

Offered: 2/17/86
Referred: Judiciary

Original sponsors: Gruenberg, Goll,
Koponen, et al

BY THE LABOR AND
COMMERCE COMMITTEE

1 IN THE HOUSE

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CS FOR HOUSE BILL NO. 517 (L&C)

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IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act relating to the private sale and consignment
7 of works of art."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 45 is amended by adding a new chapter to read:

10

CHAPTER 67. ARTISTS AND WORKS OF ART.

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Sec. 45.67.010. ARTISTS AND ART DEALER RELATIONSHIPS. (a) When
12 an artist delivers or causes to be delivered a work of art of the
13 artist's own creation to an art dealer for the purpose of sale, or
14 exhibition and sale, on a commission, fee, or other basis of compen-
15 sation, the acceptance of the work of art by the art dealer is a
16 consignment, and

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(1) the art dealer is, with respect to the work of art, the
18 agent of the artist;

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(2) the work of art is trust property in the hands of the
20 art dealer for the benefit of the artist; and

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(3) proceeds from the sale of the work of art are trust
22 funds in the hands of the art dealer for the benefit of the artist.

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(b) A work of art initially received as a consignment remains
24 trust property notwithstanding the subsequent purchase of the artwork
25 by the art dealer directly or indirectly for the art dealer's own
26 account until the consignment price due to the artist is paid in full.
27 If the work of art is resold to a bona fide third party before the
28 artist has been paid in full, the proceeds of the resale are trust
29 funds in the hands of the art dealer for the benefit of the artist to

1 the extent necessary to pay any balance still due to the artist. The
2 trusteeship continues until the fiduciary obligation of the art dealer
3 with respect to the transaction is discharged in full.

4 (c) The proceeds due to the artist from a sale or resale of the
5 work of art are not subject or subordinate to a claim, lien or secur-
6 ity interest of the art dealer's creditors.

7 Sec. 45.67.020. WAIVER. (a) A provision of a contract or
8 agreement whereby the artist waives a provision of AS 45.67.010 is
9 void except as provided in this subsection. An artist may waive the
10 provisions of AS 45.67.010(a)(3) if the waiver is clear, conspicuous,
11 and agreed to in writing by the artist. A waiver under this subsec-
12 tion is not valid with respect to the proceeds of a work of art ini-
13 tially received as a consignment but subsequently purchased by the art
14 dealer directly or indirectly for the art dealer's own account.

15 (b) A waiver under (a) of this section may not inure to the
16 benefit of the art dealer's creditors in a manner that is inconsis-
17 tent with the artist's rights under AS 45.67.010.

18 Sec. 45.67.030. RETURN TO ARTIST. Unless the artist and art
19 dealer have otherwise agreed in writing, the art dealer shall return
20 an unsold work of art on demand of the artist.

21 Sec. 45.67.040. APPLICABILITY. (a) The provisions of AS 45.-
22 67.010, 45.67.020, and 45.67.030 may not be construed to have an
23 effect upon a written or oral contract or arrangement in existence on
24 the effective date of this section, except by the mutual written
25 consent of the parties.

26 (b) The provisions of AS 45.67.010 and 45.67.020 apply notwith-
27 standing the absence of, or a conflict with, a written agreement
28 between the artist and the art dealer concerning any matter covered by
29 AS 45.67.010 and 45.67.020. In the event of a conflict between

1 AS 45.67.010, 45.67.020, or 45.67.030 and AS 45.01 - AS 45.09 (Uniform
2 Commercial Code) or other provision of law, the provisions of
3 AS 45.67.010, 45.67.020, and 45.67.030 govern.

4 Sec. 45.67.050. RIGHT TO REPRODUCE WORKS OF ART. (a) When a
5 work of art is sold or otherwise transferred by or on behalf of the
6 artist who created it, or the heirs or personal representatives of the
7 artist, the right of reproduction is reserved to the grantor until it
8 passes into the public domain by act or operation of law, unless the
9 right is sooner expressly transferred by an instrument, note, or
10 memorandum in writing signed by the owner of the right or an author-
11 ized agent of the owner.

12 (b) When an exclusive or nonexclusive conveyance of a right of
13 reproduction is made by the holder of the right, or the holder's
14 authorized agent, ownership of the physical art work is presumed to
15 remain with and be reserved to the grantor unless expressly trans-
16 ferred in writing signed by the grantor or the grantor's authorized
17 agent.

18 (c) This section may not be construed to prohibit the fair use
19 of a work of art or to conflict with federal copyright law.

20 Sec. 45.67.100. DEFINITIONS. In this chapter, unless the con-
21 text otherwise requires,

22 (1) "artist" means the creator of a work of art or, if
23 deceased, the heirs or personal representatives of the creator;

24 (2) "art dealer" means a person engaged in the business of
25 selling works of art, other than a person exclusively engaged in the
26 business of selling goods at public auction;

27 (3) "consignment" means that no title to or estate in the
28 goods or right to possession superior to that of the consignor vests
29 in the consignee, notwithstanding the consignee's power or authority

1 to transfer and convey, to third person, all of the right, title and
2 interest of the consignor, in and to the goods;

3 (4) "creditor" has the meaning given in AS 45.01.201;

4 (5) "right of reproduction" means a right to reproduce,
5 prepare derivative works of, distribute copies of, or publicly display
6 a work of art;

7 (6) "work of art" means a painting, sculpture, drawing,
8 work of graphic art, photograph, or craft work, in any medium.

9 * Sec. 2. AS 45.02.326(e) is repealed.