal or performance will take place may solicit the assistance of the Society for the Prevention of Cruelty to Children in New York city, and outside New York city, with the Society for the Prevention of Cruelty to Children or other child protective organization, if there be one and such other state and local agencies as he or she may determine.

5. Violation of this section shall be a misdemeanor.

§ 35.03. Judicial approval of certain contracts for services of infants; effect of approval; guardianship of savings. 1. A contract made by an infant or made by a parent or guardian of an infant, or a contract proposed to be so made, under which (a) the infant is to perform or render services as an actor, actress, model, dancer, musician, vocalist or other performing artist, or as a participant or player in professional sports, or (b) a person is employed to render services to the infant in connection with such services of the infant or in connection with contracts therefor, may be approved by the supreme court or the surrogate's court as provided in this section where the infant is a resident of this state or the services of the infant are to be performed or rendered in this state. If the contract is so approved the infant may not, either during his minority or upon reaching his majority, disaffirm the contract on the ground of infancy or assert that the parent or guardian lacked authority to make the contract. A contract modified, amended or assigned after its approval under this section shall be deemed a new contract.

2. (a) Approval of the contract pursuant to this section shall not

exempt any person from any other law with respect to licenses, consents or authorizations required for any conduct, employment, use or exhibition of the infant in this state, nor limit in any manner the discretion of the licensing authority or other persons charged with the administration of such requirements, nor dispense with any other requirement of law relating to the infant.

(b) No contract shall be approved which provides for an employment, use or exhibition of the infant, within or without the state, which is prohibited by law and could not be licensed to take place in this state.

(c) No contract shall be approved unless (i) the written acquiescence to such contract of the parent or parents having custody, or other person having custody of the infant, is filed in the proceeding or (ii) the court shall find that the infant is emancipated.

(d) No contract shall be approved if the term during which the infant is to perform or render services or during which a person is employed to render services to the infant, including any extensions thereof by option or otherwise, extends for a period of more than three years from the date of approval of the contract, provided, however that if the court finds that such infant is represented by qualified counsel experienced with entertainment industry law and practices such contract may be for a period of not more than seven years. If the contract contains any covenant or condition which extends beyond such three years or, where the court finds that the infant is represented by qualified counsel as provided in this paragraph, seven years, the same may be approved if found to be reasonable and for such period as the court may determine.

(e) If the court which has approved a contract pursuant to this section shall find that the well-being of the infant is being impaired by the performance thereof, it may, at any time during the term of the contract during which services are to be performed by the infant or rendered by or to the infant or during the term of any other covenant or condition of the contract, either revoke its approval of the contract, or declare such approval revoked unless a modification of the contract which the court finds to be appropriate in the circumstances is agreed upon by the parties and the contract as modified is approved by order of the court. Application for an order pursuant to this paragraph may be made by the infant, or his parent or parents, or guardian, or his limited guardian appointed pursuant to this section, or by the person having the care and custody of the infant, or by a special guardian appointed for the purpose by the court on its own motion. The order granting or denying the application shall be made after hearing, upon notice to the parties to the proceeding in which the contract was approved, given in such manner as the court shall direct. Revocation of the approval of the contract shall not affect any right of action existing at the date of the revocation, except that the court may determine that a refusal to perform on the ground of impairment of the well-being of the infant was justified.

3. (a) The court may withhold its approval of the contract until the filing of consent by the parent or parents entitled to the earnings of the infant, or of the infant if he is entitled to his own earnings, that a part of the infant's net earnings for services performed or rendered during the term of the contract be set aside and saved for the infant pursuant to the order of the court and under guardianship as provided in this section, until he attains his majority or until further order of the court. Such consent shall not be deemed to constitute an emancipation of the infant.

(b) The court shall fix the amount or proportion of net earnings to be set aside as it deems for the best interests of the infant, and the amount or proportion so fixed may, upon subsequent application, be modified in the discretion of the court, within the limits of the consent given at the time the contract was approved. In fixing such amount or proportion, consideration shall be given to the financial circumstances of the parent or parents entitled to the earnings of the infant and to the needs of their other children, or if the infant is entitled to his own earnings and is married, to the needs of his family. Unless the infant is at the time thereof entitled to his own earnings and has no dependents, the court shall not condition its approval of the contract upon consent to the setting aside of an amount or proportion in excess of one-half of the net earnings.

(c) For the purposes of this subdivision, net earnings shall mean the gross earnings received for services performed or rendered by the infant during the term of the contract, less (i) all sums required by law to be paid as taxes to any government or subdivision thereof with respect to or by reason of such earnings; (ii) reasonable sums to be expended for the support, care, education, training and professional management of the infant; and (iii) reasonable fees and expenses paid or to be paid in connection with the proceeding, the contract and its performance.

4. (a) A proceeding for the approval of a contract shall be commenced by verified petition of the guardian of the infant's person or property, or of the infant, or of a parent, or of any interested person, or of any relative of the infant on his behalf. If a guardian of the infant's person or property has been appointed or qualified in this state, the petition shall be made to the court by which he was appointed or in which he qualified. If there is no such guardian, the petition shall be made to the supreme court or the surrogate's court in the county in which the infant resides, or if he is not a resident of the state, in any county in which the infant is to be employed under the contract.

(b) The following persons, other than one who is the petitioner or joins in the petition, shall be served with an order or citation to show cause why the petition should not be granted: (i) the infant, if over the age of fourteen years, (ii) his guardian or guardians, if any, whether or not appointed or qualified in this state; (iii) each party to the contract; (iv) the parent or parents of the infant; (v) any person having the care and custody of the infant; (vi) the person with whom the infant resides; and (vii) if it appears that the infant is married, his spouse. Service shall be made in such manner as the court shall direct, at least eight days before the time at which the petition is noticed to be heard, unless the court shall fix a shorter time.

5. The petition shall have annexed a complete copy of the contract or proposed contract and shall set forth:

(a) The full name, residence and date of birth of the infant;

(b) The name and residence of any living parent of the infant, the name and residence of the person who has care and custody of the infant, and the name and residence of the person with whom the infant resides;

(c) Whether the infant has had at any time a guardian appointed by will or deed or by a court of any jurisdiction;

(d) Whether the infant is a resident of the state, or if he is not a resident, that the petition is for approval of a contract for performance or rendering of services by the infant and the place in the state where the services are to be performed or rendered;

(e) A brief statement as to the infant's employment and compensation under the contract or proposed contract;

(f) (i) A statement that the term of the contract during which the infant is to perform or render services or during which a person is employed to render services to the infant can in no event extend for a period of more than three years from the date of approval of the contract, and (ii) an enumeration of any other covenants or conditions contained in the contract which extend beyond such three years or a statement that the contract contains no such other covenants or conditions;

(g) A statement as to who is entitled to the infant's earnings and, if the infant is not so entitled, facts regarding the property and financial circumstances of the parent or parents who are so entitled;

(h) The facts with respect to any previous application for the relief sought in the petition or similar relief with respect to the infant;

(i) A schedule showing the infant's gross earnings, estimated outlays and estimated net earnings as defined in subdivision three of this section;

(j) The interest of the petitioner in the contract or proposed contract or in the infant's performance under it;

(k) Such other facts regarding the infant, his family and property, as show that the contract is reasonable and provident and for the best interests of the infant.

If no guardian of the property of the infant has been appointed or qualified in this state, the petition shall also pray for the appointment of a limited guardian as provided in subdivision seven of this section. The petition may nominate a person to be appointed as such limited guardian, setting forth reasons why the person nominated would be a proper and suitable person to be appointed as limited guardian and setting forth the interest of the person so nominated in the contract or proposed contract or in the infant's performance under it.

6. At any time after the filing of the petition the court, if it deems it advisable, may appoint a special guardian to represent the interests

of the infant.

7. If a guardian of the property of the infant has been appointed or qualified in this state, he shall receive and hold any net earnings directed by the court to be set aside for the infant as provided in subdivision three. In any other case a limited guardian shall be appointed for such purpose. A parent, guardian or other petitioner is not ineligible to be appointed as limited guardian by reason of his interest in any part of the infant's earnings under the contract or proposed contract or by reason of the fact that he is a party to or otherwise interested in the contract or in the infant's performance under the contract, provided such interest is disclosed.

If the contract is approved and if the court shall direct that a portion of the net earnings be set aside as provided in subdivision three of this section, the limited guardian shall qualify in the manner provided with respect to a general guardian of the property of the infant appointed by the court in which the proceeding is had, and with respect to net earnings ordered to be set aside shall be subject to all provisions applicable to a general guardian so appointed.

If a guardian of the property of the infant is appointed or qualifies after the appointment of a limited guardian, the limited guardian may continue to act with respect to earnings under the contract approved by the court until the termination of the contract; upon such termination he shall transfer to the guardian of the infant's property the funds of the infant in his hands.

8. (a) The infant shall attend personally before the court upon the hearing of the petition. Upon such hearing, and upon such proof as it deems necessary and advisable, the court shall make such order as justice and the best interests of the infant require.

(b) The court at such hearing or on an adjournment thereof may, by order:

(i) determine any issue arising from the pleadings or proof and required to be determined for final disposition of the matter, including issues with respect to the age or emancipation of the infant or with respect to entitlement of any person to his earnings;

(ii) disapprove the contract or proposed contract or approve it, or approve it upon such conditions, with respect to modification of the terms thereof or otherwise, as it shall determine;

(iii) appoint a limited guardian as provided in subdivision seven of this section.

(c) If the contract is approved upon condition of consent that a portion of the net earnings of the infant under the contract be set aside, the court shall fix the amount or proportion of net earnings to be set aside and if the court shall find that consent or consents thereto have been filed as provided in subdivision three of this section, shall give directions with respect to computation of and payment of sums to be set aside.

§ 35.07. Unlawful exhibitions. 1. It shall be unlawful for any person to employ, use, or exhibit any child under sixteen years of age, or for a parent, guardian or employer to consent to or to refuse to restrain such child in engaging or acting:

a. As a rope or wire walker, gymnast (except in a non-professional capacity or activity), rider upon a horse or other animal (except in a non-professional horse show), or as an acrobat, or upon any bicycle or other mechanical vehicle or contrivance unless a child performer permit is issued pursuant to the provisions of section one hundred fifty-one of the labor law, and the child is protected by the use of safety devices or protective equipment which comply with the provisions of the Federal Occupational Safety and Health Act provided, however, that where an activity is exempt from the permit requirement of this paragraph because the activity is non-professional, the activity shall still be required to comply with the requirement of this paragraph relating to safety devices and protective equipment; or

(b) As a wrestler, boxer, or contortionist; or

(c) In begging or receiving or soliciting alms in any manner or under any pretense, or in any mendicant occupation; or in gathering or picking rags, or collecting cigar stumps; or collecting bones or refuse from markets or streets; or in peddling; or

(d) In any illegal, indecent, or immoral exhibition or practice; or in the exhibition of any such child when mentally ill, developmentally disabled, or when presenting the appearance of any deformity or unnatural physical formation or development; or

(e) In any practice or exhibition or place dangerous or injurious to the life, limb, health or morals of such child provided, however, that the provisions of this paragraph shall not apply to service as a member of a certified volunteer ambulance service under the supervision of an emergency medical technician as provided in article thirty of the public health law by youthful volunteers at least fifteen years of age who hold a current American Red Cross advanced first aid and emergency care card.

2. It shall be unlawful for any person to employ, use or exhibit any person under eighteen years of age as a dancer or performer in any portion of a facility open to the public wherein performers appear and dance or otherwise perform unclothed, under circumstances in which such employment would be harmful to such person in the manner defined in subdivision six of section 235.20 of the penal law.

