

COMMITTEE REPORT

SENATE

FURTHER:

5/7/86

Date 5/11/86

Mr. President

The Committee on FINANCE considered CSHB 517(Jud)am relating to the private sale and consignment of works of art.

and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass
- do pass with attached amendment(s)
- replace with/or adopt 5 CS for CSHB 517 (L+C)
- new title
- same title and recommends Do Pass
- and attached a "LETTER OF INTENT" NEW FISCAL NOTE
8 law
- reports it back without recommendation
- recommends referral to _____ Committee

MEMBERS SIGNING
DO PASS

J. Kuffel
J. Keck/Halford
Paul Grube
R. Glavin
J. J. J.

MEMBERS HAVING
OTHER RECOMMENDATIONS

J. J. J.
Chairman

do pass
Chairman recommendation

Offered: 5/8/86
Referred: Finance

Original sponsors: Gruenberg, Goll,
Koponen, et al

BY THE LABOR AND
COMMERCE COMMITTEE

1 IN THE HOUSE

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

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 AS 45.02.326(e) is repealed and reenacted to read: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 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 and the dealer shall transmit the proceeds to the artist within 30

1 days of the sale of the work of art.

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

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 45.01' (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.

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

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

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

FISCAL DETAIL

Agency Affected : Department of Law
 BRU : Legal Services

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 :

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.

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

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

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

Date : 2/12/86

Offered: 4/11/86
Referred: Rules

Sp 5/8/86

Original sponsors: Gruenberg, Goll,
Koponen, et al

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 517 (Judiciary) am

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4 FOURTEENTH LEGISLATURE - SECOND SESSION

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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) A person may not reproduce a work of art that is reproduced
24 as reproduced in a limited edition, beyond the number of copies repre-
25 sented to be contained in the edition.

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

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COMMITTEE REPORT
SENATE

FURTHER:

4/21/86

Date 7 May 86

Mr. President

The Committee on LABOR & COMMERCE considered CSHB 517(Jud)am relating to the private sale and consignment of works of art.

and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass
- do pass with attached amendment(s)
- ~~replace with/or adopt SCS for~~
- new title
- same title and recommends
- and attached a "LETTER OF INTENT" NEW FISCAL NOTE
- reports it back without recommendation
- recommends referral to Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS

Bill Ray No Rec

Frank J. Zharoff
Chairman
Do Pass -
Chairman recommendation