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3

HOUSE COMMITTEE REPORT

(7)

Date referred:

1/19/87

FURTHER REFERRALS: Judiciary

DATE: _____

The Labor & Commerce Committee has considered HB 3

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

RECOMMENDS:

- replace with _____ the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):

- fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published _____
- zero with analysis

SIGNING DO PASS:

John F. Koponen
John Ellis
Cliff Dinkins
Samuel Palumbo
Dave Douley

SIGNING OTHER RECOMMENDATIONS:

Dave Douley

 Chairman's signature

State of Alaska

House Majority Leader

COMMITTEES

HOUSE HEALTH, EDUCATION
AND SOCIAL SERVICES
HOUSE JUDICIARY
HOUSE RULES



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

P.O. BOX V
JUNEAU, ALASKA 99811
(907) 465-3718
465-4968/4986

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

MEMORANDUM

DATE: February 6, 1987
TO: House Labor and Commerce Committee
FROM: Max F. Gruenberg, Jr. *MFG*
RE: HB3, "An Act Relating to the Private Sale and
Consignment of Works of Art."

Sectional Analysis

Sec. 1

AS 45.02.326(e) The present law protects works of art from the claims of an art dealer's creditors. This section adds language which requires that art dealers post notice that works of art are being sold on consignment so that potential creditors will be on notice that the works of art will not be subject to their claims against the art dealer.

Sec. 2

AS 45.67.010 Provides that works of art sold on consignment and the proceeds from such a sale are trust property and remain trust property until the art dealer transmits the proceeds of the sale to the art dealer. It also requires that the art dealer transmit the proceeds to the artist within 30 days of the sale.

Sec. 3

AS 45.670.20 Provides that the only valid waiver of the above provisions is a waiver of the 30 day requirement which is clear, conspicuous, and agreed to in writing by the artist, and that such a waiver will not make the proceeds subject to the claims of the dealer's creditors.

Sec. 4

AS 45.67.030 Provides that an art dealer will return an unsold work of art to the artist on demand unless otherwise agreed to in writing.

Sec. 5

AS 45.67.040 Provides that the provisions of 45.67.010, 020 and 030 do not have an effect on contracts or arrangements in existence before the effective date of the bill unless agreed to in writing, and that these provisions govern in the event of a conflict with other state laws.

Sec. 6

As 45.67.050 Provides that when a work of art is transferred by an artist, the right to reproduce the artwork remains the property of the artist unless the right is specifically transferred by a written instrument and that conversely when a right to reproduce a work of art is transferred by an artist the work of art remains the property of the artist unless specifically transferred in a written instrument.

Sec. 7

AS 45.67.100 Defines for the purposes of the bill the terms artist, art dealer, consignment, creditor, right of reproduction and work of art.

may on reasonable notification to the buyer require payment directly from the buyer.

(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 the person 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 the person's creditors to be substantially engaged in selling the goods of others; or

(3) complies with the filing provisions of AS 45.09.

(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 the artist's 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

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- (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 § SLA 1979)

Editor's notes. — Subsection (e), added by the 1979 amendment, is not part of the official text of the Uniform Commercial Code.

Collateral references. — Consignment transactions under the Uniform Commercial Code. 40 ALR3d 1078.

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)

Collateral references. — 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 has discretion to 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 the auctioneer 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

STATE OF ALASKA THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY LEGISLATIVE REFERENCE LIBRARY

May, 1988

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

Mary Van Nimwegen

H JUD.	3-18-87	1:30p.m.
H JUD	3-10-87	1:30p.m.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 31, 1988

SUBJECT: Private sale and consignment of works of art -
SCS CSHB 3(Jud)

TO: Representative Max Gruenberg

FROM: Michael F. Ford *M.F.*
Legislative Counsel

You have asked if AS 45.67.030 would be applicable to a sale or transfer that occurred prior to the effective date of SCS CSHB 3(Jud). The applicability language in section 2 of the bill and the general prohibition against retrospective application of statutes contained in AS 01.10.090, would preclude AS 45.67.030 from being applied to a sale or transfer that occurs prior to the effective date of the bill.

You have also asked how AS 45.67.030 affects a museum's right to reproduce a work of art. Under this section the right of reproduction is reserved to the grantor, unless expressly transferred in writing. Therefore, until the right of reproduction passes into the public domain, the museum would need written permission from the owner of the right of reproduction in order to reproduce the art work.

Please contact me if you have further questions.