3. Violation of this section shall be a misdemeanor.

TITLE M
THEATRICAL EMPLOYMENT CONTRACTS; SAFETY PRECAUTIONS FOR CERTAIN PERFORMERS; PERFORMING ARTISTS

ARTICLE 37
THEATRICAL EMPLOYMENT CONTRACTS; SAFETY PRECAUTIONS FOR CERTAIN PERFORMERS

§ 37.01. Definitions. As used in sections 37.03 and 37.05 of this article:

1. "Person" means any individual, company, society, association, corporation, manager, contractor, subcontractor, partnership, bureau, agency, service, office or the agent or employee of the foregoing.

2. "Fee" means anything of value, including any money or other valuable consideration charged, collected, received, paid or promised for any service, or act rendered or to be rendered by an employment agency, including but not limited to money received by such agency or its emigrant agent which is more than the amount paid by it for transportation, transfer of baggage, or board and lodging on behalf of any applicant for employment.

3. "Theatrical employment agency" means any person (as defined in subdivision one hereof) who procures or attempts to procure employment or engagements for an artist, but such term does not include the business of managing entertainments, exhibitions or performances, or the artists or attractions constituting the same, where such business only incidentally involves the seeking of employment therefor.

4. "Theatrical engagement" means any engagement or employment of an artist in employment described in subdivision three of this section.

5. "Artist" shall mean actors and actresses rendering services on the legitimate stage and in the production of motion pictures, radio artists, musical artists, musical organizations, directors of legitimate stage, motion picture and radio productions, musical directors, writers, cinematographers, composers, lyricists, arrangers, models, and other artists and persons rendering professional services in motion picture, theatrical, radio, television and other entertainment enterprises.

§ 37.03. Theatrical employment; contracts. Contracts between a theatrical employment agency and an artist shall include the gross commission or fees to be paid by the artist to the theatrical employment agency consistent with section one hundred eighty-five of the general business law. Such contracts shall contain no other conditions and provisions except such as are equitable between the parties thereto and do not constitute an unreasonable restriction of business. In addition, such contracts in blank shall be first approved by the commissioner of labor, except that in the city of New York, such contracts in blank shall be first approved by the commissioner of consumer affairs of such city, pursuant to section one hundred eighty-nine of the general business law, and his or her determination shall be reviewable by certiorari. Each such contract shall also include the name, address, phone number and license number of the theatrical employment agency in addition to the name of the artist, the type of services covered by the contract, and all terms and conditions associated with the payment of such commission or fees. The theatrical employment agency shall keep on file a copy of each contract entered into with an artist and provide a copy of each contract to the artist. Separately from the contract, the agency shall provide to the artist, at the time of each audition or interview for specific employment, information as to the name and address of the person to whom the artist is to apply for such employment, the service to be performed, the anticipated rate of compensation, where such compensation is known prior to the audition or interview, and any other material terms and conditions of such employment that are known by the agency prior to the audition or interview. Such information may be provided by electronic communication.

§ 37.05. Theatrical employment; financial investigations and security. A theatrical employment agent shall investigate whether or not any employer (person, firm or corporation) who is offering employment to an applicant for employment, has defaulted in the payment of salaries, fees or other compensation to any performer or group of performers or has left stranded any performing companies or individuals or groups, during the five years preceding the date of the application. An agent shall not procure or undertake to procure employment or engagements on the part of any performer or groups of performers for an employer who has failed to pay salaries, fees or other compensation, or who has left stranded any performer or groups of performers or any performing companies or individuals during the five years preceding the date of the application, unless such employer (person, firm or corporation) shall provide sufficient security for the direct benefit of the performer or performers and in an amount ample to pay the performer or performers their full compensation for the specified employment or engagement designated in the employment or engagement contract. The provisions of this section shall not apply to employment or engagements in modeling.

§ 37.07. Performing artists; ads for availability of employment. 1. It shall be unlawful for any person, firm, corporation, association, or agent or employee thereof, holding itself out to the public by any designation indicating a connection with show business including, but not limited to, talent agent, talent scout, personal manager, artist manager, impresario, casting director, public relations advisor or consultant, promotion advisor or consultant, to

(a) Make, publish, disseminate, circulate or place before the public or cause directly or indirectly to be made, published, disseminated, circulated or placed before the public in this state an advertisement, solicitation, announcement, notice or statement which represents that such person, firm, corporation or association has employment available or is able to secure any employment in the field of show business, including, but not limited to, theatre, motion pictures, radio, television, phonograph records, commercials, opera, concerts, dance, modeling or any other entertainments, exhibitions or performances when an advance fee of any nature is a condition to such employment; or

(b) Accept from a member of the public any fee, retainer, salary, advance payment or other compensation of any nature in return for services or otherwise, other than (i) repayment for advances or expenses actually incurred for or on behalf of such member of the public, or (ii) agreed commissions, royalties or similar compensation based upon payments received by or on behalf of such member of the public as a result of his employment in the field of show business.

2. Whenever there shall be a violation of this section, an application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violations; and if it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this section, an injunction may be issued by such court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules, and direct restitution. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

§ 37.09. Protection of aerial performers from accidental falls. 1. No person shall participate in any public performance or exhibition on a trapeze, tightrope, wire, rings, ropes, poles, or other aerial apparatus which requires skill, timing or balance and which creates a substantial risk to himself or others of serious injury from falling, unless there shall be provided for such performance a safety belt, life-net, or other safety device of similar purpose suitably constructed and placed to arrest or cushion his fall and minimize the risk of such injury. No owner, agent, lessee, manager or other person in charge of a circus, carnival, fair, theatre, moving-picture house, public hall, or other public place of assembly, resort or amusement, shall permit any person to take part in a performance specified herein without providing such safety device. Any such aerial performance or exhibition without such safety device in which the height of possible fall is more than twenty feet, shall be presumed to create a substantial risk of serious injury.

2. The commissioner of labor may make rules supplementary to this

section designating safety devices of an approved type, strength and location and otherwise effectuating the purposes hereof. The commissioner may also grant variations pursuant to the provisions of section thirty of the labor law. Violations of this section shall be punishable as provided in section two hundred thirteen of the labor law for violations thereunder.

3. In acting upon an application for a variation, the board may take into consideration the availability, in whole or part, of practicable safety devices for a particular type of performance or exhibition and the history and nature of the accidents incurred in such performance or exhibition. The provisions of subdivision one of this section and the rules of the board issued pursuant to this section shall be inapplicable to any performance or exhibition concerning which a variation has been issued to the extent specified in such variation.

§ 37.11. Prevention of personal injuries at carnivals, fairs and amusement parks. The commissioner of labor may make rules guarding against personal injuries in the assembly, disassembly and use of amusement devices and temporary structures at carnivals, fairs and amusement parks to persons employed at or to persons attending the carnivals, fairs and amusement parks where the carnivals, fairs and amusement parks are located outside the city of New York, and where the carnivals, fairs and amusement parks are located within the city of New York, the department of buildings of the city of New York may make and enforce such rules.

TITLE P
NEW YORK STATE CULTURAL EDUCATION TRUST

ARTICLE 40
NEW YORK STATE CULTURAL EDUCATION TRUST

§ 40.01. Short title. This title shall be known and may be cited as the "New York state cultural education trust act".

§ 40.03. Definitions. When used or referred to in this title, unless otherwise specified, the following terms shall have the following meaning:

1. "Trust" shall mean the trust created by section 40.05 of this title.

2. "Board" shall mean the board of the trust created by section 40.05 of this title.

3. "Board of regents" shall mean the board of regents of the university of the state of New York.

§ 40.05. New York state cultural education trust. 1. A trust to be known as the "New York state cultural education trust" is hereby created under the jurisdiction of the state education department and its existence shall commence with the appointment of the members of the board as provided herein.

2. The board shall consist of five members as follows: the chancellor of the board of regents of the university of the state of New York, or his or her designee from the board of regents, who shall serve as the chair; one additional member of the board of regents, to be appointed by such chancellor; one member appointed by the governor; one member appointed by the majority leader of the senate; and one member appointed

by the speaker of the assembly. Members of the board, other than the representative of the board of regents, shall be appointed to the board based on their knowledge and background as relevant to the purposes of the trust, or, due to their experience and knowledge in the fields of New York state history, collection display and management or other related fields.

3. The member of the board of regents appointed to the board shall serve at the pleasure of the chancellor of the board of regents and shall serve a term equivalent to his or her term as a member of the board of regents. The chancellor may reappoint the same member of the board of regents as his or her appointee for so long as such regent remains a member of the board of regents.

4. The initial terms of the appointees of the governor, the speaker of the assembly and the majority leader of the senate shall be staggered, with the governor's appointment expiring after one year and the majority leader of the senate's and the speaker of the assembly's appointments expiring after three years. All subsequent appointments shall be for three years.

5. Members may be reappointed and may serve two consecutive full terms, in addition to the terms of their original appointments, but not more than nine consecutive years. Each member shall continue in office until such member's successor has been appointed and qualifies. Such continuation in office shall not be counted in determining whether a member has served nine consecutive years. In the event of a vacancy occurring in the office of any member of the board, other than by the expiration of a member's term, such vacancy shall be filled for the balance of the unexpired term, if applicable, in the same manner as the original appointment.

6. The members of the board shall serve without compensation, but shall be entitled to reimbursement of their actual and necessary expenses incurred in the performance of their official duties.

7. The powers of the trust shall be vested in and exercised by a

majority of the members thereof.

§ 40.07. Purpose of the trust. The purpose of the trust shall be to prepare and recommend plans, in cooperation with the commissioner of education, to the director of the budget regarding projects to enhance the public display of the collections and exhibits of the state museum, library and archives, and for the aquisition of a new storage facility for such collections.

§ 40.09. Reports. Not later than ninety days following the end of the state fiscal year the trust shall annually submit to the governor, the majority leader of the senate and the speaker of the assembly a report on the priorities and finances of the trust.

§ 40.11. Assistance of other agencies. The trust board may request from any state agency or political subdivision of the state and the same are authorized to provide such assistance and information as will enable it to carry out its purpose and powers pursuant to this title.

§ 40.13. Members not to profit. No member of the trust shall receive or may be lawfully entitled to receive any pecuniary profit from the operation of the trust.

TITLE S

ARTICLE 54

EXECUTIVE MANSION TRUST

§ 54.01. Short title. This title may be cited as the "Executive Mansion Trust Act".

§ 54.03. Definitions. When used or referred to in this title, unless a different meaning clearly appears from the context, the terms listed below shall have the following meanings:

1. "Trust" shall mean the trust created by section 54.05 of this title.

2. "Executive mansion" shall mean the lands and structures constituting the executive residence of the governor at 138 Eagle Street in Albany, New York.

3. "Real property" shall mean lands, structures, franchise and interest in lands and any and all things usually included within the said term. The term "real property" as used in this title, shall exclude the executive mansion.

§ 54.05. Executive Mansion Trust. 1. A trust known as the "Executive Mansion Trust" is hereby created. The trust shall be a body corporate and politic and its existence shall commence upon the appointment of the members as herein provided.

2. The trust shall consist of the commissioner of general services, the commissioner of parks, recreation and historic preservation, the commissioner of education, the chairman of the board of trustees of the New-York Historical Society and a private citizen appointed to a

three-year term of membership by the governor; such private citizen shall be a person known for professional competence and experience in the field of history, architecture, art, design or museum services. The director of the budget and a designee of the governor shall serve as non-voting members of the trust.

3. The powers of the trust shall be vested in and exercised by a majority of the voting members thereof.

4. The commissioner of general services shall serve as chairperson of the trust.

5. The members of the trust shall serve without compensation, but shall be entitled to reimbursement of their actual and necessary expenses incurred in the performance of their official duties.

6. The trust shall be subject to the provisions of article 15-A of the executive law.

7. The trust and its corporate existence shall continue until terminated by law, provided, however, that no such law shall take effect so long as the trust shall have financial obligations outstanding, unless adequate provision has been made for the payment thereof, and until arrangements have been made for the adequate care and conservation of its artifacts and collections. Upon termination of the existence of the trust, all its rights and properties shall vest in the state.

