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Referred: Labor & Commerce
and Judiciary

BY GRUENBERG, GOLL, LARSON,
DAVIDSON AND KOPONEN

1 IN THE HOUSE

2 HOUSE BILL NO. 3

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST 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 AS 45.02.326(e) is repealed and reenacted to read:

10 (e) When an artist delivers a work of art to an art dealer as
11 described in AS 45.67.010, the art dealer shall prominently display a
12 sign stating substantially, "Works of art for sale are on consign-
13 ment." Works of art on consignment are not subject to the claims of
14 the art dealer's creditors.

15 * Sec. 2. AS 45 is amended by adding a new chapter to read:

16 CHAPTER 67. ARTISTS AND WORKS OF ART.

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

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

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

27 (3) proceeds from the sale of the work of art are trust
28 funds in the hands of the art dealer for the benefit of the artist;
29 and

1 (4) the dealer shall transmit the proceeds to the artist
2 within 30 days of the sale of the work of art.

3 (b) A work of art initially received as a consignment remains
4 trust property notwithstanding the subsequent purchase of the artwork
5 by the art dealer directly or indirectly for the art dealer's own
6 account until the consignment price due to the artist is paid in full.
7 If the work of art is resold to a bona fide third party before the
8 artist has been paid in full, the proceeds of the resale are trust
9 funds in the hands of the art dealer for the benefit of the artist to
10 the extent necessary to pay any balance still due to the artist. The
11 trusteeship continues until the fiduciary obligation of the art dealer
12 with respect to the transaction is discharged in full.

13 Sec. 45.67.020. WAIVER. (a) A provision of a contract or
14 agreement whereby the artist waives a provision of AS 45.67.010 is
15 void except as provided in this subsection. An artist may waive the
16 provisions of AS 45.67.010(a)(4) if the waiver is clear, conspicuous,
17 and agreed to in writing by the artist. A waiver under this subsec-
18 tion is not valid with respect to the proceeds of a work of art ini-
19 tially received as a consignment but subsequently purchased by the art
20 dealer directly or indirectly for the art dealer's own account.

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

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

27 Sec. 45.67.040. APPLICABILITY. (a) The provisions of AS 45.-
28 67.010, 45.67.020, and 45.67.030 may not be construed to have an
29 effect upon a written or oral contract or arrangement in existence on

1 the effective date of this section, except by the mutual written
2 consent of the parties.

3 (b) The provisions of AS 45.67.010 and 45.67.020 apply notwith-
4 standing the absence of, or a conflict with, a written agreement
5 between the artist and the art dealer concerning any matter covered by
6 AS 45.67.010 and 45.67.020. In the event of a conflict between
7 AS 45.67.010, 45.67.020, or 45.67.030 and AS 45.01 - AS 45.09 (Uniform
8 Commercial Code) or other provision of law, the provisions of AS 45.-
9 67.010, 45.67.020, and 45.67.030 govern.

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

18 (b) When an exclusive or nonexclusive conveyance of a right of
19 reproduction is made by the holder of the right, or the holder's
20 authorized agent, ownership of the physical art work is presumed to
21 remain with and be reserved to the grantor unless expressly trans-
22 ferred in writing signed by the grantor or the grantor's authorized
23 agent.

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

26 Sec. 45.67.100. DEFINITIONS. In this chapter, unless the con-
27 text otherwise requires,

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

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

4 (3) "consignment" means that no title to or estate in the
5 goods or right to possession superior to that of the consignor vests
6 in the consignee, notwithstanding the consignee's power or authority
7 to transfer and convey, to third person, all of the right, title and
8 interest of the consignor, in and to the goods;

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

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

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