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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 99502
(907) 276-6844

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

Memorandum

From: Representative Max F. Gruenberg, Jr. *MFG*
Re: CSHB 517 (JUD), relating to the private sale
and consignment of works of art
Date: April 17, 1986

This bill is modeled after two New York statutes passed in 1966, and is designed to offer protections to Alaskan artists in their business relationships with art dealers and their rights to reproduction.

SECTION 1 Provides that works of art on consignment are not subject to the claims of an art dealer's creditors, and that a sign must be posted in a gallery where art is sold on consignment stating that works of art for sale are on consignment.

SECTION 2 Provides that works of art delivered to an art dealer are trust property in the hands of the art dealer for the benefit of the artist.

Provides that subsection (a)(3) of 45.67.020 may be waived if the agreement is clear and agreed to in writing, however, under a waiver the proceeds of a sale are still not subject to a lien against an art dealer.

Provides that unsold artwork must be returned to the artist on demand consistent with any written agreement.

Also provides that the provisions of 45.67.010 - 020 may not be construed to effect an existing contract. Subsection (b) provides that this law will apply to all future dealings between an artist and art dealer

Protection of Ownership Rights of Artists Act

Artists often find themselves in a complicated and disadvantageous business situation when conveying rights to a work of art. Artists will frequently make an agreement for reproduction rights to an artwork, but are often unable to reacquire the original artwork after it has been reproduced if the agreement was oral or the contract was complex and signed without benefit of counsel. This 1983 New York law overcomes these problems and protects the interests of the individual artists involved.

Under this bill, even if an artist or owner sells reproduction rights for a work of art, the ownership of the actual work remains with the creator or owner unless the ownership is transferred in writing and signed by the artist or owner. In addition, any contracts selling reproduction rights must be in plain language. If a purchaser does not comply with this requirement the contract could be unenforceable and any right not conveyed would remain with the artist or owner.

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This act may be cited as the Protection of Owner-
2 ship Rights of Artists Act.

1 Section 2. [*Definitions.*] As used in this act:

2 (1) "Work of Art" means any visual or graphic art of any medium.

3 (2) "Artist" means the creator or creators of a work of art.

4 (3) "Reproduction Right" means a right to reproduce, prepare derivative
5 works of, distribute copies of, publicly perform or publicly display a work
6 of art.

1 Section 3. [*Right to Reproduce Works of Art.*]

2 (a) Whenever a work of art is sold or otherwise transferred by or on behalf
3 of the artist who created it, or his heirs or personal representatives, the right
4 of reproduction thereof is reserved to the grantor until it passes into the
5 public domain by act or operation of law unless such right is sooner expressly
6 transferred by an instrument, note or memorandum in writing, signed by the
7 owner of the rights conveyed or his duly authorized agent.

8 (b) Whenever an exclusive or non-exclusive conveyance of any reproduc-
9 tion right is made by the holder of such right, or his duly authorized agent,
10 ownership of the physical art work shall be presumed to remain with and
11 be reserved to the grantor unless expressly transferred in writing by an in-
12 strument, note, memorandum or by other written means, signed by the
13 grantor or his duly authorized agent.

14 (c) Nothing herein contained, however, shall be construed to prohibit the
15 fair use of such work of art.

16 (d) Nothing in this article shall operate or be construed to conflict with
17 any rights or liabilities under federal copyright law.

1 Section 4. [*Severability.*] [Insert severability clause.]

1 Section 5. [*Repealer.*] [Insert repealer clause.]

1 Section 6. [*Effective Date.*] [Insert effective date.]

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of Artists Act

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graphic art of any medium. of a work of art. reproduce, prepare derivative work or publicly display a work

art.)
be transferred by or on behalf of legal representatives, the right to such right is sooner expressly assumed in writing, signed by the authorized agent.
conveyance of any reproduction by his duly authorized agent, presumed to remain with and transferred in writing by an instrument in writing, signed by the

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be construed to conflict with the law.

clause.]