§ 54.07. Purposes and powers of the trust. The purposes of the trust shall be to preserve, improve and promote the executive mansion as a historical and cultural resource of the state of New York, including by operation of an executive mansion museum, and to serve as a focal point for the receipt and administration of private, gifts, devises, loans, and bequests made or donated to these ends. To carry out such purposes, the trust shall have power:

1. To accept unconditional gifts, devises and bequests, and, with the

approval of the director of the budget, conditional gifts, devises, loans, and bequests, of real or personal property for the purposes of preserving, improving or promoting the executive mansion as a historical and cultural resource of the state of New York.

2. To accept, administer and expend funds made available to the trust by private donation or public grant or appropriation for any of its purposes.

3. To operate an executive mansion museum within the executive mansion.

4. To acquire artifacts or furnishings to enhance the historical and cultural character of the executive mansion, and other real or personal property by purchase, gift, bequest, loan, or exchange, for use in, on, or to benefit the executive mansion, its grounds, and any executive mansion museum operated by the trust. The cost of acquisition of such property, exclusive of services provided by any state department, board, commission or agency, shall be paid from funds available to the trust.

5. To retain or, as appropriate, transfer immediate jurisdiction and control over any property acquired by the trust to the office of general services or other appropriate public body or agency with its consent and the prior approval of the director of the budget.

6. To undertake any work, including furnishing of services and materials, required to preserve, restore, maintain, improve or promote the historical or cultural significance or character of the executive mansion and the executive mansion museum, or any property associated with them related to their historical and cultural character, upon request or approval of the office of general services, and with the prior approval of the director of the budget.

7. To undertake or commission research or studies and to make reports relating to the executive mansion, including development of a master plan for the preservation and maintenance of the executive mansion and its grounds as a historic and cultural resource of the state of New

York.

8. To appoint and employ such officers, employees and staff, qualified by training and experience, who shall be deemed to be state employees, and to retain such expert legal, financial, architectural, curatorial, conservation and other consultant services as it deems necessary to carry out its corporate purposes, including operation of an executive mansion museum.

9. To sell and convey real or personal property or interest therein, acquired by and under the jurisdiction of the trust and surplus to its needs and the needs of the executive mansion, excluding property to which the state of New York has title, in accordance with generally accepted museum standards, provided such sale and conveyance receives the prior approval of the director of the budget and does not contravene the terms or conditions of any gift, devise, loan, or bequest. The trust shall retain the proceeds derived therefrom for its corporate purposes in accordance with generally accepted museum standards.

10. To participate and cooperate with other public and private agencies having mutual interests and purposes in appropriate programs and projects intended to preserve, improve and promote the historic and cultural significance and character of the executive mansion or of the properties and activities associated with the historic or cultural significance of such mansion or executive mansion museum.

11. To administer, manage or operate any property acquired by the trust pending transfer or jurisdiction thereof, and to retain for its corporate purposes any receipts, revenues or income derived from the operation or use of such property during the pendency of such transfer.

12. To sue and be sued.

13. To have a seal and alter the same at pleasure.

14. To do all things necessary or convenient to carry out the purposes of this trust.

§ 54.09. Temporary assignment and transfer of employees. Whenever in the opinion of the trust it would be in the public interest, it may, after prior approval of the director of the budget, request the temporary assignment and transfer of certain employees of any board, commission, agency or department of the state or its political subdivisions, and said board, commission, agency or department, if in its opinion such transfer will not interfere with the performance of its duties and functions, may make such assignment and transfer of said employees to the trust. Such assignment and transfer or extension thereof shall not affect the civil service status, continuity of service, retirement plan status, right to compensation, grade or compensation or other rights or privileges of any employee so transferred.

§ 54.11. Services provided by state officials. 1. The attorney general shall furnish any and all necessary legal services and advice, including examination of title to real property, required to assist the trust in accomplishing its corporate services.

2. The commissioner of education shall advise the trust with respect to the custody, use, cataloging, restoration, deaccessioning, and control of original documents, artifacts and furnishings having unique historic significance.

§ 54.13. Moneys of the trust. 1. The head of the division of the treasury in the department of taxation and finance shall be the custodian of the funds of the trust. Disbursements from the funds of the trust shall be made by the custodian or such person as may be authorized by him only upon warrants signed by the chairperson of the trust or an official thereof authorized to do so.

2. The comptroller of the state and his legally authorized representatives are hereby authorized and empowered from time to time to

examine the accounts and books of the trust including its receipts, disbursements, contracts, investments and any other matters relating to its financial standing. The report of any such audit shall be included in the report required by subdivision three of this section.

3. The trust shall submit to the governor, the chairperson of the senate finance committee, the chairperson of the assembly ways and means committee and the state comptroller, within ninety days after the end of its fiscal year (which shall be the same as the state's fiscal year), a complete and detailed report of its operations and accomplishments, including staffing and temporary transfer and assignment of employees, its receipts and disbursements, any acquisitions and deaccessions, and its assets and liabilities.

§ 54.15. Creation of trust a public purpose. It is hereby found, determined and declared that the creation of the trust and the carrying out of its corporate purposes is in all respects for the benefit of the people of the state of New York, for the preservation, improvement and promotion of the executive mansion as a historical and cultural resource of the state of New York, and is a public purpose, in that the trust will be performing an essential governmental function in the exercise of the powers conferred upon it by this title and the trust shall not be required to pay taxes or assessments upon any of the property acquired by it or under its jurisdiction and control, or upon its activities in the operation and maintenance of such properties or use of any moneys, revenues or other income received by the trusts. All contributions made to the trust whether by gift, devise or bequest shall qualify as deductions in computing the net taxable income of the donor for the purposes of any income tax imposed by the state or any political subdivision thereof. The trust is authorized to seek exemption for federal tax purposes.

§ 54.17. Members and employees not to profit. No officer, member or employee of the trust shall receive or may be lawfully entitled to receive any pecuniary profit from the operation thereof except reasonable compensation for services in effecting one or more of its purposes as set forth in this title.

TITLE T

NATURAL HERITAGE TRUST

ARTICLE 55

NATURAL HERITAGE TRUST

§ 55.01. Short title. This title may be cited as the "Natural Heritage Trust Act."

§ 55.03. Definitions. As used or referred to in this title, unless a different meaning clearly appears from the context:

1. The term "trust" shall mean the corporation created by section 55.05 of this article.

2. The term "board" shall mean the members of the corporation.

3. The term "real property" shall mean lands, structures, franchises

and interest in lands and any and all things usually included within the said term, and includes not only fees simple and absolute but also any and all lesser interests, such as easements, rights of way, uses, leases, licenses, and all other incorporeal hereditaments and every estate, interest or right, legal or equitable, including terms of years and liens thereon by way of judgments, mortgages or otherwise, and also claims for damage to real property.

§ 55.05. Natural Heritage Trust. The board known as the "Natural Heritage Trust" is hereby continued. Such a board shall be a body corporate and politic constituting a public benefit corporation and its existence shall commence upon the appointment of the members as herein provided. Such board shall consist of the chairperson of the state council of parks and outdoor recreation, the commissioner of environmental conservation, the secretary of state and the commissioner of parks, recreation and historic preservation. The powers of the board shall be vested in and exercised by the majority of the members thereof. The members of the board shall serve without compensation, but shall be entitled to reimbursement of their actual and necessary expenses incurred in the performance of their official duties. At the first meeting of the board and the first meeting thereof in each fiscal year thereafter, the members of the board shall choose from their number, a chairperson and vice-chairperson.

The trust and its corporate existence shall continue until terminated by law, provided, however, that no such law shall take effect so long as the trust shall have bonds, notes and other obligations outstanding, unless adequate provision has been made for the payment thereof in the documents securing the same. Upon termination of the existence of the trust, all its rights and properties shall vest in the state.

§ 55.07. Purposes and powers of the corporation. The purpose of the corporation shall be to serve as a focal point for the receipt and administration of private gifts, devises and bequests of real and personal property donated to further conservation, outdoor recreation and historic preservation purposes and advance public understanding, revitalization and restoration of New York's waterfronts. Revitalization and restoration of the waterfront shall be undertaken pursuant to, and consistent with an approved local waterfront revitalization plan or plan approved by the department of state, which has been the subject of a public hearing. To carry out said purposes, the corporation shall have power:

1. To accept unconditional gifts, devises and bequests, and, with the approval of the governor, conditional gifts, devises and bequests, of real or personal property for conservation, outdoor recreation, historic preservation purposes and public understanding, revitalization and restoration of New York's waterfronts and to administer and expend funds made available to the corporation for any of its purposes.

2. To acquire real property in the name of the people of the state of New York by purchase, gift, devise or exchange of lands previously acquired by the trust and under its immediate jurisdiction or by appropriation through the agency of the commissioner of parks, recreation and historic preservation or the commissioner of environmental conservation whenever the attorney general shall determine such appropriation is necessary to clear any defect or encumbrance on the title of such real property which would hinder its use for the intended public purpose. The cost of such land acquisition, exclusive of services furnished by any state department, board, commission or agency, shall be paid from funds available to the trust.

3. To acquire personal property in the name of the people of the state of New York by purchase, gift, bequest or exchange of personalty previously acquired by the trust and under its immediate jurisdiction. The cost of acquisition of such personal property shall be paid from funds available to the trust.

4. To transfer immediate jurisdiction and control over any real or personal property acquired by the trust to the office of parks, recreation and historic preservation, the department of environmental conservation, the secretary of state or other appropriate public body or

agency with its consent and the prior approval of the director of the budget.

5. To undertake any work, including furnishing of services and materials, required to manage, preserve, restore, maintain or improve any real or personal property under its jurisdiction and, at the request of the office of parks, recreation and historic preservation, department of state or department of environmental conservation, upon real or personal property under the jurisdiction of the requesting agency, after prior approval of the director of the budget.

6. To undertake research, studies and make reports relating to conservation, outdoor recreation, historic preservation matters and public understanding, revitalization and restoration of New York's waterfronts.

7. To sell and convey any real or personal property or interest therein acquired by and under the jurisdiction of the trust and surplus to its needs, provided such sale and conveyance does not contravene the terms or conditions of any gift, devise or bequest, and to retain the proceeds derived therefrom for its corporate purposes.

8. To appoint and employ such officers, employees and staff and to retain such expert legal, financial, engineering, architectural and such other consultant services as it deems necessary to carry out its corporate purposes.

9. To participate and cooperate with other public and private agencies having mutual interests and purposes in appropriate programs and projects intended to preserve and improve the natural and historic resources of the state and advance public understanding, revitalization and restoration of New York's waterfronts in furtherance of the education, welfare and enjoyment of its people.

10. To administer, manage or operate any property acquired by the trust pending transfer of jurisdiction thereof and to retain for its corporate purposes any receipts, revenue or income derived therefrom

during the pendency of such transfer.

11. To sue and be sued.

12. To have a seal and alter the same at pleasure.

13. To do all things necessary or convenient to carry out the purposes of this corporation.

§ 55.09. Temporary assignment and transfer of employees. Whenever in the opinion of the trust it would be in the public interest, it may, after prior approval of the director of the budget, request the temporary assignment and transfer of certain employees of any board, commission, agency or department of the state or its political subdivisions, and said board, commission, agency or department, if in its opinion such transfer will not interfere with the performance of its duties and functions may make such assignment and transfer of said employees to the trust. Such assignment and transfer or extension thereof shall not in any way affect the civil service status, continuity of service, retirement plan status, right to compensation, grade or compensation or other rights or privileges of any employee so transferred.