MFF:bb
b4/081

State of Alaska

House Majority Leader

COMMITTEES

HOUSE HEALTH, EDUCATION
AND SOCIAL SERVICES
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Representative Max F. Gruenberg, Jr.
District 11
Spenard, Upper Midtown Anchorage

MEMORANDUM

DATE: February 9, 1987

TO: Members of the House Labor and Commerce Committee

FROM: Max F. Gruenberg, Jr.

RE: HB 3, "An Act Related to the Sale and Consignment of Art."

HB 3 was adapted from two New York statutes that were passed in 1966. This bill is intended to protect Alaskan artists. It provides that art work delivered to an art dealer for sale constitutes a trust in the legal sense. This protects the proceeds of the sale from the art dealer's creditors. The bill also guarantees that the right of reproduction is not transferred with the artist's transfer of the work of art itself, unless there's a specific agreement to that effect.

This bill removes the filing requirements of the U.C.C. in regards to consignment sales of artworks. It shifts the burden to notify potential creditors that works of art are sold on consignment from the artist to the dealers themselves.

This is especially important for Alaskan artists who often ship their art from the rural areas, where they live, to population centers, where art dealers do their business. It is therefore more equitable and practicable to place the burden of securing credit to art dealers on the art dealers themselves and on creditors who are in a better position to secure their loans and monitor the art dealer's solvency.

This bill is essentially the same as HB 517 which passed the House last session, but died in the Senate Rules Committee. I have made some technical changes which clarify the language in regards to an artist's view of the provisions of the bill.

5-0117B

Ford
3/18/87

Original sponsors: Gruenberg, Goll,
Larson, et al.

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 3 (Judiciary)

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 if the waiver is clear, conspicuous, and
17 agreed to in writing by the artist. A waiver under this subsection is
18 not valid with respect to the proceeds of a work of art initially
19 received as a consignment but subsequently purchased by the art dealer
20 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. The provisions of AS 45.67.010,
28 45.67.020, and 45.67.030 may not be construed to have an effect upon a
29 written or oral contract or arrangement in existence on the effective

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

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

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

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

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

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

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

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

1 interest of the consignor, in and to the goods;

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

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

6 (6) "work of art" means a painting, sculpture, drawing,
7 work of graphic art, photograph, or craft work, in any medium.
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5-0117B ✓

Ford
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14 the art dealer's creditors.

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22 consignment, and

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

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

27 (b) A work of art initially received as a consignment remains
28 trust property notwithstanding the subsequent purchase of the artwork
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1 account until the consignment price due to the artist is paid in full.
2 If the work of art is resold to a bona fide third party before the
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6 trusteeship continues until the fiduciary obligation of the art dealer
7 with respect to the transaction is discharged in full.

8 Sec. 45.67.020. WAIVER. (a) A provision of a contract or
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10 void except as provided in this subsection. An artist may waive the
11 provisions of AS 45.67.010 if the waiver is clear, conspicuous, and
12 agreed to in writing by the artist. A waiver under this subsection is
13 not valid with respect to the proceeds of a work of art initially
14 received as a consignment but subsequently purchased by the art dealer
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18 tent with the artist's rights under AS 45.67.010.

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

22 Sec. 45.67.040. APPLICABILITY. The provisions of AS 45.67.010,
23 45.67.020, and 45.67.030 may not be construed to have an effect upon a
24 written or oral contract or arrangement in existence on the effective
25 date of this section, except by the mutual written consent of the
26 parties.

27 Sec. 45.67.050. RIGHT TO REPRODUCE WORKS OF ART. (a) When a
28 work of art is sold or otherwise transferred by or on behalf of the
29 artist who created it, or the heirs or personal representatives of the

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artist, the right of reproduction is reserved to the grantor until it passes into the public domain by act or operation of law, unless the right is sooner expressly transferred by an instrument, note, or memorandum in writing signed by the owner of the right or an authorized agent of the owner.

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

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

Sec. 45.67.100. DEFINITIONS. In this chapter, unless the context otherwise requires,

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

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

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

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

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

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Introduced: 1/19/87
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

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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

Handwritten scribbles and notes on the left margin, including "AS 45.67.010" and "agent of the artist".

Handwritten note "Delete" with a bracket pointing to lines 27-29.

Handwritten note "Put Back" with a box around it.

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

(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)(4) 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.

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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

Delet

Delet

Put back

Artist may not waive 010 with respect to the proceeds

~~1. No waiver at all~~

may waive 010 if clear + conspicuous + agreed

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
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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.

