

H B

5 1 7

# STATE OF ALASKA THE LEGISLATURE

## LEGISLATIVE AFFAIRS AGENCY

### LEGISLATIVE REFERENCE LIBRARY

POUTHY - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907-465-3800

May, 1986

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS date base CM 14. In order to save space copies of minutes have not been left in the files.

Jeanie Henry

House Judiciary	3/11/86	3pm
" "	4/10/86	8AM

HOUSE  
COMMITTEE REPORT

(7)

Date referred: 2/17/86

FURTHER REFERRALS:

DATE: 4/10/86

The JUDICIARY Committee has considered HB 517

"An Act relating to the private sale and consignment of works of art."

and recommends:

- do pass
- do not pass
- do pass with attached amendment(s)
- no recommendation
- replace with Committee Substitute  same title  
 new title

and recommends do pass

further referral to the \_\_\_\_\_ Committee

- and attaches:
- letter of intent
  - first fiscal note
  - new fiscal note
  - zero fiscal note

SIGNING DO PASS:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

SIGNING OTHER RECOMMENDATIONS:

\_\_\_\_\_  
 \_\_\_\_\_ NO REC  
 \_\_\_\_\_ NO REC  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

\_\_\_\_\_  
 Chairman

Original sponsors: Gruenberg, Goll,  
Koponen, et al

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 517 (Judiciary)

3 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 AS 45.02.326(c) is repealed and reenacted to read: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; and

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 (b) A work of art initially received as a consignment remains

trust property notwithstanding the subsequent purchase of the artwork by the art dealer directly or indirectly for the art dealer's own account until the consignment price due to the artist is paid in full. If the work of art is resold to a bona fide third party before the artist has been paid in full, the proceeds of the resale are trust funds in the hands of the art dealer for the benefit of the artist to the extent necessary to pay any balance still due to the artist. The trusteeship continues until the fiduciary obligation of the art dealer with respect to the transaction is discharged in full.

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

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

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

Sec. 45.67.040. APPLICABILITY. (a) The provisions of AS 45.67.010, 45.67.020, and 45.67.030 may not be construed to have an effect upon a written or oral contract or arrangement in existence on the effective date of this section, except by the mutual written consent of the parties.

(b) The provisions of AS 45.67.010 and 45.67.020 apply

1 notwithstanding the absence of, or a conflict with, a written  
2 agreement between the artist and the art dealer concerning any matter  
3 covered by AS 45.67.010 and 45.67.020. In the event of a conflict  
4 between AS 45.67.010, 45.67.020, or 45.67.030 and AS 45.01 - AS 45.09  
5 (Uniform Commercial Code) or other provision of law, the provisions of  
6 AS 45.67.010, 45.67.020, and 45.67.030 govern.

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

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

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

23 Sec. 45.67.100. DEFINITIONS. In this chapter, unless the con-  
24 text otherwise requires,

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

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

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

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

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

10 (6) "work of art" means a painting, sculpture, drawing,  
11 work of graphic art, photograph, or craft work, in any medium.  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29

Original sponsors: Gruenberg, Goll,  
Koponen, et al

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 517 (Judiciary)

3 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 45.02.326(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 45.09.114(a) is amended to read:~~

16 ~~(a) A person who delivers goods under a consignment, other than~~  
17 ~~a consignment under AS 45.02.326(e) or AS 45.67.010, that [WHICH] is~~  
18 ~~not a security interest and who would be required to file under~~  
19 ~~AS 45.09.101 - 45.09.507 by AS 45.02.326(c)(3) has priority over a~~  
20 ~~secured party who is or becomes a creditor of the consignee and who~~  
21 ~~would have a perfected security interest in the goods if they were the~~  
22 ~~property of the consignee, and also has priority with respect to~~  
23 ~~identifiable cash proceeds received on or before delivery of the goods~~  
24 ~~to a buyer, if~~

25 (1) the consignor complies with the filing provision of  
26 AS 45.02.326(c)(3) before the consignee receives possession of the  
27 goods;

28 (2) the consignor gives notification in writing to the  
29 holder of the security interest if the holder has filed a financing

1 statement covering the same types of goods before the date of the  
2 filing made by the consignor;

3 (3) the holder of the security interest receives the noti-  
4 fication within five years before the consignee receives possession of  
5 the goods; and

6 (4) the notification states that the consignor expects to  
7 deliver goods on consignment to the consignee, describing the goods by  
8 item or type.