§ 55.11. Examination of title. The title to all real property proposed to be acquired by the trust shall be examined and approved by the attorney general of the state who shall also furnish any and all necessary legal services and advice required to assist the trust in accomplishing its corporate purposes.

§ 55.13. Moneys of the corporation. 1. The moneys of the trust shall be retained by it and deposited in a general account and such other accounts as the trust may deem necessary for the transaction of its business and shall be paid out on checks signed by the chairperson of the corporation or by such other member or officer as the corporation may authorize.

2. The comptroller of the state and his legally authorized representatives are hereby authorized and empowered from time to time to examine the accounts and books of the trust including its receipts, disbursements, contracts, investments and any other matters relating to its financial standing.

3. The trust shall submit to the governor, the chairperson of the senate finance committee, the chairperson of the assembly ways and means committee and the state comptroller, within ninety days after the end of its fiscal year, a complete and detailed report of its operations and accomplishments, its receipts and disbursements and its assets and liabilities.

§ 55.15. Creation of trust a public purpose. It is hereby found, determined and declared that the creation of the trust and the carrying out of its corporate purposes is in all respects for the benefit of the people of the state of New York, for the preservation and improvement of the natural, historic and waterfront resources constituting their natural heritage and in furtherance of their welfare and prosperity, and is a public purpose, in that the trust will be performing an essential governmental function in the exercise of the powers conferred upon it by this title and the trust shall not be required to pay taxes or assessments upon any of the property acquired by it or under its jurisdiction and control, or upon its activities in the operation and maintenance of such properties or use of any moneys, revenues or other income received by the corporation. All contributions of real or personal property made to the trust whether by gift, devise or bequest shall qualify as deductions in computing the net taxable income of the donor for the purposes of any income tax imposed by the state or any political subdivision thereof.

§ 55.17. Payments in lieu of taxes. The trust may, when funds are available and with the approval of the governor, enter into an agreement with a municipality or district within which real property has been acquired by the trust providing for the payment of moneys in lieu of anticipated tax revenues for a period not to exceed five years whenever the trust shall determine that undue hardship justifying such financial relief has been created by such acquisition.

§ 55.19. Members and employees not to profit. No officer, member or employee of the trust shall receive or may be lawfully entitled to receive any pecuniary profit from the operation thereof except reasonable compensation for services in effecting one or more of its purposes herein set forth.

§ 55.21. Application of law. All of the general provisions of the public authorities law or of any other law shall apply to the natural heritage trust herein continued in the same manner as if the language of such law had been incorporated in full into this article, except to the extent that such provisions are inconsistent with the provisions of this article.

§ 55.23. Actions against the trust. Except in an action for wrongful death, an action against the trust founded on tort shall not be commenced more than one year and ninety days after the cause of action therefor shall have accrued, nor unless a notice of claim shall have been served on the trust within the time limited by, and in compliance with all the requirements of section fifty-e of the general municipal law. An action against the trust for wrongful death shall be commenced in accordance with the notice of claim and time limitation provisions of title eleven of article nine of the public authorities law.

TITLE U
DIVISIONS OF HISTORY AND PUBLIC RECORDS

ARTICLE 57

DIVISIONS OF HISTORY AND PUBLIC RECORDS

§ 57.01. Office of state history. There shall be in the education department the office of state history.

§ 57.02. New York state history month. 1. Each month of October following the effective date of the chapter of the laws of two thousand nineteen that amended this subdivision shall be designated as New York state history month.

2. The purpose of this month shall be to celebrate the history of New York state and recognize the contributions of state and local historians.

3. The commissioner of education, through the office of state history is hereby authorized to undertake projects to recognize New York state history month. Such projects may include the creation of an essay contest for state residents who are enrolled in any elementary or secondary education program which shall reflect upon the importance of New York state history. Any project or projects created pursuant to this subdivision may, in the discretion of the commissioner of education, authorize non-monetary awards to be given to project participants or project winners as such commissioner may deem appropriate.

§ 57.03. Functions of the office of state history. It shall be the function of the office of state history:

1. To collect, edit and publish, with the approval of the commissioner of education, any archives, records, papers or manuscripts that are deemed essential or desirable for the preservation of the state's history.

2. To prepare and publish, with the approval of the commissioner of education, or assist in the preparation and publication of, works relating to the history of the colony and state of New York.

3. To acquire, administer, preserve, exhibit, interpret, and, in conformity with the regulations of the commissioner of education, to loan, exchange or dispose of historical objects of personal property relating to the history of the colony and state of New York; and to advise any state agency, board, commission, office, civil subdivision, institution, organization, or individual on the acquisition, administration, preservation, exhibition, interpretation, and disposition of historical objects.

4. To perform the functions of the state education department set forth in section 19.11 of the parks, recreation and historic preservation law with respect to historic sites under the jurisdiction of the office of parks, recreation and historic preservation; and to advise and assist any political subdivision of the state and any institution, organization or individual concerning the designation, acquisition, administration, interpretation, use and disposition of any historic site, property or place relative to the history of the colony and state of New York, and to coordinate educational programs and projects at such historic sites or properties.

5. To advise and assist any state agency, board, commission, office, civil subdivision, institution or organization in the planning and execution of any commemorative event relating to the history of the colony and state of New York or New York's participation in commemorative events outside of the state.

6. To perform other functions or duties assigned the office by the commissioner of education.

§ 57.05. State archives. 1. There shall be continued within the education department the state archives. The state archives shall acquire, appraise, preserve either in original or duplicate form, catalog, display, duplicate and make available for reference and use by state officials and others those official records that have been determined to have sufficient historical value or other value to warrant their continued preservation by the state.

2. For the purposes of this section, official records shall include all books, papers, maps, photographs, or other documentary materials, regardless of physical form or characteristics, made or received by any agency of the state or by the legislature or the judiciary in pursuance of law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities, or because of the information contained therein.

3. Library or museum material made or acquired and preserved solely for reference or exhibition purposes, extra copies of documents preserved only for convenience of reference, and stocks of publications and of processed documents shall not be deemed to constitute official records for the purposes of this section.

4. Except as otherwise provided by law, the state archives shall acquire and assume the official custody and responsibility for preserving and making available for reference and use those official records of the legislature, the judiciary and the civil departments of the state government which are deemed to have sufficient historical value or other value to warrant their continued preservation by the state.

5. The state archives shall acquire and assume the official custody

and responsibility for preserving and making available for reference and use the official records of any public office, body or board now extinct, or hereafter becoming extinct, which are deemed to have sufficient historical value, or other value to warrant their continued preservation by the state, if the custody and preservation of such records are not otherwise provided for by law.

6. The state archives may accept records, or copies of records, of a municipal, district or public benefit corporation, providing the records have sufficient historical significance to warrant continued preservation by the state.

7. The commissioner of education may request the attorney general to institute legal action for the return to the custody of the state of any record which has not legally been released from state custody.

8. The state archives may duplicate records in its custody, and certify under its own official seal to the authenticity of the copies of such records. The state archives with the approval of the commissioner of education and in accordance with existing state statutes may dispose of original records in its custody that have been duplicated.

9. The commissioner of education shall have the power to promulgate rules and regulations to carry out the purposes of this section, providing no objection to those rules and regulations is made within thirty days prior to the effective date of the proposed rules and regulations by the following: the speaker of the assembly for rules and regulations relating to the records of the assembly; the president pro-tem of the senate for rules and regulations relating to the records of the senate; the director of the division of the budget for rules and regulations relating to records of the civil departments; and the chief administrator of the courts for rules and regulations relating to records of the judiciary.

11. The state archives shall establish a state records center consisting of one or more depositories for nonpermanent storage of state records and shall be responsible for the preservation and disposal of

such records. Solely for the purposes of carrying out his record-keeping functions, the commissioner of education shall be empowered:

(a) To assume responsibility for the physical possession, storage, servicing and preservation of state agency records accepted into the state records center, and for the security of the information contained in or on them. State records stored with the state archives shall for all purposes be deemed to be within the possession, custody and control of the agency that transferred such records.

(b) To authorize the disposal or destruction of state records including books, papers, maps, photographs, microphotographs or other documentary materials made, acquired or received by any agency. At least forty days prior to the proposed disposal or destruction of such records, the commissioner of education shall deliver a list of the records to be disposed of or destroyed to the attorney general, the comptroller and the state agency that transferred such records. No state records listed therein shall be destroyed if within thirty days after receipt of such list the attorney general, comptroller, or the agency that transferred such records shall notify the commissioner of education that in his opinion such state records should not be destroyed.

(c) To agree to the deposit of noncurrent state records in the state records center.

(d) To review plans submitted by state agencies for management of their records and to make recommendations thereupon to the head of the state agency and the director of the division of the budget.

(e) To inquire into the condition, character, amount and method of keeping such records.

(f) To develop and implement a comprehensive and ongoing training program in records management for all state agencies.

(g) To provide technical assistance in records management for state agencies.

(h) To provide for the transfer of such records having archival value from the state records center to the state archives for their permanent preservation.

(i) To develop and implement a fee schedule, to be adopted by the board of regents pursuant to rules and regulations adopted in conformity with the state administrative procedure act, to support records management activities subject to the following:

(i) the fee schedule may be changed only once in any twelve month period, and

(ii) after the initial fee schedule is established by the board of regents, proposed changes to said schedule must be included in the annual budget request submitted to the director of the budget. Such amended fee schedule shall not become effective until enactment of the budget submitted annually by the governor to the legislature in accordance with article seven of the constitution, and shall generate revenues consistent with appropriations contained therefor within such budget and sufficient to cover anticipated expenditures for the period for which such fees shall be effective.

(j) To promulgate such other regulations as are necessary to carry out the purposes of this subdivision.

§ 57.07. Local historian; appointment; maintenance of historical edifices. 1. A local historian shall be appointed, as provided in this section, for each city, town or village, except that in a city of over one million inhabitants a local historian shall be appointed for each borough therein instead of for the city at large; and a county historian may be appointed for each county. Such historian shall be appointed as follows: For a city, by the mayor; for a borough, by the borough president; for a town, by the supervisor; for a village, by the mayor; for a county, by the board of supervisors. Such historian shall serve without compensation, unless the governing board of the city, town, village or county for or in which he or she was appointed or in the city of New York, the mayor, shall otherwise provide. In a city having a board of estimate, other than the city of New York, a resolution or ordinance establishing compensation or salary for such historian shall not take effect without the concurrence of such board. Each local government historian shall promote the establishment and improvement of programs for the management and preservation of local government records with enduring value for historical or other research; encourage the coordinated collection and preservation of nongovernmental historical records by libraries, historical societies, and other repositories; and carry out and actively encourage research in such records in order to add to the knowledge, understanding and appreciation of the community's history. The local authorities of the city, town, village or county for which such historian is appointed, may provide the historian with sufficient space in a safe, vault or other fire proof structure for the preservation of historical materials collected. Such local authorities and also the board of supervisors of each of the counties of the state are hereby authorized and empowered to appropriate, raise by tax and expend moneys for historical purposes within their several jurisdictions, including historical edifices, the erection of historical markers and monuments, the collection of war mementos, and, either alone or in cooperation with patriotic or historical organizations, the preparation and publication of local histories and records and the printing and issuing of other historical materials in aid of the work of the local historian.

2. Such local authorities and also the board of supervisors of each of the counties of the state are hereby authorized and empowered, in their discretion, to contract with the trustees of an historical association for the support of any or all historic edifices situated within the boundaries of such municipality; or may share the cost of maintaining the same as agreed with other municipal bodies; or may contract with the trustees of such historical associations to maintain said historic edifices for public use under such terms and conditions as may be stated in such contract. The amount agreed to be paid for such use under such contract shall be a charge upon the municipality and shall be paid in the same manner as other municipal charges, except in a city having a board of estimate, other than the city of New York, such contracts and any payments made thereunder shall be approved by such board of estimate. In the city of New York, such contracts and any payments thereunder shall be approved by the mayor.