Protection of Artists Whose Work Has Been Altered Act

Several well-known cases of mutilated, altered or defaced artwork have led to a drive to balance the property rights of owners against the creative rights of the artists and the general rights of society. The following legislation was enacted by New York in 1983 to protect the reputation of an artist after an artwork has been sold.

The bill gives a legal cause of action if a work which an artist created was defaced, altered or mutilated (without the artist's consent) and damage to the artist's reputation could result. The artist could also claim or disclaim authorship of work. Exceptions are made when: an artist consents to changes in writing; the nature of the materials used causes a change in the work; a change occurs because of the reproduction process or when work is professionally framed or restored. An aggrieved artist is afforded a cause of action for damages, exemplary damages where appropriate, equitable relief, and reasonable attorney and witness fees.

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This act may be cited as the Protection of Artists
2 Act.

1 Section 2. [*Definitions.*] As used in this act:

2 (1) "Artist" means the creator of a work of fine art.

3 (2) "Conservation" means acts taken to correct deterioration and altera-
4 tion and acts taken to prevent, stop or retard deterioration.

5 (3) "Person" means an individual, partnership, corporation, association
6 or other group, however organized.

7 (4) "Reproduction" means a copy, in any medium, of a work of fine art
8 that is displayed or published under circumstances that, reasonably con-
9 strued, evinces an intent that it be taken as a representation of a work of
10 fine art as created by the artist.

11 (5) "Work of Fine Art" means any original work of visual or graphic art
12 of any medium which includes, but is not limited to, the following: painting;
13 drawing; print; photographic print or sculpture of a limited edition of not more
14 than 300 copies; provided however, that "work of fine art" shall not include
15 sequential imagery such as that in motion pictures.

1 Section 3. [*Public Display, Publication and Reproduction of Works of Fine*
2 *Art.*] Except as limited by Section 5 of this act, no person other than the ar-
3 tist or a person acting with the artist's consent shall knowingly publicly
4 display or publish a work of fine art of that artist or a reproduction thereof
5 in an altered, defaced, mutilated or modified form if the work is displayed,
6 published or reproduced as being the work of the artist, or under cir-
7 cumstances under which it would reasonably be regarded as being the work
8 of the artist, and damage to the artist's reputation could result therefrom.

1 Section 4. [*Artists' Authorship Rights.*]

2 (a) Except as limited by Section 5 of this act, the artist shall retain at all
3 times the right to claim authorship, or, for just and valid reason, to disclaim

Suggested State Legislation

4 authorship of his or her work of fine art. The right to claim authorship shall
5 include the right of the artist to have his or her name appear on or in con-
6 nection with the work of fine art as the artist. The right to disclaim author-
7 ship shall include the right of the artist to prevent his or her name from ap-
8 pearing on or in connection with the work of fine art as the artist. Just and
9 valid reasons for disclaiming authorship shall include that the work of fine
10 art has been altered, defaced, mutilated or modified other than by the artist,
11 without the artist's consent, and damage to the artist's reputation could result
12 or has resulted therefrom.

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

1 Section 5. [*Limitations of Applicability.*]

2 (a) Alteration, defacement, mutilation or modification of a work of fine art
3 resulting from the passage of time or the inherent nature of the materials
4 will not by itself create a violation of Section 3 or a right to disclaim author-
5 ship under Section 4(a), provided such alteration, defacement, mutilation or
6 modification was not the result of gross negligence in maintaining or pro-
7 tecting the work of fine art.

8 (b) In the case of a reproduction, a change that is an ordinary result of the
9 medium of reproduction does not by itself create a violation of Section 3
10 or a right to disclaim authorship under Section 4(a).

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

14 (d) In the case of work prepared under contract for advertising or trade
15 use, the rights granted by this article may be waived contractually or other-
16 wise at any time.

17 (e) The provisions of this article shall apply only to works of fine art know-
18 ingly publicly displayed, published or reproduced in this state.