9 / \* Sec. 3. AS 45.09.114 is amended by adding a new subsection to read:

10 (c) When an art dealer sells a work of art for an artist as  
11 described in AS 45.67.010, the proceeds due to the artist from the  
12 sale or resale of the work of art are not subject or subordinate to a  
13 claim, lien, or security interest of the art dealer's creditors.

14 \* Sec. 3. AS 45 is amended by adding a new chapter to read:

15 CHAPTER 67. ARTISTS AND WORKS OF ART.

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

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

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

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

28 (b) A work of art initially received as a consignment remains  
29 trust property notwithstanding the subsequent purchase of the artwork

1 by the art dealer directly or indirectly for the art dealer's own  
2 account until the consignment price due to the artist is paid in full.  
3 If the work of art is resold to a bona fide third party before the  
4 artist has been paid in full, the proceeds of the resale are trust  
5 funds in the hands of the art dealer for the benefit of the artist to  
6 the extent necessary to pay any balance still due to the artist. The  
7 trusteeship continues until the fiduciary obligation of the art dealer  
8 with respect to the transaction is discharged in full.

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

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

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

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

28 (b) The provisions of AS 45.67.010 and 45.67.020 apply notwith-  
29 standing the absence of, or a conflict with, a written agreement

1 between the artist and the art dealer concerning any matter covered by  
2 AS 45.67.010 and 45.67.020. In the event of a conflict between  
3 AS 45.67.010, 45.67.020, or 45.67.030 and AS 45.01 - AS 45.09 (Uniform  
4 Commercial Code) or other provision of law, the provisions of AS 45.-  
5 67.010, 45.67.020, and 45.67.030 govern.

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

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

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

22 Sec. 45.67.100. DEFINITIONS. In this chapter, unless the con-  
23 text otherwise requires,

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

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

29 (3) "consignment" means that no title to or estate in the

1 goods or right to possession superior to that of the consignor vests  
2 in the consignee, notwithstanding the consignee's power or authority  
3 to transfer and convey, to third person, all of the right, title and  
4 interest of the consignor, in and to the goods;

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

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

9 (6) "work of art" means a painting, sculpture, drawing,  
10 work of graphic art, photograph, or craft work, in any medium.  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29

Version #1  
Ford  
4/9/86

Original sponsors: Gruenberg, Goll,  
Koponen, et al

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 517 (Judiciary)

3 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 45.02.326(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 45.09.114(a) is amended to read:

16 (a) A person who delivers goods under a consignment, other than  
17 a consignment under AS 45.02.326(e) or AS 45.67.010, that [WHICH] is  
18 not a security interest and who would be required to file under  
19 AS 45.09.101 - 45.09.507 by AS 45.02.326(c)(3) has priority over a  
20 secured party who is or becomes a creditor of the consignee and who  
21 would have a perfected security interest in the goods if they were the  
22 property of the consignee, and also has priority with respect to  
23 identifiable cash proceeds received on or before delivery of the goods  
24 to a buyer, if

25 (1) the consignor complies with the filing provision of  
26 AS 45.02.326(c)(3) before the consignee receives possession of the  
27 goods;

28 (2) the consignor gives notification in writing to the  
29 holder of the security interest if the holder has filed a financing

1 statement covering the same types of goods before the date of the  
2 filing made by the consignor;

3 (3) the holder of the security interest receives the noti-  
4 fication within five years before the consignee receives possession of  
5 the goods; and

6 (4) the notification states that the consignor expects to  
7 deliver goods on consignment to the consignee, describing the goods by  
8 item or type.