3. Such local authorities are hereby authorized to establish and collect reasonable charges to defray the cost of searching for and reproducing copies of written or printed historical materials collected.

§ 57.09. Duties of local historian. It shall be the duty of each local historian, appointed as provided in the last section, in cooperation with the state historian, to collect and preserve material relating to the history of the political subdivision for which he or she is appointed, and to file such material in fireproof safes or vaults in the county, city, town or village offices. Such historian shall examine into the condition, classification and safety from fire of the public records of the public offices of such county, city, town or village, and shall call to the attention of the local authorities and the state historian any material of local historic value which should be acquired for preservation. He or she shall make an annual report, in the month of January, to the local appointing officer or officers and to the state historian of the work which has been accomplished during the preceding year. He or she shall, upon retirement or removal from office, turn over to the local county, city, town or village authorities, or to his or her successor in office, if one has been then appointed, all materials gathered during his or her incumbency and all correspondence relating thereto. It shall be the duty of the county historian to supervise the activities of the local historians in towns and villages within the county in performing the historical work recommended by the state historian, and also to prepare and to present to the board of supervisors a report of the important occurrences within the county for each calendar year. The state historian, at regular intervals, not less than once a year, shall indicate to the local historians the general lines along which local history material is to be collected.

§ 57.11. Penalty. A public officer who refuses or neglects to perform any duty required of him by this article or to comply with a recommendation of the commissioner of education under the authority of this article, shall for each month of such neglect or refusal, be punished by a fine of not less than twenty dollars.

ARTICLE 57-A

LOCAL GOVERNMENT RECORDS LAW

§ 57.13. Statement of legislative intent. The legislature finds that public records are essential to the administration of local government. Public records contain information which allows government programs to function, provides officials with a basis for making decisions, and ensures continuity with past operations. Public records document the legal responsibility of government, protect the rights of citizens, and provide citizens with a means of monitoring government programs and measuring the performance of public officials. Local government records also reflect the historical development of the government and of the community it serves. Such records need to be systematically managed to ensure ready access to vital information and to promote the efficient and economical operation of government.

§ 57.15. Short title. This article may be cited as the "Local Government Records Law".

§ 57.17. Definitions. Wherever used in this article, the following terms shall have the respective meanings hereinafter set forth:

1. "Local government" means any county, city, town, village, school district, board of cooperative educational services, district

corporation, public benefit corporation, public corporation, or other government created under state law that is not a state department, division, board, bureau, commission or other agency, heretofore or hereafter established by law.

2. "Governing body" means the town board, village board of trustees, city council, county legislature or board of supervisors, board of education or board of trustees of a school district or board of cooperative educational services, board of fire commissioners or other body authorized by law to govern the affairs of a local government.

3. "Local officer" shall mean and include a local officer as defined in section two of the public officers law and any officer of a public benefit corporation.

4. "Record" means any book, paper, map, photograph, or other information-recording device, regardless of physical form or characteristic, that is made, produced, executed, or received by any local government or officer thereof pursuant to law or in connection with the transaction of public business. Record as used herein shall not be deemed to include library materials, extra copies of documents created only for convenience of reference, and stocks of publications.

5. "Retention period" means the minimum length of time that must elapse before a record is eligible for disposition.

6. "Records retention and disposition schedule" means a list or other instrument describing records and their retention periods which is issued by the commissioner of education.

7. "Disposition" means the disposal of a record by destruction, sale, gift, transfer to the local government archives, or by other authorized means.

§ 57.19. Local government records management program. The governing body, and the chief executive official where one exists, shall promote and support a program for the orderly and efficient management of records, including the identification and appropriate administration of records with enduring value for historical or other research. Each local government shall have one officer who is designated as records management officer. This officer shall coordinate the development of and oversee such program and shall coordinate legal disposition, including destruction of obsolete records. In towns, the town clerk shall be the records management officer. In fire districts, the district secretary shall be the records management officer. In villages, the village clerk shall be the records management officer. In other units of government, except where the governing body shall have enacted a local law or ordinance establishing a records management program and designating a records management officer prior to the date that this article shall take effect, the chief executive official shall designate a local officer to be records management officer, subject to the approval of the governing body.

§ 57.21. Local government records advisory council. The commissioner of education shall appoint a local government records advisory council consisting of representatives of local government associations, historians, the chief administrative judge, the commissioner of the department of records and information services of the city of New York or its successor agency, other users of local government records, and other citizens. The city clerk of the city of New York shall be a non-voting members of such advisory council. The council shall advise the commissioner of education concerning local government records policies and procedures, state services and financial support needed to assist or advise local officials, and regulations pertaining to local government records, and grants for local government records management improvement pursuant to section 57.35 of this chapter. The advisory council shall prepare an initial report on the above matters by December first, nineteen hundred eighty-seven to be provided to the commissioner of education, the governor, and appropriate committees of the legislature. The commissioner of education shall not promulgate regulations for the administration and maintenance of local government records before July first, nineteen hundred eighty-eight except with prior consultation with and review by the advisory council.

§ 57.23. Oversight and advisory services. 1. It shall be the responsibility of the commissioner of education to advise local governments on planning and administering programs for the creation, maintenance, preservation, reproduction, retention, and disposition of their records; to advise local governments on the development of micrographics systems, automated data processing systems, and other systems that rely on technology to create, store, manage, and reproduce information or records; and to advise local governments on the preservation and use of vital records and records with enduring value for historical or other research purposes.

2. The commissioner of education is authorized to establish requirements for the proper creation, preservation, management and protection of records, and shall develop statewide plans to ensure preservation of adequate documentation of the functions, services, and historical development of local governments.

3. The commissioner of education is authorized to promulgate regulations to implement the provisions of this article with advice from the local government records advisory council.

§ 57.25. Records retention and disposition. 1. It shall be the responsibility of every local officer to maintain records to adequately document the transaction of public business and the services and programs for which such officer is responsible; to retain and have custody of such records for so long as the records are needed for the conduct of the business of the office; to adequately protect such records; to cooperate with the local government's records management officer on programs for the orderly and efficient management of records including identification and management of inactive records and identification and preservation of records of enduring value; to dispose of records in accordance with legal requirements; and to pass on to his successor records needed for the continuing conduct of business of the office. In towns, records no longer needed for the conduct of the business of the office shall be transferred to the custody of the town clerk for their safekeeping and ultimate disposal.

2. No local officer shall destroy, sell or otherwise dispose of any public record without the consent of the commissioner of education. The commissioner of education shall, after consultation with other state agencies and with local government officers, determine the minimum length of time that records need to be retained. Such commissioner is authorized to develop, adopt by regulation, issue and distribute to local governments records retention and disposition schedules establishing minimum legal retention periods. The issuance of such schedules shall constitute formal consent by the commissioner of education to the disposition of records that have been maintained in excess of the retention periods set forth in the schedules. Such schedules shall be reviewed and adopted by formal resolution of the governing body of a local government prior to the disposition of any records. If any law specifically provides a retention period longer than that established by the records retention and disposition schedule established herein the retention period established by such law shall govern.

§ 57.27. Records with statewide significance. The commissioner of education is authorized to designate particular local government records for permanent retention because of their enduring statewide significance.

§ 57.29. Reproduction of records and disposition of the originals. Any local officer may reproduce any record in his custody by microphotography or other means that accurately and completely reproduces all the information in the record. Such official may then dispose of the original record even though it has not met the prescribed minimum legal retention period, provided that the process for reproduction and the provisions made for preserving and examining the copy meet requirements established by the commissioner of education.

Such copy shall be deemed to be an original record for all purposes, including introduction as evidence in proceedings before all courts and administrative agencies.

§ 57.31. Cooperative records storage and management. All local government records shall be kept in secure facilities maintained by the local government unless the consent of the commissioner of education is obtained to their transfer and storage elsewhere. Any local government may cooperate with another local government or governments for the improved management and preservation of records, and may enter into a contractual arrangement for such purposes.

§ 57.33. Exclusions. The provisions of this article shall not apply to:

1. The records of any court, except as provided in section 57.35 of this article.

2. The records of any city with a population of one million or more, and the records of any county contained therein, so long as the destruction of the records of such city or county shall be carried out in accordance with the procedure prescribed by any existing law exclusively applicable to the destruction of the records of such city or county, provided that section 57.35 of this article shall apply to grants for local government records management for supreme court records in the custody of the counties of New York, Kings, Queens, Richmond and Bronx, and records under the jurisdiction of the department of records and information services of the city of New York or its successor agency, and records under the jurisdiction of the city clerk of the city of New York. If any such law shall be amended by local law after the first day of July, nineteen hundred fifty-one, the provisions of this section shall not apply to the destruction of such records if the procedures therefor established by such law, as amended by local law, shall be acceptable to the commissioner of education.

3. The records of any state department, division, board, bureau, commission or other agency.

§ 57.35. Grants for local government records management improvement. 1. The commissioner of education, upon consultation with the local government records advisory council, is authorized to award grants for records management improvement as specified in sections 57.19, 57.25, 57.29 and 57.31 of this article to individual local governments, groups of cooperating local governments and local governments that have custody of court records and for records management improvement for supreme court records in the custody of the counties of New York, Kings, Queens, Richmond, and Bronx and in accordance with subdivision two-a of this section, records under the jurisdiction of the department of records and information services of the city of New York or its successor agency and the city clerk of the city of New York, and to fire companies and voluntary ambulance services as such terms are defined in section one hundred of the general municipal law.

2. The commissioner of education shall promulgate rules and regulations setting forth criteria and procedures necessary to award grants for records management improvement from monies available for this purpose in the New York state local government records management improvement fund, established pursuant to section ninety-seven-i of the state finance law.

Such criteria shall include but not be limited to:

(a) the development by the applicant of a written plan for a records management program;

(b) the condition of the records of the applicant;

(c) the geographic location of the applicant so as to provide, to the extent practicable, equitable geographic distribution of the grants;

(d) the particular design of the applicant's records management program; and

(e) the applicant's arrangements for cooperative activities among local governments for a records management program.

2-a (a) Notwithstanding the provision of paragraph (c) of subdivision two of this section, the commissioner of education may award grants totaling in the aggregate no more than one million dollars annually for records management improvement to the department of records and information services of the city of New York or its successor agency and the city clerk of the city of New York in accordance with the provisions of this subdivision.

(b) The department of records and information services or its successor agency and the city clerk of the city of New York shall submit applications to the commissioner of education at the same time as applications pursuant to subdivision two of this section are required to be submitted. The applications shall set forth the records management improvement projects proposed by the department of records and information services or its successor agency and the city clerk of the city of New York is priority order and the amount requested for each project. Priority assignment of each project shall be a factor taken into consideration in addition to those outlined in subdivision two of this section when making grant awards.

(c) Upon receipt of grant monies, the commissioner of the department of records and information services or its successor agency and the city clerk of the city of New York shall direct the disbursement of grant monies to each project for which a grant has been approved.

(d) The commissioner of the department of records and information services or its successor agency and the city clerk of the city of New York shall, in addition to monitoring the progress of and providing technical assistance to projects receiving awards pursuant to this subdivision, prepare and submit progress reports on such projects. Such reports shall be at the level of detail and frequency comparable to reports required of other local governments receiving awards pursuant to this section.

3. All monies received by the commissioner of education under the provisions of the third undesignated paragraph of subdivision (a) of section eight thousand eighteen, subparagraph b of paragraph four of subdivision (a) of section eight thousand twenty-one and subparagraph b of paragraph eleven of subdivision (b) of section eight thousand twenty-one of the civil practice law and rules, and subdivision a of

section 7-604 of the administrative code of the city of New York, shall be deposited by the commissioner of education to the credit of the New York state local government records management improvement fund established pursuant to section ninety-seven-i of the state finance law by the tenth day of the month following receipt of such monies.