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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.

pathe

1st hearing 3/11/86 -

Offered: 2/17/86
Referred: Judiciary

- canned salmon
- home dealer
- photography records / tapes
- paper products

Original sponsors: Gruenberg, Goll, Koponen, et al

BY THE LABOR AND COMMERCE COMMITTEE

1 IN THE HOUSE

2

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 of works of art."

7

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.

11

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

17

(1) the art dealer is, with respect to the work of art, the

18

agent of the artist;

19

(2) the work of art is trust property in the hands of the

20

art dealer for the benefit of the artist; and

21

(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.

23

(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

Trust expands to proceeds of sales

major philosophical step to give priority =

CSHB 517(L&C)

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

What is it?

I.R.S. Utilizes Wage claims

Who is the grantor?

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

What is it?

Who is it?

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.

Renacted 1979

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.

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State of Alaska

COMMITTEES

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



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

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

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

MEMORANDUM

TO: HOUSE LABOR AND COMMERCE COMMITTEE MEMBERS

FROM: REPRESENTATIVE MAX F. GRUENEBRG, 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 ARTOWRK 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 PROPSD 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.



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, appearing to read "R. T. WALLEN". The letters are bold and somewhat stylized, with a large "W" and "L".

R. T. Wallen

AN ACT RELATING TO THE PRIVATE SALE AND CONSIGNMENT OF WORKS OF ART.

PRIME SPONSOR: GRUENBERG

CO-SPONSORS: GOLL, KOPONEN, LARSON, JENKINS, FAYLOR, HURLEY, HANLEY, NAVARRE
MILLER.MM

\$000 GENERAL(FNOTE)

\$000 OTHER(FNOTE)

CURRENT STATUS: (S) RLS

DATE		PAGE	ACTION
01/27/86	(H)	1892	READ THE FIRST TIME - REFERRAL(S)
02/17/86	(H)	2127	L&C RPT CS(L&C) 7DP
02/17/86	(H)	2127	ZERO FISCAL NOTE/ANALYSIS HSE SUPPL 86
04/11/86	(H)	2674	JUD RPT CS(JUD) 5DP 2NR
04/16/86	(H)		RULES TO CALENDAR 4/17/86
04/17/86	(H)	2763	READ THE SECOND TIME
04/17/86	(H)	2763	JUD CS ADOPTED UNAN CONSENT
04/17/86	(H)	2763	ADVANCED TO THIRD READING UNAN CONSENT
04/17/86	(H)	2763	READ THE THIRD TIME CSHB 517(JUD)
04/17/86	(H)	2763	PASSED Y31 N6 X1 A2

HB 517 MEASURE HISTORY PAGE 02 OF 02

DATE		PAGE	ACTION
04/17/86	(H)	2764	RIEGER NOTICE OF RECONSIDERATION
04/18/86	(H)	2779	RECON TAKEN UP - IN THIRD READING
04/18/86	(H)	2780	RETURN TO SECOND FOR AM 1 UNAN CONSENT
04/18/86	(H)	2780	AM NO 1 ADOPTED Y17 N15 X5 A3
04/18/86	(H)	2781	RETURN TO SECOND FOR AM 2 UNAN CONSENT
04/18/86	(H)	2781	AM NO 2 ADOPTED UNAN CONSENT
04/18/86	(H)	2781	PASSED ON RECONSIDERATION Y27 N5 X5 A3
04/18/86	(H)	2785	TRANSMITTED TO (S)
04/21/86	(S)	2414	READ THE FIRST TIME - REFERRAL(S)
05/08/86	(S)	2678	L&C RPT SCS 2DP 1NR
05/11/86	(S)	2831	FIN RPT 6DP L&C SCS RULES

FISCAL NOTE

Revision Date : _____

REQUEST Page 1 of 2

FISCAL DETAIL

Bill/Resolution No. : CSWB 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 Phone : 465-3672
 Division : Administrative Services Division Date : 2/12/86

Approved by Commissioner : Richard I. Pegues/Fel
Harold M. Brown, Attorney General Date : 2/12/86
 Agency : Department of Law

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.

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: _____

Bill Version: HB3
Publish Date: _____

Revision Date: _____
Title: An Act relating to the private sale and consignment of works of art.
Sponsor: Repr. Gruenberg
Requestor: House Labor and Commerce

Agency Affected: Department of Law
BRU: Legal Services
Components: Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

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

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Please see attached analysis.

Richard I. Pegues

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

Phone: 465-3672
Date: 1/21/87

Approved by Commissioner: Acting Attorney General
Agency: Department of Law

Date: 1/21/87

Distribution (by preparer):

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB3

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.