9 \* Sec. 3. AS 45.09.114 is amended by adding a new subsection to read:

10 (c) When an art dealer sells a work of art for an artist, as  
11 described in AS 45.67.010, the proceeds due to the artist from the  
12 sale or resale of the work of art are not subject or subordinate to a  
13 claim, lien, or security interest of the art dealer's creditors.

14 \* Sec. 4. AS 45 is amended by adding a new chapter to read:

15 CHAPTER 67. ARTISTS AND WORKS OF ART.

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

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

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

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

28 (b) A work of art initially received as a consignment remains  
29 trust property notwithstanding the subsequent purchase of the artwork

1 by the art dealer directly or indirectly for the art dealer's own  
2 account until the consignment price due to the artist is paid in full.  
3 If the work of art is resold to a bona fide third party before the  
4 artist has been paid in full, the proceeds of the resale are trust  
5 funds in the hands of the art dealer for the benefit of the artist to  
6 the extent necessary to pay any balance still due to the artist. The  
7 trusteeship continues until the fiduciary obligation of the art dealer  
8 with respect to the transaction is discharged in full.

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

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

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

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

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

1 consent of the parties.

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

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

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

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

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

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

29 (2) "art dealer" means a person engaged in the business of

1 selling works of art, other than a person exclusively engaged in the  
2 business of selling goods at public auction;

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

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

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

12 (6) "work of art" means a painting, sculpture, drawing,  
13 work of graphic art, photograph, or craft work, in any medium.  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29



R. T. Wallen  
P. O. Box 1063  
Juneau, Alaska, 99802

Rep. Max Gruenberg  
Pouch V  
State Capitol  
Juneau, Alaska, 99811

February 9, 1986

Dear Max,

I very much appreciate the efforts of the sponsors of this arts bill. I think it is going to clarify some rather vague areas concerning the rights and responsibilities of artists, art dealers and art patrons. The section of the bill in which I am most interested is 45. 67. 020, the section dealing with the right to reproduce works of art.

Whenever an artist creates a series of original prints, from a stone or metal plate, for example, or when he reproduces a painting with a series of prints, or makes a series of castings from a mold, the artist may elect to mark these original prints, or reproductions, or castings with the letter "c" enclosed in a circle, followed by his initials and the year date. This copyright symbol and initials and date proclaim his "intent to copyright" and proclaim his rights under Federal Copyright Law. The system functions well with works of art which appear as multiple images or forms since everyone, artist, dealer and buyer understand, by the fact of the copyright signal appearing on the art that certain rights to the reproduction of that work have been established.

Original works, however, one of a kind works, whether they be paintings, or drawings or sculptures, often do not bear the copyright symbol because the artist has not reproduced them, and does not intend that they be reproduced. In fact, the artist, although he has the option of marking the work with the copyright symbol, often will not do so because the appearance of the copyright symbol on an original work implies that it has been reproduced, or might be reproduced in the future, and the mark might thus affect the value of the work both aesthetically and commercially. As I understand Federal Copyright Law, the artist has sole rights to reproduction of an original work of his own art regardless of whether he has marked it with the copyright symbol. However, the lack of such a symbol on a work of art can create an area of uncertainty in the mind of a buyer or art dealer.

For this and other reasons I think that there is value in a state law which addresses the problem and spells out the legal rights of artists in regards to the reproduction of their works of art. I think the fairness of the theory of this section of the bill is reflected in Federal Copyright Law, in the legal rights of authors to their printed works, and in the legal rights that pertain to many kinds of design work, such as architecture, boat design and so on.

As a state law, this is close to home, and every person seriously involved in the art world here in the state will be familiar with it. As an artist who has had to deal with copyright related issues a number of times in my career, and who has business with many different art dealers, and who is often asked by patrons about their rights in regard to a work of art, I see great value in this bill and benefits to artist, dealer and buyer alike. It goes a long way in clearly establishing the ground rules.

Sincerely,

A handwritten signature in black ink, appearing to read "R. T. Wallen". The signature is written in a cursive, somewhat stylized font with a large, sweeping "W".