4. Each year the New York state local government records advisory council shall review and make recommendations on a proposed operational and expenditure plan for the New York state local government records management improvement fund prior to its adoption by the commissioner of education. The annual expenditure plan shall be subject to the approval of the director of the division of the budget.

§ 57.37. Regional records offices. 1. The commissioner of education is authorized to establish in each judicial district, except New York city, a regional records office. In New York city, the commissioner of education is authorized to establish a single regional records office to oversee records management programs for entities within the city of New York whose records are not under the jurisdiction of the department of records and information services or its successor agency and the city clerk of the city of New York.

2. The regional records offices shall provide advisory and consultative services and technical assistance to local governments on records management and the administration of archival records and address recommendations of the New York state local government records advisory council.

3. The commissioner of education is authorized to employ specialists in records management, archives administration and other specialists necessary to provide advisory, consultative and technical assistance to local governments from monies available for this purpose in the New York state local government records management improvement fund, established pursuant to section ninety-seven-i of the state finance law.

§ 57.39. Reporting requirements. The commissioner of education, with the advice of the New York state local government records advisory council, shall report annually on or before March first to the governor and the legislature on the status of local government records management, including a report of revenues and expenditures from the New York state local government records management improvement fund for the previous calendar year and appropriate recommendations.

ARTICLE 57-B

THE AMISTAD COMMISSION

§ 57.51. Legislative findings. The legislature finds and declares that:

1. During the period beginning late in the fifteenth century through the nineteenth century, millions of persons of African origin were enslaved and brought to the Western Hemisphere, including the United States of America; anywhere from between twenty to fifty percent of enslaved Africans died during their journey to the Western Hemisphere; the enslavement of Africans and their descendants was part of a concerted effort of physical and psychological terrorism that deprived groups of people of African descent the opportunity to preserve many of their social, religious, political and other customs; the vestiges of slavery in this country continued with the legalization of second class citizenship status for African-Americans through Jim Crow laws, segregation and other similar practices; the legacy of slavery has pervaded the fabric of our society; and in spite of these events there are endless examples of the triumphs of African-Americans and their significant contributions to the development of this country.

2. All people should know of and remember the human carnage and

dehumanizing atrocities committed during the period of the African slave trade and slavery in America and of the vestiges of slavery in this country; and it is in fact vital to educate our citizens on these events, the legacy of slavery, the sad history of racism in this country, and on the principles of human rights and dignity in a civilized society.

3. It is the policy of the state of New York that the history of the African slave trade, slavery in America, the depth of their impact in our society, and the triumphs of African-Americans and their significant contributions to the development of this country is the proper concern of all people, particularly students enrolled in the schools of the state of New York.

4. It is therefore desirable to create a state-level commission, which shall research and survey the extent to which the African slave trade and slavery in America is included in the curricula of New York state schools, and make recommendations to the legislature and executive regarding the implementation of education and awareness programs in New York concerned with the African slave trade, slavery in America, the vestiges of slavery in this country, and the contributions of African-Americans in building our country. Such recommendations may include, but not be limited to, the development of workshops, institutes, seminars, and other teacher training activities designed to educate teachers on this subject matter; the coordination of events on a regular basis, throughout the state, that provide appropriate memorialization of the events concerning the enslavement of Africans and their descendants in America as well as their struggle for freedom and liberty; and suggestions for revisions to the curricula and textbooks used to educate the students of New York state to reflect a more adequate inclusion of issues identified by the commission.

§ 57.52. Amistad commission; established. 1. The Amistad commission (commission), so named in honor of the group of enslaved Africans led by Joseph Cinque who, while being transported in eighteen hundred thirty-nine on a vessel named the Amistad, gained their freedom after overthrowing the crew and eventually having their case successfully argued before the United States Supreme Court, is hereby created and established. The commission shall consist of nineteen members, including the commissioner of education or their designee, the secretary of state or their designee, and the chancellor of the state university of New York or their designee, serving ex officio, and sixteen public members. Public members shall be appointed as follows: four public members, no more than two of whom shall be of the same political party, shall be appointed by the temporary president of the senate; four public members, no more than two of whom shall be of the same political party, shall be appointed by the speaker of the assembly; and eight public members, no more than four of whom shall be of the same political party, shall be appointed by the governor. The appointed members shall be chosen with due regard to broad ethnic diversity and shall have a demonstrated educational background in the history of the African slave trade and slavery in America or the contributions of African-Americans to our society. The public members shall be residents of the state, chosen with due regard to broad geographic representation and ethnic diversity, who have an interest in the history of the African slave trade and slavery in America and the contributions of African-Americans to our society.

1-a. Any business or other matter undertaken or commenced by the department of state or the secretary of state pertaining to or connected with the functions, powers, obligations and duties of the commission established pursuant to subdivision one of this section are hereby transferred and assigned to the commissioner of education or the department of education and pending on the effective date of this subdivision, may be conducted and completed by such commissioner or such department in the same manner and under the same terms and conditions and with the same effect as if conducted and completed by the department of state or the secretary of state.

2. Each public member of the commission shall serve for a term of three years, except that of the initial members so appointed: one member appointed by the temporary president of the senate, one member appointed by the speaker of the assembly, and two members appointed by the governor shall serve for terms of one year; one member appointed by the

temporary president of the senate, one member appointed by the speaker of the assembly, and three members appointed by the governor shall serve for terms of two years; and two members appointed by the temporary president of the senate, two members appointed by the speaker of the assembly, and three members appointed by the governor shall serve for terms of three years. Public members shall be eligible for reappointment. They shall serve until their successors are appointed and qualified, and the term of the successor of any incumbent shall be calculated from the expiration of the term of that incumbent. A vacancy occurring other than by expiration of term shall be filled within forty-five days in the same manner as the original appointment but for the unexpired term only. If such vacancy is not filled within forty five days, the vacancy shall be filled within thirty days by the commissioner of education but for the unexpired term only.

3. The members of the commission shall serve without compensation but shall be entitled to reimbursement for all necessary expenses incurred in the performance of their duties.

4. The commissioner of education, or their designee, shall serve as the chair and the secretary of state, or their designee, shall serve as the vice-chair of the commission. The presence of a majority of the authorized membership of the commission shall be required for the conduct of official business.

5. The department of education shall provide technical assistance and data to the commission as may be necessary for the commission to carry out its responsibilities pursuant to this article. The commissioner of education or their designee shall be responsible for hiring the staff of the commission and shall serve as the liaison between the commission and the department of education. The commissioner of education may designate employees of the department of education to provide support and services to the commission as are reasonably necessary.

§ 57.53. The Amistad commission; duties and responsibilities. The Amistad commission shall have the following responsibilities and duties:

1. to survey and catalog the extent and breadth of education concerning the African slave trade, slavery in America, the vestiges of slavery in this country and the contributions of African-Americans to our society presently being incorporated into the curricula and textbooks and taught in the school systems of the state; and, to inventory those African slave trade, American slavery, or relevant African-American history memorials, exhibits and resources which should be incorporated into courses of study at educational institutions and schools throughout the state.

2. to compile a roster of individual volunteers who are willing to share their knowledge and experience in classrooms, seminars and workshops with students and teachers on the subject of the African slave trade, American slavery and the impact of slavery on our society today, and the contributions of African-Americans to our country;

3. to increase awareness and encourage school districts to utilize curricula on African-American history by:

(a) establishing and administering a program to publicly recognize schools that do an outstanding job teaching subjects related to the African-American experience through a designation of special status or other award as determined by the commission; and

(b) offering grants to individual teachers who demonstrate exemplary practices teaching subjects related to the African-American experience, as determined by the commission, and the commission shall catalog and publicize such practices for use by other teachers; and

4. to prepare reports for the governor and the legislature regarding its findings and recommendations on facilitating the inclusion of the African slave trade, American slavery studies, African-American history and special programs in the educational system of the state.

§ 57.54. Authorization. 1. The Amistad commission is authorized to call upon any department, office, division or agency of the state, or of any county, municipality or school district of the state, to supply such data, program reports and other information, as it deems necessary to discharge its responsibilities under this article.

2. These departments, offices, divisions and agencies shall, to the extent possible and not inconsistent with any other law of this state, cooperate with the commission and shall furnish it with such information and assistance as may be necessary or helpful to accomplish the purposes of this article.

TITLE V
AMERICAN MUSEUM OF NATURAL HISTORY PLANETARIUM AUTHORITY

ARTICLE 59
AMERICAN MUSEUM OF NATURAL HISTORY PLANETARIUM AUTHORITY

§ 59.01. Short title. This title may be cited as the "Museum

Planetarium Act".

§ 59.03. Definitions. As used or referred to in this title, unless a different meaning clearly appears from the context,

1. The term "Planetarium Authority" shall mean the corporation created by section 59.05 of this chapter;

2. The term "planetarium" shall mean the planetarium herein authorized and shall include the building housing the same and all machinery, equipment, facilities and educational material incidental thereto;

3. The term "bonds" shall mean bonds issued by the authority pursuant to this title;

4. The term "board" shall mean the members of the board of directors of the Planetarium Authority.

§ 59.05. The American Museum of Natural History Planetarium Authority. The trustees of The American Museum of Natural History, a corporation created by chapter one hundred and nineteen of the laws of eighteen hundred sixty-nine, and their successors in such office shall appoint no less than three nor more than five individuals to serve as members of the board of directors of the Planetarium Authority for terms of one to three years (as determined by the trustees of the American Museum of Natural History), and which is hereby continued as a body corporate by the name of "The American Museum of Natural History Planetarium Authority," to be located in the city of New York, for the purpose of establishing and maintaining in such city a planetarium upon a site provided by the authorities of such city adjacent to The American Museum of Natural History in such city; of encouraging and developing the study of astronomical science; of advancing the general knowledge of kindred subjects, and to that end, of furnishing popular instruction. Such authority shall constitute a public benefit corporation.

Each member of the board of the Planetarium Authority shall be independent of the Planetarium Authority and of the American Museum of Natural History as described in the public authorities law; and the American Museum of Natural History shall not be considered an affiliate of the Planetarium Authority.

The board of the Planetarium Authority may appoint an executive director. The members of the board and the executive director of the Planetarium Authority shall serve pro bono and shall be entitled to no compensation for their services or reimbursement for expenses incurred or to be incurred in connection with the planetarium hereby authorized. A majority of the members of the board of the Planetarium Authority shall constitute a quorum at any meeting of the board, and a majority of the members present at a meeting of the board at which there is a quorum may exercise the powers of the authority. The board of the Planetarium Authority may delegate to one or more of its members or to its officers, any such powers and duties as it may deem proper. The Planetarium Authority shall continue the lease with the American Museum of Natural History for the exclusive occupancy, operation and use of the planetarium by the American Museum of Natural History for the purpose of carrying out the purposes set forth above and related purposes, all upon the obligation of the American Museum of Natural History to keep the planetarium in reasonable repair, and to maintain and operate the planetarium, which lease may be of indefinite duration terminable only upon surrender of the lease by the direction and authorization of the board of trustees of the American Museum of Natural History.

The existence of the Planetarium Authority shall continue until dissolved by its board, provided that all its liabilities have been met and its bonds have been paid in full or such liabilities or bonds have been discharged and provided further that the Planetarium Authority's lease to the American Museum of Natural History shall have been surrendered by the American Museum of Natural History. Notwithstanding the foregoing, the Planetarium Authority shall be dissolved when the American Museum of Natural History surrenders its lease of the planetarium to the Planetarium Authority, provided that all its liabilities have been met and its bonds have been paid in full or such liabilities or bonds have been discharged or assumed by the American Museum of Natural History. Upon its ceasing to exist, all of its real property shall pass to the city of New York and all of its personal property shall pass to The American Museum of Natural History for its corporate purposes. Thereupon, such real property shall be maintained and operated in the same manner and subject to the same provisions, restrictions and authorities and by the same corporation as the other property of the city of New York which is now occupied by The American Museum of Natural History.

