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# 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*  
*Chris ...*  
*Scott ...*  
*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  
Spenard, Upper Midtown Anchorage

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JUNEAU, ALASKA 99811  
(907) 465-3718  
465-4968/4986

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

## MEMORANDUM

DATE: February 9, 1987

TO: Members of the House Labor and Commerce Committee

FROM: Max F. Gruenberg, Jr. *MFG*

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 waiver of the provisions of the bill.

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

## 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.

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 . 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.