R. T. Wallen

# State of Alaska

## COMMITTEES

HOUSE HEALTH, EDUCATION  
AND SOCIAL SERVICES  
(Co-Chairman)  
HOUSE JUDICIARY  
HOUSE COMMUNITY AND  
REGIONAL AFFAIRS



POUCH V  
JUNEAU, ALASKA 99811  
(907) 465-4968

914 CLAY COURT  
ANCHORAGE, ALASKA 99503  
(907) 276-6844

Representative Max F. Gruenberg, Jr.  
District 11  
Spennard, Upper Midtown Anchorage

## MEMORANDUM

TO: HOUSE LABOR AND COMMERCE COMMITTEE MEMBERS

FROM: REPRESENTATIVE MAX F. GRUENBERG, JR.

DATE: FEBRUARY 8, 1986

RE: HB 517 RELATING TO THE PRIVATE SALE AND CONSIGNMENT  
OF WORKS OF ART

THIS BILL WAS ADAPTED FOR ALASKA LAW FROM TWO NEW YORK STATUTES PASSED IN 1966. IT IS INTENDED TO PROTECT ARTISTS IN THEIR DEALINGS WITH ART DEALERS BY PROVIDING THAT ARTWORK DELIVERED FOR SALE CONSTITUTES A TRUST FOR THE BENEFIT OF THE ARTIST AND PROTECTS SALE PROCEEDS FROM THE CREDITORS OF THE ART DEALER. THE BILL WOULD ALSO GUARANTEE REPRODUCTION RIGHTS IN STATE STATUTE.

THE PROPOSED DRAFT COMMITTEE SUBSTITUTE REFLECTS TWO CHANGES RECOMMENDED BY ARTISTS WHO HAVE REVIEWED THE BILL:

1. PAGE 2, LINES 18-20 PROVIDES THAT AN ART DEALER MUST RETURN UNSOLD ARTWORK ON DEMAND TO THE ARTIST IF CONSISTENT WITH ANY WRITTEN AGREEMENTS.
2. PAGE 4, LINE 9 REPEALS AN EXISTING SUBSECTION IN THE UNIFORM CORPORATION CODE WHICH IS SIMILAR TO PROPOSED LANGUAGE IN SECTION 1.

THE BILL HAS BEEN WIDELY DISTRIBUTED BY THE SPONSORS TO ARTISTS AND ART DEALERS IN THE STATE AND HAS RECEIVED POSITIVE FEEDBACK. IT IS SUPPORTED BY THE INSTITUTE OF ALASKA NATIVE ARTS AND THE ALASKA STATE COUNCIL ON THE ARTS.

Bill/Resolution No.: CSHB 517 (L&C)  
 Title: "An Act relating to the private sale and consignment of works of art."

Agency Affected: Department of Law  
 BRU: Legal Services

Sponsor: Repr. Gruenberg  
 Requestor: House Labor & Commerce  
 Date of Request: February 11, 1986

Components: Legal Services Operations

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING : (Thousands of Dollars)

GENERAL FUND		-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

FULL-TIME		-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

-Please see attached analysis.-

Prepared by: Richard I. Pegues, Director  
 Division: Administrative Services Division

Phone: 465-3672  
 Date: 2/12/86

Approved by Commissioner: Richard I. Pegues/Fel  
Harold M. Brown, Attorney General  
 Agency: Department of Law

Date: 2/12/86

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

This bill sets out some of the property rights of artists, providing for the sale and consignment of works of art under Title 45. The bill, which adds a new Chapter to this Title, does not contain penalty provisions. Any disputes arising from the provisions of the bill would be civil matters between private parties and would not involve the Department of Law.

(b) The delivery to seller of a proper letter of credit suspends the buyer's obligation to pay. If the letter of credit is dishonored, the seller may on reasonable notification to the buyer require payment directly from him.