1 Section 6. [*Relief.*]

2 (a) An artist aggrieved under Sections 3 or 4 shall have a cause of action
3 for damages, exemplary damages where appropriate, equitable relief and
4 reasonable attorney's and expert witness's fees, provided, the court may,
5 in its discretion, award attorney's and expert witness's fees to the defen-
6 dant upon dismissal of any action on the grounds such action was frivolous
7 and malicious.

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

1 Section 7. [*Severability.*] [Insert severability clause.]

1 Section 8. [*Repealer.*] [Insert repealer clause.]

1 Section 9. [*Effective Date.*] [Insert effective date.]



**Alaska Arts
Southeast**^{INC}

P.O. BOX 2133, SITKA, ALASKA 99835 · PHONE (907) 747-8177

February 7th, 1986

Representative Peter Goll
Box 581
Haines, AK 99827

Dear Peter:

I would like to express my support of House Bill No. 517, which you co-sponsored in the State Legislature. I believe that this bill would be fair to all parties concerned, and codifies honest and prudent practice between artists and those who maintain galleries.

Thank you for returning my call this week concerning the possibility of a teleconference this spring. As I stated in our conversation I conducted a survey of Arts Organizations in Southeast in an attempt to gauge interest in a consortium of presentors in our region. Such a consortium could save money for all organizations and increase the range of choices for many of the smaller communities. A by product would be the facilitation of planning an entire season of events for Southeast.

I have enclosed copies of Presenter Survey forms from those who responded favorably. Five communities from District two are represented: Skagway, Haines, Metlakatla, Hoonah, and Angoon. A sixth organization has since expressed interest in Gustavus. Keep in mind that the interest has been expressed by organizations which ultimately represent and impact hundreds of individuals. Ten other organizations have also expressed an interest with- in the following communities: Juneau, Sitka, Ketchikan, Port Alexander, Pelican, and Petersburg. It would appear then, that at least half of the communities expressing an interest in talking further about a consortium are in District 2.

If we are to be effective in our efforts to begin planning and discussing booking for next year we should begin our dialogue soon. I don't know what your schedule will allow but I would suggest sometime between the last week in March and mid May. Early May would be ideal for me since I am on the road in Southeast recruiting for Camp during most of April.

I realize, however, that teleconferences are difficult to schedule. I would appreciate any efforts that you could make in securing one for the arts communities in our region.

Sincerely,

Gordon M. Bolar
Executive Director
Alaska Arts Southeast



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.

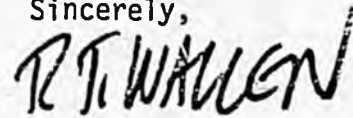
Whenever an artist creates a series of original prints, from a stone or metal plate, for example, or when he reproduces a painting with a series of prints, or makes a series of castings from a mold, the artist may elect to mark these original prints, or reproductions, or castings with the letter "c" 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 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 achitecture, 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 that reads "R. T. WALLEN". The letters are bold and slightly slanted, with a distinctive flourish on the final "N".

R. T. Wallen

CHAIRMAN'S INFORMATION: CSHB 517 (Jud)am

1) BILL TITLE: "An act relating to the private sale and consignment of works of art."

a) Introduced: Gruenberg

b) Co-sponsors:

2) INTENT: This measure clarifies the relationship between artists and art dealers concerning art work being sold on consignment.

N.B. Rep Gruenberg may be offering an amendment which would require the drafting of an SCS

FISCAL NOTE: 0

3) ADDITIONAL REFERRALS: Finance and Rules

4) PUBLIC HEARINGS:

a) Sponsor:

b) Public Witnesses:

5) BILL ACTION:

a) Hold in committee?

b) Assign to sub committee for further review?

c) Move from committee?

d) Close public hearings?

6) COMMITTEE ACTION?

a) amendments?

b) CS adoption?

Need to Adopt L&C SCS

L&C SCS DELETED
SUBSECTION (C) P 3
LINES 23-25 of
CSHB 517(Jud)

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 45.09 (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.
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STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revised 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						
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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: Harold M. Brown, Attorney General
 Agency: Department of Law

Date: 2/12/86