§ 59.07. Powers of the Planetarium Authority. The Planetarium Authority shall have power:

1. To sue and be sued;

2. To have a seal and alter the same at pleasure;

3. To acquire, hold and dispose of personal property for its corporate purposes;

4. To make by-laws for the management and regulation of its affairs;

5. To use the agents, employees and facilities of The American Museum of Natural History, paying its proper proportion of the compensation or cost;

6. To appoint officers and agents;

7. To make contracts and to execute all instruments necessary or convenient;

8. By contract or contracts or by its own employees, to construct such planetarium building, together with incidental machinery, equipment and facilities;

9. To purchase or construct, or acquire by gift, loan or otherwise

from The American Museum of Natural History or other persons or corporations, and install in such planetarium building, a planetarium instrument or instruments and such other astronomical instruments and exhibits as to such board shall seem best adapted for astronomical instruction;

10. To maintain, reconstruct and operate the planetarium;

11. To charge or grant to the American Museum of Natural History in the lease the right to charge admission fees for exhibiting the planetarium or some part or parts thereof, subject to and in accordance with section 59.09 of this title and such agreements with bondholders as may be made as hereinafter provided;

12. To issue negotiable bonds and to provide for the rights of the holders thereof; and

13. To do all things necessary or convenient to carry out the powers expressly given by this title.

§ 59.09. Admission fees. In order that the educational influence of the planetarium shall reach as many persons as possible, the board shall not fix admission fees, at rates higher than are necessary to pay the cost of construction, operation, maintenance and repair of the planetarium and instruction in connection therewith, and reserves therefor, and to pay the principal of and interest on any bonds issued hereunder, and to meet the reserves and sinking funds provided for in any resolution authorizing such bonds. Classes from the public schools and colleges of the city of New York shall be admitted to the planetarium at such times and upon such days of the week and under such reasonable rules and regulations as the board shall prescribe.

§ 59.11. Moneys of the Planetarium Authority. The moneys in the deposit account of the Planetarium Authority shall be paid out on checks signed by the executive director of the Planetarium Authority or by such other person or persons as the Planetarium Authority may authorize. All deposits of such moneys shall, if required by the Planetarium Authority, be secured by obligations of the United States or the state of New York, of a market value equal at all times to the amount of the deposit and all banks and trust companies are authorized to give such security for such deposits. The comptroller of the city of New York and his legally authorized representatives are hereby authorized and empowered from time to time to examine the accounts and books of the Planetarium Authority, including its receipts, disbursements, contracts, sinking funds, investments and any other matters relating to its financial standing.

§ 59.13. Bonds of the Planetarium Authority. 1. Subject to the consent of the American Museum of Natural History, the Planetarium Authority shall have power and is hereby authorized from time to time to issue its negotiable bonds in conformity with applicable provisions of the uniform commercial code in the aggregate principal amount of not exceeding one million dollars. The Planetarium Authority shall have power from time to time to refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured, and may issue bonds partly to refund bonds then outstanding and partly for any other corporate purpose. In computing the total amount of bonds of the Planetarium Authority which may at any time be outstanding the amount of the outstanding bonds to be refunded from the proceeds of the sale of new bonds or by exchange for new bonds shall be excluded.

2. Such bonds shall be authorized by resolution of the board and shall bear such date or dates, mature at such time or times not exceeding twenty-five years from their respective dates, bear interest at such rate or rates as approved by the state comptroller, payable semi-annually, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in such medium of payment at such place or places, and be subject to such terms of redemption not exceeding par and accrued interest as such resolution or resolutions may provide. Such bonds may be sold at public or private sale for such price or prices as the authority shall determine.

3. Such bonds may be issued for any corporate purposes of the Planetarium Authority.

4. Any resolution or resolutions authorizing any bonds may contain provisions which shall be a part of the contract with the holders of the bonds, as to

(a) Pledging the revenues of the planetarium to secure the payment of the bonds;

(b) The admission fees to be charged for the exhibition of the planetarium and the amount to be raised in each year by admission fees and the use and disposition of such fees and other revenues;

(c) The setting aside of reserves or sinking funds and the regulation or disposition thereof;

(d) The use and exhibition of the planetarium;

(e) Limitations on the purpose to which the proceeds of sale of any issue of bonds then or thereafter to be issued may be applied;

(f) Limitations on the issuance of additional bonds;

(g) The procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto and the manner in which such consent may be given.

5. Neither the members of the board nor any person executing such bonds shall be liable personally on the bonds or be subject to any personal liability or accountability by reason of the issuance thereof.

6. The Planetarium Authority shall have power out of any funds available therefor to purchase any bonds issued by it at a premium of not more than four percentum and accrued interest. All bonds so purchased shall be cancelled.

§ 59.15. State and city not liable on bonds. The bonds and other obligations of the Planetarium Authority shall not be a debt of the state of New York or city of New York and neither the state nor such city shall be liable thereon, nor shall they be payable out of any funds other than those of the Planetarium Authority.

§ 59.17. Bonds legal investments for fiduciaries. The bonds are hereby made securities in which all public officers and bodies of this state and all municipalities and municipal subdivisions, all insurance companies and associations, all savings banks and savings institutions, including savings and loan associations, administrators, guardians, executors, trustees and other fiduciaries in the state may properly and legally invest funds in their control.

§ 59.19. Bonds to be tax exempt. The bonds shall be exempt from taxation except for transfer and estate taxes.

§ 59.21. Remedies of bondholders. 1. In the event that the Planetarium Authority shall default in the payment of principal of or interest on any of the bonds after the same shall become due, whether at maturity or upon call for redemption, and such default shall continue for a period of thirty days, or in the event that the Planetarium Authority shall fail or refuse to comply with the provisions of this title, or shall default in any agreement made with the holders of the bonds, the holders of twenty-five percentum in aggregate principal amount of the bonds then outstanding by instrument or instruments filed in the office of the clerk of the county of New York and proved or acknowledged in the same manner as a deed to be recorded may appoint a trustee to represent the bondholders for the purposes herein provided;

2. Such trustee may, and upon written request of the holders of twenty-five percentum in the principal amount of the bonds then outstanding shall, in his or its own name:

(a) By suit, action or special proceeding enforce all rights of the bondholders, including the right to require the Planetarium Authority and the board to collect admission fees adequate to carry out any agreement as to, or pledge of, such admission fees, and to require the Planetarium Authority and the board to carry out any other agreements with the bondholders and to perform its and their duties under this title;

(b) Bring suit upon the bonds;

(c) By action or suit in equity, require the authority to account as if it were the trustee of an express trust for the bondholders;

(d) By action or suit in equity, enjoin any acts or things which may be unlawful or in violation of the rights of the bondholders;

(e) Declare all bonds due and payable, and if all defaults shall be made good annul, upon the written consent of the holders of twenty-five percentum in principal amount of the bonds then outstanding, such declaration and its consequences.

3. The supreme court shall have jurisdiction of any suit, action or proceeding by the trustee on behalf of the bondholders. The venue of any such suit, action or proceeding shall be laid in New York county.

4. Before declaring the principal of all bonds due and payable the trustee shall first give thirty days' notice in writing to the Planetarium Authority.

5. Any such trustee, whether or not all bonds have been declared due and payable, shall be entitled as of right to the appointment of a receiver who may enter and take possession of the planetarium or any part or parts thereof and operate and maintain the same and collect and receive all admission fees and other revenues thereafter arising therefrom in the same manner as the Planetarium Authority itself might do and shall deposit all such moneys in a separate account and apply the same in such manner as the court shall direct. In any suit, action or proceeding by the trustee the fees, counsel fees and expenses of the trustee and of the receiver, if any, shall constitute taxable disbursements and all costs and disbursements allowed by the court shall be a first charge on any admission fees and other revenues derived from the planetarium.

6. Such trustee shall in addition to the foregoing have and possess all of the powers necessary or appropriate for the exercise of any functions specifically set forth herein or incident to the general

representation of the bondholders in the enforcement and protection of their rights.

§ 59.23. Members of the board of the Planetarium Authority and employees not to profit. No officer, member of the board or employee of the corporation shall receive or may be lawfully entitled to receive any pecuniary profit from the operation thereof.

§ 59.25. Visitation by regents. The regents, or the commissioner of education, or their representatives, may visit, examine into and inspect, the Planetarium Authority as an institution under the educational supervision of the state, and may require, as often as desired, duly verified reports therefrom giving such information and in such form as the regents or the commissioner of education shall prescribe.

§ 59.27. Application of law. All of the general provisions of the public authorities law or of any other law shall apply to the Planetarium Authority herein continued in the same manner as if the language of such law had been incorporated in full into this article, except to the extent that such provisions are inconsistent with the provisions of this article.

TITLE V-1
SALE OF AUTOGRAPHED SPORTS COLLECTIBLES

ARTICLE 60
SALE OF AUTOGRAPHED SPORTS COLLECTIBLES

§ 60.01. Definitions. As used in this article, the following terms shall have the following meanings:

1. "Autographed" means bearing the actual signature of a sports personality, signed by such individual's own hand.

2. "Collectible" means an autographed sports item including, but not limited to, a photograph, book, ticket, plaque, sports program, trading card, item of sports equipment or clothing, or other sports memorabilia sold or offered for sale in or from this state by a dealer to a consumer for twenty-five dollars or more.

3. "Consumer" means any natural person who purchases an autographed sports collectible from a dealer for personal, family or household purposes.

4. "Dealer" means a person who is in the business of selling or offering for sale in or from this state, exclusively or non-exclusively, autographed sports collectibles or a person who by his occupation holds himself out as having knowledge or skill peculiar to such collectibles, or to whom such knowledge or skill may be attributed by his employment of an agent or other intermediary who by his occupation holds himself out as having such knowledge or skill. The term "dealer" includes an auctioneer who sells such collectibles at public auction, and includes persons who are consignors or principals of auctioneers.

5. "Description" means any representation in writing, including but not limited to a representation contained in an advertisement, invoice, catalog, flyer, sign, brochure, or other commercial or promotional material. Such term shall also include a representation contained in a prepared script and made for the purpose of selling an autographed sports collectible in a radio or television broadcast to the public in or from this state.

6. "Person" means any natural person, partnership, corporation, company, trust, association or other entity, however organized.

7. "Supplier" means any person who provides collectibles to a dealer specifically for the purposes of re-sale.

§ 60.02. Certificate of authenticity; contents. 1. Whenever a dealer, in selling or offering to sell in or from this state a collectible to a consumer, provides a description of such collectible as being autographed, he shall furnish to the consumer at the time of sale a certificate of authenticity. Such certificate of authenticity shall be in writing and signed by such dealer, his or her authorized agent or his or her supplier. The certificate shall be in at least ten point boldface type and shall contain the dealer's or supplier's true legal name and street address. Each certificate of authenticity shall:

(a) describe the collectible and the name of the sports personality who signed it; and

(i) specify the purchase price and date of sale; or

(ii) be accompanied by a separate invoice that specifies the purchase price and date of sale;

(b) contain an express warranty, which shall be presumed to be part of the basis of the bargain, of the authenticity of the autographed collectible. Such warranty shall not be negated or limited because the dealer or the supplier in the certificate does not use formal words such as "warranty", or "guarantee", or because such dealer or supplier does not have a specific intention or authorization to make a warranty or because any statement relevant to the autographed collectible is, or purports to be, or is capable of being, merely the dealer's or the supplier's opinion; and

(c) unless such information appears in legible fashion on the collectible itself, specify whether the collectible is offered as one of a limited edition and, if so:

(i) how the collectible and the edition are numbered, and

(ii) the size of the edition and the size of any prior or anticipated future edition, if any. If the size of any prior or anticipated future edition is not known, the certificate shall contain an explicit statement to that effect.