(c) Unless otherwise agreed, the term "letter of credit" or "banker's credit" in a contract for sale means an irrevocable credit issued by a financing agency of good repute and, if the shipment is overseas, of good international repute. The term "confirmed credit" means that the credit must also carry the direct obligation of such an agency which does business in the seller's financial market. (§ 2.325 ch 114 SLA 1962)

**Sec. 45.02.326. Sale on approval and sale or return; consignment sales and rights of creditors.** (a) Unless otherwise agreed, if delivered goods may be returned by the buyer even though they conform to the contract, the transaction is

(1) a "sale on approval" if the goods are delivered primarily for use; and

(2) a "sale or return" if the goods are delivered primarily for resale.

(b) Except as provided in (c) of this section, goods held on approval are not subject to the claims of the buyer's creditors until acceptance; goods held on sale or return are subject to such claims while in the buyer's possession.

(c) If goods are delivered to a person for sale and the person maintains a place of business at which he deals in goods of the kind involved under a name other than the name of the person making delivery, then, with respect to claims of creditors of the person conducting the business, the goods are considered to be on sale or return. This subsection is applicable even though an agreement purports to reserve title to the person making delivery until payment or resale or uses such words as "on consignment" or "on memorandum." However, this subsection is not applicable if the person making delivery

(1) complies with an applicable law providing for a consignor's interest or the like to be evidenced by a sign;

(2) establishes that the person conducting the business is generally known by his creditors to be substantially engaged in selling the goods of others; or

(3) complies with the filing provisions of AS 45.09.101 - 45.09.507.

(d) An "or return" term of a contract for sale is to be treated as a separate contract for sale within the statute of frauds section (AS 45.02.201), and as contradicting the sale aspect of the contract within the provisions on parol or extrinsic evidence (AS 45.02.202).

(e) Whenever an artist delivers or causes to be delivered a work of fine art of his own creation to an art dealer for the purpose of sale, or exhibition and sale to the public on a commission or fee or other basis of compensation, the work of fine art is not subject to the claims of the art dealer's creditors. For the purposes of this subsection

(1) "art dealer" means a person other than a public auctioneer engaged in the business of selling works of fine art;

(2) "artist" means the creator of a work of fine art;

(3) "fine art" includes a painting, sculpture, drawing, photograph, or work of graphic art.

(§ 2.326 ch 114 SLA 1962; am § 1 ch 8 SLA 1979)

**Effect of amendment.** — The 1979 amendment added subsection (e).

**Editor's note.** — Subsection (e), which was added by the amendment, is not part of the official text of the Uniform Commercial Code.

**Am. Jur. 2d and ALR references.** — 67 Am. Jur. 2d, Sales, § 410.

Consignment transactions under the Uniform Commercial Code, 40 ALR3d 1079.

**Sec. 45.02.327. Special incidents of sale on approval and sale or return.** (a) Under a sale on approval, unless otherwise agreed,

(1) although the goods are identified to the contract, the risk of loss and the title do not pass to the buyer until acceptance;

(2) use of the goods consistent with the purpose of trial is not acceptance, but failure seasonably to notify the seller of election to return the goods is acceptance, and, if the goods conform to the contract, acceptance of any part is acceptance of the whole; and

(3) after due notification of election to return, the return is at the seller's risk and expense but a merchant buyer must follow reasonable instructions.

(b) Under a sale or return, unless otherwise agreed,

(1) the option to return extends to the whole or a commercial unit of the goods while in substantially their original condition, but must be exercised seasonably; and

(2) the return is at the buyer's risk and expense. (§ 2.327 ch 114 SLA 1962)

**ALR reference.** — Goods in "sale or return" transaction under U.C.C. § 2-327, 66 ALR3d 190.

**Sec. 45.02.328. Sale by auction.** (a) In a sale by auction if goods are put up in lots each lot is the subject of a separate sale.

(b) A sale by auction is complete when the auctioneer so announces by the fall of the hammer or in other customary manner. Where a bid is made while the hammer is falling in acceptance of a prior bid, the auctioneer may in his discretion reopen the bidding or declare the goods sold under the bid on which the hammer was falling.

(c) A sale by auction is with reserve unless the goods are in explicit terms put up without reserve. In an auction with reserve, the auctioneer may withdraw the goods at any time until he announces completion of the sale. In an auction without reserve, after the auctioneer calls for bids on an article or lot, that article or lot cannot