2. If a dealer offers collectibles at auction, the requirement for a certificate of authenticity may be met if the dealer at the time of sale:

(a) provides the buyer a catalog which (i) is available to the public, (ii) contains a picture and description of the collectible, and (iii) contains a warranty and information which meet the requirements of paragraphs (b) and (c) of subdivision one of this section; and

(b) provides a separate invoice that specifies the purchase price and date of sale.

The dealer shall be required to maintain a copy of such catalog and information regarding the sale of items described therein for a period of five years following the year of such sale.

3. In those instances in which the provisions of this section are met in accordance with subdivision two of this section by use of a catalog, any warranty contained in such catalog shall not be more restrictive than the provisions of this article.

§ 60.03. Prohibitions. No dealer shall represent that a collectible is autographed if said dealer knows, or has reason to believe, that it was signed other than by the sports personality in his or her own hand.

§ 60.04. Disclosure required. 1. No dealer shall sell or offer for sale in or from this state an autographed sports collectible to any consumer unless, at the location where the sale occurs, in close proximity to the merchandise, he places a conspicuous sign that reads:

SALE OF AUTOGRAPHED SPORTS MEMORABILIA
AS REQUIRED BY LAW A DEALER WHO SELLS TO A CONSUMER
ANY SPORTS MEMORABILIA DESCRIBED AS BEING PERSONALLY
AUTOGRAPHED FOR TWENTY-FIVE DOLLARS OR MORE MUST
PROVIDE A WRITTEN CERTIFICATE OF AUTHENTICITY AT THE

TIME OF SALE.

2. (a) Any dealer engaged in a mail-order or telephone order business who sells or offers for sale in or from this state an autographed sports collectible to any consumer shall include in any written advertisement relating to any such item, in type of conspicuous size, the disclosure required by subdivision one of this section or language substantially equivalent to the disclosure required by subdivision one of this section.

(b) When an offer for sale of an autographed sports collectible takes the form of a televised broadcast, such offer shall include a written on-screen message that shall be prominently displayed and clearly visible for no less than five seconds at the beginning of each segment of broadcast for each item offered for sale and displayed thereafter for no less than five seconds at ten minute intervals during said segment, that reads:

A WRITTEN CERTIFICATE OF AUTHENTICITY
IS PROVIDED WITH EACH AUTOGRAPHED
COLLECTIBLE, AS REQUIRED BY LAW.

(c) When such offer for sale takes the form of a radio advertisement, such advertisement shall include as part of the oral message the disclosure required by paragraph (b) of this subdivision.

§ 60.05. Private remedies. Any consumer injured by the failure of a dealer to provide a certificate of authenticity containing the information required by section 60.02 of this article, or by the furnishing by a dealer of a certificate of authenticity that contains information that the dealer knows or has reason to believe is materially false may bring an action for recovery of damages after giving the dealer fifteen days notice by certified mail, return receipt requested. In any such action the court may allow the prevailing consumer the costs of the action together with reasonable attorney's fees and expert witnesses' fees. A dealer may assert the tender of a refund of the original purchase price as a full defense to such an action when such refund has been tendered prior to the commencement of such action. This remedy shall not bar or be deemed inconsistent with the exercise of additional remedies otherwise available to the consumer.

§ 60.06. Enforcement by attorney general. In addition to the other remedies provided, whenever there shall be a violation of this article, application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction by a special proceeding to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violations; and if it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this article, an injunction may be issued by such court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules, and direct restitution. Whenever the court shall determine that a violation of this article has occurred, the court may impose a civil penalty of not more than one thousand dollars for each violation. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

TITLE W
MISCELLANEOUS PROVISIONS

ARTICLE 61
MISCELLANEOUS PROVISIONS

§ 61.01. Public entertainment on Sunday. All legitimate theatrical performances, concert and recital dances, motion picture exhibitions, or other public exhibitions, exhibits, shows or entertainment on the first day of the week are prohibited, except as hereinafter provided.

Notwithstanding the provisions of this section, or of any general or local law, it shall be lawful to conduct or participate in any public entertainment on the first day of the week after five minutes past one o'clock in the afternoon, to witness which the public is invited or an admission fee is charged, either directly or indirectly, in a city, town or village as shall be permitted, by a local law or ordinance heretofore or hereafter adopted by the common council or other legislative body of the city, town or village, permitting the same on such day and after such hour. If in any city, town or village concert or recital dances, motion pictures or legitimate theatrical productions are now exhibited on the first day of the week, they may continue to be so exhibited during such times as the exhibition of such dances, pictures, productions and performances shall not have been prohibited by a local law or ordinance heretofore or hereafter adopted by the common council or other legislative body of such city, town or village.

§ 61.03. Maintenance or employment of band by a city or village. The governing board of any city of the first or second class may, and the governing board of a city of the third class or of a village, if a proposition be submitted as provided in this section and adopted by majority vote of the qualified voters of the city or village voting thereon, shall provide for the maintenance or employment of a band for musical purposes, for the entertainment of the public. In a city of the third class or a village, a petition, signed and duly acknowledged by at least five percentum of the qualified voters of the city or village may be filed, within sixty days and not later than thirty days before a regular municipal election therein, with the officer or board charged by law with the duty of preparing ballots for such election, requesting the submission thereat of the proposition "Shall this city (or village) maintain or employ a band at an annual expense of not exceeding (amount to be inserted) dollars?" Upon the due filing of such a petition, such proposition shall be submitted at such election in the manner provided in the election law, and notice that such proposition is to be so submitted shall be published by such board or officer as follows: In a newspaper published in the city or village once in each of the two weeks preceding the election; but if there be no such newspaper, such board or officer shall cause such notice to be posted in ten public places in the city or village at least ten days before the election. In such a city of the third class or village, in which such a proposition shall have been adopted, a like petition may be presented after two years for the submission of the proposition "Shall the maintenance or employment of a band by the city (or village) be discontinued?" Such proposition shall be submitted accordingly and if adopted by majority vote of the qualified voters of the city or village voting thereon, the power of the city or village to maintain or employ such a band shall cease. This section shall not apply to a city or village whose charter makes special provision in relation to the maintenance or employment of a band by the city.

§ 61.05. Free public libraries. Any municipal corporation may establish and maintain a free public library or museum in accordance with the library provisions of sections two hundred fifty-three to two hundred seventy-one, both inclusive, of the education law.

§ 61.07. Use of fireworks in entertainment productions in certain cities. Notwithstanding any other provision of law, a city having a population of one million or more may enact a local law permitting and regulating the storage, transportation, sale for use or use of fireworks, as defined in subdivision one of section 270.00 of the penal law, in connection with the presentation in whole or in part of a musical, dramatic, dance, operatic or other stage performance by performers who appear in person in the immediate presence of an audience, which is held in any building or part of a building adapted and used for such purpose or which has a stage for such performances used with scenery or other stage appliances, and to which admission is limited to persons holding admission tickets or other evidence of permission to enter, or in connection with the production of motion pictures.

§ 61.09. Use of school house by news media. The trustees or board of education of any school district may permit, subject to terms and conditions satisfactory to such trustees or board, the admission of persons and equipment of any news medium to school grounds, school houses, school buildings and other locations for the dissemination of information by print, broadcast, recording or other means, of athletic events, concerts, lectures and similar activities taking place thereat of interest to the general public; provided that nothing herein contained shall prevent the broadcasting or televising of any such events or activities with or without commercial sponsorship.

§ 61.11. Fingerprinting employees of public galleries, museums, hospitals, medical colleges affiliated with hospitals and private proprietary hospitals. The trustees or board of managers of a public gallery of art or museum housing valuable objects of art, precious metals or precious stones, or the trustees or board of managers of a legally incorporated hospital, supported in whole or in part by public funds or private endowment, or the trustees or board of managers of a medical college affiliated with such a hospital or the governing body of a private proprietary hospital may, as a condition of securing employment or of continuing employment, require that all of its employees be fingerprinted. Such fingerprints shall be submitted to the division of criminal justice services for a state criminal history record check, as defined in subdivision one of section three thousand thirty-five of the education law, and may be submitted to the federal bureau of investigation for a national criminal history record check.

§ 61.13. Earl W. Brydges Artpark. Notwithstanding any inconsistent provision of law to the contrary, the performing arts theatre in the Niagara Frontier region known as the Lewiston State Park Arts Center shall continue to be known and suitably marked, in a manner prescribed by the commissioner of parks, recreation and historic preservation, as the Earl W. Brydges Artpark.

* Notwithstanding that Chapter 73 of the Laws of 1983 amends subdivision (b) of Section 219 of the General Business Law, it is the determination of the Legislative Bill Drafting Commission, pursuant to bill sections 13 and 14 of Chapter 876 of the Laws of 1983, to juxtapose and transfer such subdivision to be subdivision 2 of Section 11.01, to Chapter 11-C of the Consolidated Laws entitled "The Arts and Cultural Affairs Law", as enacted by such Chapter 876 of the Laws of 1983.

* Notwithstanding that Chapter 851 of the Laws of 1983 adds subdivision 10 to Section 672 to the Executive Law, it is the determination of the Legislative Bill Drafting Commission, pursuant to the provisions of bill sections 13 and 14 of Chapter 876 of the Laws of 1983, to juxtapose and transfer such subdivision, to be subdivision 10 of Section 3.05, to Chapter 11-C of the Consolidated Laws entitled "The Arts and Cultural Affairs Law", as enacted by such Chapter 876 of the Laws of 1983.

* Notwithstanding that Chapter 967 of the Laws of 1983, repeals section 202-b of the Labor Law, it is the determination of the Legislative Bill Drafting Commission, pursuant to the provisions of bill sections 13 and 14 of Chapter 876 of the Laws of 1983, to deem that Section 37.11 of Chapter 11-C of the Consolidated Laws entitled "The Arts and Cultural Affairs Law", as enacted by such Chapter 876 of the Laws of 1983 is also repealed as of April 1, 1984 as such material will then be covered by Article 27 of the Labor Law.

* Notwithstanding that Chapter 993 of the laws of 1983 repeals and adds Article 12-E and (Sections 219-f and 219-g) to the General Business Law, it is the determination of the Legislative Bill Drafting

Commission, pursuant to the provisions of bill sections 13 and 14 of Chapter 876 of the Laws of 1983, to juxtapose and transfer such article and sections to be Article 14 and (Sections 14.01 through 14.03), respectively, to Chapter 11-C of the Consolidated Laws entitled "The Arts and Cultural Affairs Law", as enacted by such Chapter 876 of the Laws of 1983.

* Notwithstanding that Chapter 994 of the Laws of 1983 adds Article 12-J and (Sections 228-m through 228-q) to the General Business Law, it is the determination of the Legislative Bill Drafting Commission, pursuant to the provisions of bill sections 13 and 14 of Chapter 876 of the Laws of 1983, to juxtapose and transfer such article and sections to be Article 14-A and (Sections 14.51 through 14.59), respectively, to Chapter 11-C of the Consolidated Laws entitled "The Arts and Cultural Affairs Law", as enacted by such Chapter 876 of the Laws of 1983, as of January 1, 1984.

* Notwithstanding that Chapter 996 of the Laws of 1983, adds Article 25 and (Sections 660 through 665) to the Executive Law, it is the determination of the Legislative Bill Drafting Commission, pursuant to the provisions of bill sections 13 and 14 of Chapter 876 of the Laws of 1983 to juxtapose and transfer such article and sections to be Article 4 and (Sections 4.01 through 4.11), respectively, to Chapter 11-C of the Consolidated Laws entitled "The Arts and Cultural Affairs Law", as enacted by such Chapter 876 of the Laws of 1983, as of April 1, 1984.